



## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 1337, RELATING TO CONTEMPT OF COURT.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, April 1, 2008 **TIME:** 2:00 PM

**LOCATION:** State Capitol Room 325  
*Deliver to: Committee Clerk, Room 302, 5 copies*

**TESTIFIER(S):** Lisa M. Ginoza, First Deputy Attorney General,  
or Lawrence A. Sousie, Deputy Attorney General,  
or Garry L. Kemp, Administrator, Child Support Enforcement  
Agency.

---

Chair Waters and Members of the Committee:

The Attorney General strongly supports this bill.

This bill amends sections 571-81, 584-17, and 710-1077, Hawaii Revised Statutes, in order to facilitate the enforcement of an order requiring a parent to pay child support, medical support, or other remedial care for his or her child.

Presently when a parent who is required to pay child support becomes delinquent in his or her obligation, the party bringing a civil contempt court action against the non-complying parent to enforce the child support order has the burden to prove that the non-complying parent has the ability to pay court-ordered child support. This can often be a difficult burden, as the information as to the non-complying parent's ability to pay is with the non-complying parent.

This measure creates a statutory presumption that an obligated parent is in civil contempt when there is proof that the non-complying parent was present in court at the time the child support order was pronounced or that the non-complying parent was served with the child support order, and proof that the non-complying parent did not comply with the order. It will then be up to the

non-complying parent to explain to the court the reasons for his or her inability to make child support payments as ordered.

Following are a few examples of difficulties faced when seeking to obtain civil contempt of court orders to require Obligor to pay already court-ordered child support:

Case 1.

Child support delinquency of \$48,000.00.

The Obligor ran a business that had a gross income of \$171,000.00 a year. A motion for contempt was brought. The Obligor stated that the business was doing poorly. He was ordered to provide records to support his assertion that the business was doing poorly, and to apply for work utilizing his teaching certificate. He failed to do both. The Court ordered Obligor to make certain payments or he could be jailed. The Obligor did not make all payments, yet the Court did not make a finding of contempt.

Case 2.

Child support delinquency of \$13,000.00.

Payments were not being made. The Obligor's usual occupation was a licensed real estate agent. No source of income or other information as to assets were discovered.

At the hearing to show cause why he should not be found in contempt, Obligor testified that he was unemployed and being supported by his current spouse. Based solely on the Obligor's testimony, the Court did not find Obligor in contempt, and ordered that he make efforts to find a job and to make his child support payments.

Obligor has refused to comply.

Case 3.

Child support delinquency of \$57,000.00.

The Obligor was an officer and director in many different privately held corporations created by him. He had no visible means of support, but lived in an expensive

condominium, which we learned was rented by his girlfriend at the time. He kept no assets in his name, but always had a car. Credit card records were obtained by subpoena that showed his spending habits, which detailed expensive restaurant bills, vacation trips and very expensive cigar purchases. Most importantly it showed that the credit bills were paid by him regularly.

A motion for an order to show cause was brought to show why he should not be found in contempt. The Obligor stated that those particular billings were necessary because he was starting up a business and those were necessary expenses. He stated he could not pay the entire amount, but would start making monthly payments. The Court ordered him to pay a minimum of \$500.00 per month and continued the matter to monitor the payments. The Obligor made a few payments, but then had a check returned for insufficient funds. The Court provided additional opportunities to make payments and warned him that if he did not comply he would be found in contempt and jailed.

The Obligor has since fled to the mainland.

Case 4.

Child support delinquency \$53,000.00.

The Obligor ran a business holding himself out as the owner along with his girlfriend in advertisements and in the community. An income withholding order for child support was sent to the business, which replied that he does not earn enough income to make deductions.

The underlying child support order was issued by a California court and was being enforced in Hawaii by CSEA. At the court hearing, the court was informed of his business and failure to pay. The Obligor testified that the business was owned by his girlfriend and that he was only helping her start it up and paying him a very nominal

amount. He presented pay stubs indicating very little income from that business. He also represented that he intended to file with the California court a motion to modify and adjust his child support (that court still had jurisdiction to address such issues). The Court urged him to promptly file his motion in California and ordered that he comply with the child support order and that the business should be paying him and that he must begin sending in payments as he is working there.

The Obligor still refuses to comply.

Case 5.

Child support delinquency of \$20,900.

The Obligor is the listed agent and officer of a transportation service, and in fact may be the owner. By all indications, the transportation service is a thriving business, with advertisements and a listing in the 2008 Yellow Pages Telephone Directory and on the internet, and reserved parking stalls for its exclusive use at medical facilities. The Obligor may have complete control of the transportation services' financial records, inventory records, business records, contracts, and any other documents pertaining to the financial success of the transportation service.

If the custodial parent brings an action in court to enforce the child support order, it is unlikely that the custodial parent can present evidence, most of which is in the Obligor's control, to successfully meet her burden.

The Obligor has not made a payment since August 2005.

As demonstrated by these examples, it is very difficult to meet the burden to prove that the non-complying parent has the ability to pay court-ordered child support and to have a court make a contempt finding. This bill directly addresses this difficulty by shifting the burden to the non-complying parent to prove inability to pay. This bill will give custodial

parents better tools to obtain court-ordered child support from  
deadbeat parents.

The Attorney General respectfully requests the passage of this  
bill.