

JAN 18 2023

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# A BILL FOR AN ACT

RELATING TO CUSTODY AND VISITATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that individuals who  
2 abuse their intimate partners have been known to misuse court  
3 proceedings to control, harass, intimidate, coerce, or  
4 impoverish the abused partner. This litigation abuse occurs in  
5 a variety of contexts. In the family court, abusers have used  
6 cases involving dissolution, legal separation, parenting plan  
7 action or modification, a protection order, or child custody to  
8 harm or exploit their partner and children's well-being.  
9 Abusers have also filed meritless civil lawsuits alleging breach  
10 of contract, defamation, or another tort to force the abused  
11 partners to spend time, money, and emotional resources  
12 responding to the lawsuits. Due to the lengthy nature of legal  
13 proceedings, litigation abuse can extend long after a  
14 relationship has ended.

15           The legislature also finds that courts should be aware that  
16 perpetrators use coercive control to harm and exploit their  
17 partner and children's well-being when child custody is under



1 consideration. When courts are evaluating the best and safest  
2 way to issue custody orders, analysis should include acts of  
3 coercive control.

4 The purpose of this Act is to add coercive control and  
5 litigation abuse by a parent of a child to the list of factors  
6 the court shall consider in determining what constitutes the  
7 child's best interest when awarding custody and visitation  
8 rights to individuals in actions for divorce, separation,  
9 annulment, separate maintenance, or any other proceeding where  
10 the custody of a minor child is under dispute.

11 SECTION 2. Section 571-46, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) In determining what constitutes the best interest of  
14 the child under this section, the court shall consider, but not  
15 be limited to, the following:

- 16 (1) Any history of sexual or physical abuse of a child by  
17 a parent;
- 18 (2) Any history of neglect or emotional abuse of a child  
19 by a parent;
- 20 (3) The overall quality of the parent-child relationship;



- 1           (4) The history of caregiving or parenting by each parent
- 2                   prior and subsequent to a marital or other type of
- 3                   separation;
- 4           (5) Each parent's cooperation in developing and
- 5                   implementing a plan to meet the child's ongoing needs,
- 6                   interests, and schedule; provided that this factor
- 7                   shall not be considered in any case where the court
- 8                   has determined that family violence has been committed
- 9                   by a parent;
- 10          (6) The physical health needs of the child;
- 11          (7) The emotional needs of the child;
- 12          (8) The safety needs of the child;
- 13          (9) The educational needs of the child;
- 14          (10) The child's need for relationships with siblings;
- 15          (11) Each parent's actions demonstrating that they allow
- 16                   the child to maintain family connections through
- 17                   family events and activities; provided that this
- 18                   factor shall not be considered in any case where the
- 19                   court has determined that family violence has been
- 20                   committed by a parent;



- 1       (12) Each parent's actions demonstrating that they separate
- 2             the child's needs from the parent's needs;
- 3       (13) Any evidence of past or current drug or alcohol abuse
- 4             by a parent;
- 5       (14) The mental health of each parent;
- 6       (15) The areas and levels of conflict present within the
- 7             family; ~~and~~
- 8       (16) A parent's prior wilful misuse of the protection from
- 9             abuse process under chapter 586 to gain a tactical
- 10            advantage in any proceeding involving the custody
- 11            determination of a minor. ~~[Such]~~ The wilful misuse
- 12            may be considered only if it is established by clear
- 13            and convincing evidence, and if it is further found by
- 14            clear and convincing evidence that in the particular
- 15            family circumstance the wilful misuse tends to show
- 16            that, in the future, the parent who engaged in the
- 17            wilful misuse will not be able to cooperate
- 18            successfully with the other parent in their shared
- 19            responsibilities for the child. The court shall
- 20            articulate findings of fact whenever relying upon this
- 21            factor as part of its determination of the best



1 interests of the child. For the purposes of this  
2 section, when taken alone, the voluntary dismissal of  
3 a petition for protection from abuse shall not be  
4 treated as prima facie evidence that a wilful misuse  
5 of the protection from abuse process has occurred[-];

6 (17) Any history of coercive control of the child or a  
7 parent of the child by the other parent; and

8 (18) Any history of litigation abuse by a parent of the  
9 child against the other parent.

10 As used in this subsection:

11 "Coercive control" shall have the same meaning as defined  
12 in section 586-1.

13 "Litigation abuse" means:

14 (1) (A) The opposing parties have a current or former  
15 intimate partner relationship;

16 (B) The party who is filing, initiating, advancing,  
17 or continuing the litigation:

18 (i) Is a restrained party under a temporary  
19 restraining order;

20 (ii) Has been arrested for violation of chapter  
21 586 or 709; or



- 1            (iii) Has been the subject of an investigation by
- 2                            the child welfare services branch of the
- 3                            department of human services; and
- 4            (C) The litigation is being initiated, advanced, or
- 5                            continued primarily for the purpose of harassing,
- 6                            intimidating, or maintaining contact with the
- 7                            other party; and
- 8            (2) At least one of the following factors is present:
- 9                            (A) Claims, allegations, and other legal contentions
- 10                           made in the litigation are not warranted by
- 11                           existing law or by a reasonable argument for the
- 12                           extension, modification, or reversal of existing
- 13                           law, or the establishment of new law;
- 14                           (B) Allegations and other factual contentions made in
- 15                           the litigation are without evidentiary support;
- 16                           or
- 17                           (C) The issue or issues that are the basis of the
- 18                           litigation have previously been contested in one
- 19                           or more courts, and the actions have been
- 20                           litigated and disposed of unfavorably to the



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1                    party filing, initiating, advancing, or  
2                    continuing the litigation."

3            SECTION 3. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6            SECTION 4. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8            SECTION 5. This Act shall take effect upon its approval.

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   *Karl Rhoad*  
   \_\_\_\_\_  
   INTRODUCED BY:



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**Report Title:**

Judiciary; Domestic Abuse; Coercive Control; Litigation Abuse; Custody and Visitation Rights

**Description:**

Adds coercive control and litigation abuse by a parent of a child to the list of factors the court shall consider in determining what constitutes the child's best interest when awarding custody and visitation rights to individuals. Defines "coercive control" and "litigation abuse".

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

