

**HB-2425-SD-1**

Submitted on: 6/29/2020 4:01:44 PM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Younghi Overly	Testifying for AAUW of Hawaii	Support	No

Comments:



To: Chair Rhoads  
Vice Chair Keohokalole  
Members of the Committee  
Chair DelaCruz  
Vice Chair Agaran  
Members of the Committee  
Fr: Nanci Kreidman, M.A.  
Chief Executive Officer  
Re: HB 2425 HD1 SD1; Support

Aloha. Thank you for placing this Bill on the agenda for discussion and deliberation. We have learned so much about the crime of domestic violence these last 30 years. There are many and varied ways used to harass or control partners, that had not been considered domestic violence, by definition.

It is important for us to name the behaviors and hold abusers accountable for their perpetration of abuse, even when it doesn't leave a visible bruise.

This has the potential, of course, to arouse resistance and controversy. Those of us who have been working with survivors recognize the behavior included in this Bill, and have heard it described multiple times by many clients. It is clearly time to believe victims when they describe the lengths their abusers go to control them, isolate them, restrain them from contact

**DOMESTIC VIOLENCE ACTION CENTER**

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198

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TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200

WEBSITE: [WWW.DOMESTICVIOLENCEACTIONCENTER.ORG](http://WWW.DOMESTICVIOLENCEACTIONCENTER.ORG)

EMAIL: [DVAC@STOPTHEVIOLENCE.ORG](mailto:DVAC@STOPTHEVIOLENCE.ORG)



with family and friends, withhold resources, threaten them, and harass them into obedience. It is when we face the dark and hidden behaviors that we can effectively address the epidemic we see at schools, businesses, medical settings, courtrooms, churches, community based organizations, therapists offices and domestic violence shelters.

We shall look forward to favorable action on HB 2425 HD1 SD1. Thank you.

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**HB-2425-SD-1**

Submitted on: 6/30/2020 10:42:12 PM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Katrina Obleada	Testifying for Hawaii Psychological Association	Support	No

Comments:

**HB-2425-SD-1**

Submitted on: 6/29/2020 9:50:12 PM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
MARSHA H BOLSON	Individual	Support	No

Comments:

**HB-2425-SD-1**

Submitted on: 6/29/2020 3:46:16 PM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Monk	Individual	Support	No

Comments:

Barbara Gerbert, PhD  
Joshua Gerbert, DPM

59-120 Laninui Drive  
PO Box 44505  
Kamuela, HI 96743

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June 29, 2020

Dear Senator Karl Rhoads and Senator Donovan Dela Cruz  
Committees on Judiciary and Ways and Means

**Position on HB2425 HD1: Support and request to give a hearing to  
HB2425**

My name is Joshua Gerbert, DPM, a board certified foot and ankle surgeon who practiced in San Francisco for 45 years before retiring to the Big Island 7.5 years ago. In my practice I had the occasion of seeing women who were coercively abused and discovered that there were no laws that protected them.

I am writing to express my support of Bill HB 2425 HD1 in that it is long overdue. The trauma these women experience is as severe as physical abuse.

Thank you for the opportunity to testify on this Bill.

Sincerely,

Joshua Gerbert, DPM, FACFAS  
59-210 Laninui Drive  
Kamuela, HI 96743

**Position on HB 2425: Support**

TESTIMONY OF THOMAS D. FARRELL  
Regarding HB 2425, HD1, SD1, Relating to Domestic Abuse  
Committee on Ways and Means/Committee on Judiciary  
Senator Donovan Dela Cruz, Chair/Senator Karl Rhoads, Chair  
Thursday, July 2, 2020 10:00 a.m.  
State Capitol Auditorium

I do not support this bill.

Unlike any of the people who have previously submitted overwhelmingly favorable testimony, I actually go to court, day in and day out, and have been handling *Petitions for Protection* filed under Chapter 586 since about 1995. I've represented both petitioners and respondents, men and women, and I have probably handled several hundred of these cases over the past twenty-five years.

During this time, two legislative trends have emerged. First, the people who can file for an *Order for Protection* and the grounds for granting one have steadily expanded. Second, the collateral consequences of being on the receiving end of one of these orders have become more severe.

The basic concept of an *Order for Protection* is that it prohibits contact with the protected person. That isn't much of an imposition, until one recognizes that it criminalizes behavior which would otherwise be perfectly legal. That invites abuse, such as a case that I recall when I represented a gentleman who was arrested and prosecuted for violating one of these orders. His estranged wife called police and accused him of parking across the street from her residence in Kailua. After I produced proof that on the day and time in question he was actually at a sports banquet in Kaimuki, the prosecutor dropped the case. That false accusation cost my client about \$5,000 in attorney fees. Even though he wasn't convicted, she was still able to cause her ex worry and expense, and that is exactly what she wanted to do. All it takes is a call to 911.

If you are on the receiving end of an *Order for Protection*, you are de-gunned. Not everyone owns or uses firearms, of course, but for some people this is a serious problem. Even though the court can grant an exception for military and law enforcement personnel, it doesn't automatically do so. The misuse of these orders for the purpose of disarming someone is actually a tactic occasionally employed by abusers. If you know she's got a gun, you get the court to take her guns away, and then you go beat her or kill her.

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Testimony of Thomas D. Farrell  
HB 2425, HD1, SD1  
July 2, 2020  
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Domestic violence allegations are the nuclear weapon of child custody litigation. If an *Order for Protection* is granted against you, then you are presumptively disqualified from anything other than supervised visitation. In most cases, this means you will only get to see your kids for an hour every couple of weeks, at a supervised visitation center. In my experience, I have found that many parents are willing to do just about anything to win a custody case. So, the unintended consequence of §571-46(a)(9), HRS is that most child custody disputes in divorce and paternity now begin on the domestic violence calendar. If you want to win the custody battle, get an *Order for Protection*. Sometimes, BOTH parents try to do this, and if the children are on both petitions and a TRO is issued in both cases, the children wind up in foster care until the court can hold a trial and decide which parent is the abuser.

Among the other collateral consequences of being on the losing end of one of these petitions is the public and social opprobrium that comes with being labeled an “abuser.” Anyone can run your name in *Hoohiki* and find out if you have been a respondent in one of these cases, and if an order was issued. Currently, I am representing a federal employee in a case where the government wants to revoke his security clearance and fire him from a 25-year career, because of this.

So, the consequences of these orders are rather severe---much more so than for conviction of the crime of Abuse of a Family or Household Member. However, because a proceeding under Chapter 586 is a civil proceeding, there is no presumption of innocence, the burden is on the respondent to show that an order is not necessary, and the standard of proof is “preponderance of the evidence,” which is a rather low standard. In practice, this means that if the petitioner claims acts of abuse, and the respondent cannot disprove them, the petitioner wins. Since many of these cases arise from incidents that occur in the home, there are typically no witnesses other than the the two parties, and the trial is a he-said/she-said affair. These cases are very difficult to defend.

Now, I don’t dispute that there are some people who deserve all of these consequences and more. My point, however, is that you should remember the serious consequences of being on the losing end of an *Order for Protection* before you significantly expand the reasons for granting one. If HB 2425 passes, we have pretty much reached the point where anyone who feels victimized by an unhappy domestic relationship can file a petition in the Family Court.

As originally drafted, Section 586-1 was pretty clear about what constituted abuse. There had to be an assault or the threat of an assault. “Extreme psychological abuse” was eventually added, grafting on the tort concept of “extreme emotional distress.” One would think that would be clear enough, as that tort concept has been well-defined over years of decisional law. However, I had a judge once issue an *Order for Protection* on the grounds that the respondent admitted that he had called his wife “fat and lazy.”

So, HB 2425 now proposes to expand the grounds even more, to include “coercive control.” It would define it as “a pattern of threatening, humiliating, or intimidating actions... that is used to harm, punish, or frighten an individual.” You might be interested to know that in the law, a pattern means two acts.

The bill further defines “coercive control” as “behavior that seeks to take away the individual's liberty or freedom and strip away the individual's sense of self.” That could encompass almost anything. And it further defines “coercive control” (and these definitions are all in the disjunctive, not the conjunctive) as behavior designed to “make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior.” If this bill passes, anyone who thinks they are “exploited” can file for an *Order for Protection*.

The bill tries (and fails) to further define the nebulous concept by providing a set of non-exclusive examples:

- (1) Isolating the individual from friends and family; (“I can’t stand your mother, please don’t bring her over to the house.”)
- (2) Controlling how much money is accessible to the individual and how it is spent; (“Please don’t piddle away all our money on gambling; we need to pay the rent.”)
- (3) Monitoring the individual's activities, communications, and movements; (“Are you coming home for dinner tonight?”)
- (4) Name-calling, degradation, and demeaning the individual frequently; (Not behavior that I advocate, but don’t we have a First Amendment?)
- (5) Threatening to harm or kill the individual or a child or relative of the individual; (Already covered by §586-1)
- (6) Threatening to publish information or make reports to the police or the authorities; (“If you hit me again, I’m calling the cops.”)
- (7) Damaging property or household goods; and (Already covered by §586-1 and criminal statutes)
- (8) Forcing the individual to take part in criminal activity or child abuse.” (Already covered by criminal statutes)

Testimony of Thomas D. Farrell  
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I had a case a while back, where one of the allegations was that my client took away the keys to the car. Now that sounds like controlling behavior if ever I heard it. He admitted that he intended to control his wife and prevent her from driving off. He did that because she was stinking drunk, and could have hurt someone else or herself if she had gotten behind the wheel. This bill will allow her to get an *Order for Protection* for that. If you can find a defense for him in this bill, I'd like to know what it is.

Chapter 586 also covers parent-child relationships. Parents try to control, punish and coerce behavior all the time. We currently have a "reasonable parental discipline" defense that the Supreme Court has carefully defined in the context of physical punishment. Will we now have to go to the Supreme Court to find out when and under what circumstances a parent may impound a defiant teenager's smartphone?

As a divorce lawyer, I've seen some marriages where one spouse is a "gold-digger." The other has substantial income and assets, and the first has none and doesn't work. It would seem that a gold-digger spouse is exploiting the other's resources and capacities for personal gain. This bill would make that the basis for an *Order for Protection*. What if the parties had agreed that the so-called "gold-digger" would be a stay-at-home parent? What if the moneyed spouse told the "gold-digger" "Get a job and start pulling your weight, or I'll go file a petition for protection and get you thrown out of the house?"

What will happen if you pass this thing is that I will make a lot more money because we will have even more of these cases in Family Court. As the collateral consequences of these cases become increasingly severe, more and more people find it worthwhile to hire attorneys to represent them. Other than that, no good will come of this. Our Family Court is already severely overtaxed, and great injustice will be done.

I know coercive and controlling behavior when I see it, and I assure you that I have. I don't deny its existence, and I certainly don't advocate it. However, there are other ways to deal with this. If the controller is your spouse, for example, divorce is a pretty good answer. You don't need to prove anything to get a divorce, other than that you want out. Broadening the scope of §586-1 is not a good answer at all. If you pass this out, you might as well just eliminate all grounds and make an *Order for Protection* issuable on request---for any reason or no reason at all.

The people who advocate this measure do not understand the consequences of its passage. They support it because they want to make a statement against domestic violence. We can all appreciate and support that. But senators have a duty to fashion legislation that is fair, workable, and practical. HB 2425 fails on all counts.

**HB-2425-SD-1**

Submitted on: 6/29/2020 7:12:51 PM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
aimee chung	Individual	Support	No

Comments:

It is important for us to name the behaviors and hold abusers accountable for their perpetration of abuse, even when it doesn't leave a visible scars, bruises, or broken bones.

Thank you for your support of this bill and for the safety of Hawai'i's families.

Mahalo,

Aimee B Chung, MSW, LSW

DVAC Board Member

**HB-2425-SD-1**

Submitted on: 6/30/2020 2:24:32 AM

Testimony for JDC on 7/2/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
	Individual	Comments	No

Comments:

Aloha Chair Rhoads, Chair Dela Cruz and Committee Members,

Domestic violence has been politicized for decades.

For example, laws requiring mandatory arrest in domestic violence situations resulted in women being arrested.

[Note: Women perpetrating domestic violence against men (solely or mutually as a couple) has been purposefully downplayed and minimized. This is in no way intended to minimize domestic violence against women, but is intended to acknowledge an inconvenient fact and reality for those who sex/gender-politicize domestic violence.]

Therefore, laws were changed to arrest the "primary aggressor". With men being generally bigger and more physical, this was a dog whistle to arrest men as the \*primary\* aggressor. However, that wasn't enough because women were still being arrested. Now, there is the debate of primary versus dominant aggressor.

- A primary aggressor is the one who initiates the first strike.
- A dominant aggressor is the one who controls and dominates the other.

Women, in situations where they are the primary aggressor and should be arrested, can argue they are not the "dominant" aggressor. Because most men are typically bigger physically and therefore "physically" 'dominant', we are back to an arrest the man dog whistle.

The contorted legalese journey in this above example has now spawned "coercive control".

Because domestic violence has been politicized for decades, the \*sex/gender-biased\* domestic violence desired laws would read arrest the man, all the time, in every situation; however, this would be unconstitutional because it is obvious gender discrimination.

Male and female couples, with both engaging in manipulative, coercive or domestic violence behaviors, is common. This is not meant to minimize the percentage of cases where the male engages in terrible abuse of a female, but to identify a reality and address it meaningfully. Now, there are many more situations of same-sex intimate partners and how these associated domestic violence issues are resolved is equally important.

Therefore, as policy-makers, HOW WILL YOU ENSURE THE COERCIVE CONTROL LANGUAGE IN THIS PROPOSED LAW WILL BE APPLIED EQUALLY AND FAIRLY, WITHOUT REGARD TO RACE, COLOR, RELIGION, \*SEX/GENDER\*, OR NATIONAL ORIGIN?

Keep in mind that the domestic violence industry is run by mostly women for mostly women. How welcome is a man who reports domestic violence or coercive control to a women-run domestic violence advocacy group?

If women do not leave their abuser until about 7 attempts or incidents of abuse, what will a man do in situations of coercive control and abuse?

Where and how will a man get support when undergoing coercive control?

What if children are involved?

Note: A Commission on the Status of Women exists as a formal funded government agency but the Legislature has not established a commensurate Commission on the Status of Men. A Fatherhood Commission exists but is this same reductionist approach (valuing the whole woman but only a part of a role of a man) being applied to domestic violence?

Next, the 8 elements that help define a pattern of coercive control are clearly missing some typical manipulative/coercive techniques:

- Turning children against an individual or endangering children to exert control
- Making jealous accusations or gaslighting to invoke guilt, shame or fear
- Engaging in cycles of affection and rejection and/or blame for everything in order to exert control over behavior
- Making false allegations in legal proceedings that result in the equivalent of malicious prosecution or abuse of process (Note: Using the power of government to wrongly exert coercive control over another is the penultimate form of "domestic abuse" and makes government a co-abuser!)

Without modifications and protections, this bill easily enables the government to become a coercive co-abuser.

The concept of "coercive control" was developed as a man exerting control over a woman. See Evan Stark book - "Coercive Control: How Men Entrap Women in Personal Life". Sound policy requires legislators to craft legal language that protects the majority and the minority equally and fairly, without discriminating based on sex/gender. The elements that help define coercive control in HB2425 HD1 S1 are lacking and are sex/gender-biased.

#### RECOMMENDATIONS:

1. Develop **\*\*comprehensive\*\***, common-sense, **\*balanced\*** and **\*sex/gender-neutral\*** elements that help to define coercive control.
2. Require annual reporting of data to ensure the equal and fair application of the law.
  - a. From the courts (both civil and criminal), this annual reporting shall include the

sex/gender of the petitioner and respondent (protective or other court orders; criminal prosecutions) and the categories of domestic violence alleged and how the allegations were resolved. Include children affected by court actions and orders.

b. From all domestic violence service providers (who receive any state or federal taxpayer monies), this annual reporting shall include the sex/gender of everyone who initiates contact or asks for information and help and how each such contact was resolved or handled, to include the sex/genders of the involved intimate partners (If known) and any involved children.

If such persons are provided further support or assistance, then the categories of domestic violence alleged and how the allegations were resolved shall be summarized in a manner helpful to analyze the compliance with and effects of these policies.

3. Create real consequences for false allegations related to domestic abuse allegations. Note: Signing forms under the penalty of perjury is not a deterrent to false allegations as there is no real consequence.

Because domestic violence has been politicized for decades, please don't allow this bill to become another "arrest the man" dog whistle. Temporary Restraining Orders (TROs), instead of being used as shields, are already abused as swords for custody and in divorce cases. This has been well-known for quite some time. Adding sex/gender-biased coercive control language to the definition of domestic abuse, with no provisions for preventing false allegations, won't help the worst domestic violence cases but will remove the door and entire wall altogether to further malicious abuse of restraining orders.

If desired, I look forward to this continuing conversation with any proponents or opponents of such legislation so the most effective public policy can be crafted.

**HB-2425-SD-1**

Submitted on: 6/30/2020 6:22:56 AM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eileen M Gawrys	Individual	Support	No

Comments:



**HB-2425-SD-1**

Submitted on: 6/30/2020 6:48:13 AM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shawn Benton	Individual	Support	No

Comments:

I am currently a member of the Board of Directors for the Domestic Violence Action Center and support HB2425 HD1 SD1 Relating to Domestic Abuse, to include and define "coercive control". Thank you for your support in moving this Bill forward.

**HB-2425-SD-1**

Submitted on: 6/30/2020 5:00:03 PM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Individual	Support	No

Comments:

**LATE**

**HB-2425-SD-1**

Submitted on: 7/1/2020 3:25:16 PM

Testimony for JDC on 7/2/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

This area really needs a lot of looking into on the elementary school level - where children grown up to think that domestic abuse is normal and as adults in relationships, don't realize when it is happening.

Furthermore, the police force is not equipped to do anything more than "code billing" and "security" prodecures. It would be helpful if they had workshops to equip them to handle their communities. I pity the rookies who are on their respective beat and do not know what to do.

It can be stopped, and teaching people/professionals how to identify the red flags would be crucial to help stop it.