

STAND. COM. REP. NO. 873

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 1337

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 1337 entitled:

"A BILL FOR AN ACT RELATING TO CONTEMPT OF COURT,"

begs leave to report as follows:

The purpose of this measure is to facilitate the proving of civil contempt of court in the enforcement of an order compelling a parent to pay child support, medical support, or other remedial care for his or her child. The measure provides that proof that the parent was present in court at the time the order was pronounced or that parent was served with said order, and proof that the parent did not comply with said order, constitutes prima facie evidence of a civil contempt of court.

Testimony in support of this measure was received from one individual.

Presently, when a parent who is ordered to pay child support or provide other types of support for his or her child fails to do so, a party bringing a civil contempt of court action against the non-complying parent has the burden to prove that the non-complying parent has the ability to pay or provide the court-ordered support at the time of the civil contempt ruling. In Murray v. Murray, 60 Haw. 160, 587 P.2d 1220, the Hawaii Supreme Court found that the trial court did not make a specific finding that the parent was able to pay at the time of the contempt ruling. This has proven to be a difficult burden, as the information about the non-complying parent's ability to pay at a particular time is with the non-complying parent. This has made

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it difficult to pursue non-complying parents, even though there is a prior court order for child support.

This measure shifts the burden of proof on the non-complying parent after it is proven that prima facie evidence of a civil contempt where there is proof that the non-complying parent was present in court at the time the support order was pronounced or that the non-complying parent was served with said order, and proof that the non-complying parent did not comply with said order. It becomes the non-complying parent's burden to prove to the court that he or she is unable to pay or provide the court-ordered support.

The proposed statutory language is modeled after a California statute, which the United States Supreme Court held was valid in a civil contempt action. Hicks v. Feiock, 485 U.S. 624 (1988).

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1337 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 1337	Committee Referral: JDL	Date: 2/28/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
KOKUBUN, Russell S. (VC)	/			
INOUYE, Lorraine R.	/			
NISHIHARA, Clarence K.				/
GABBARD, Mike	/			
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes