



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
Twenty-Fifth Legislature, 2010**

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**ON THE FOLLOWING MEASURE:**

H.B. No. 2804, H.D. 1, RELATING TO CHILD SUPPORT ENFORCEMENT.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Thursday, February 11, 2010 **TIME:** 2:00 PM

**LOCATION:** Conference Room 325

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

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Chair Karamatsu and Members of the Committee:

The Department of the Attorney General opposes this bill.

The purpose of this measure is to require the Child Support Enforcement Agency to receive and investigate complaints alleging the misuse of child support.

Although we recognize that the misuse of child support negatively affects the children of Hawaii, we oppose this measure for the following reasons:

1. The Child Support Enforcement Agency is not the appropriate entity to investigate these types of complaints. Child support is paid to the custodial parent or caretaker of a child to assist that individual in providing for the basic needs of the child. This would include such things as the cost of housing, utilities, food, clothing, and other necessities that the child may require. In those instances where the basic needs of a child are not adequately being met, existing laws already provide the protection that this bill seeks to provide. The Department of Human Services currently investigates complaints alleging that children are being neglected or abused. They have the expertise to address this issue and are, in all likelihood, already receiving and acting upon complaints of this nature.

2. There is no provision for what should occur if the investigation reveals that there is a misuse of child support. The agency has no authority over the custodial parent to force him or her to not misuse the support. Child support cannot be refunded to the non-custodial or paying parent since there is a court or administrative order requiring the non-custodial parent to pay child support. The child support order should not be terminated since the non-custodial parent has a legal obligation to support a child that is not physically in his or her care.

3. Subsection (e), page 2, line 1, defines the "misuse of child support" as the use of child support for purposes other than what is stated in the order of support. Currently, orders of support do not have any qualifying language as to what child support is to be used for. Unless new language is adopted by the Judiciary that specifies the purposes for child support and the language is required to be placed in all orders of support, it would be impossible to determine whether child support was misused.

4. Additional staff resources will be needed if this measure passes. If there are no additional staff resources to replace those investigating the complaints, there will be less staff to do the required day-to-day activities and meeting current federal requirements would be placed in jeopardy. Failure to meet or maintain federal requirements would impact the amount of federal funding for welfare and for child support services in Hawaii. Further, because this activity is not a federal requirement, it would have to be funded one hundred per cent by state funds. It would also require that the agency maintain separate records to account for the time spent on this activity in order to ensure that federal funds were not being used improperly.

We respectfully request that this bill be held.

**TESTIMONY OF CHUNMAY CHANG, ESQ.**  
CHAIR FAMILY LAW SECTION, HAWAII STATE BAR ASSOCIATION  
**OPPOSING HOUSE BILL 2804 RELATING TO CHILD SUPPORT  
ENFORCEMENT**

House Committee on Judiciary  
February 11, 2010

Good Morning Chairman Karamatsu and members of the committee. I am Chunmay Chang, an Oahu attorney practicing in the area of family law, an area of practice which includes divorce, paternity, guardianship, adoption, child welfare services, and all areas of the law related to child custody and support. I offer my testimony in opposition to HB2804 Relating to Child Support Enforcement in my capacity as Chair and representative of the Family Law Section of the Hawaii State Bar Association.

HB2804 seeks to establish the obligation of the Child Support Enforcement Agency ("CSEA") to receive and investigate a CHILD's or a child's Guardian Ad Litem's allegations of misuse of child support funds by a custodial parent. For the following reasons, HB2804 should not be enacted as statute.

At the outset, it is important to note that child support is determined based on the child's needs and the parent's earning capability. Child support is calculated pursuant to the Child Support Guidelines ("Guidelines"). The Guidelines are established pursuant to HRS Section 576D-7(a), which provides that "the Family Court, in consultation with the [Child Support Enforcement] agency, shall establish guidelines to establish the amount of child support when an order for support is sought or being modified under this chapter." The Guidelines are reviewed every 4 years.

The focus of the Guidelines is on the children's needs. "The Guidelines attempt to distribute the costs of the children's care and education between the parents so that both parents may remain able to meet their own basic needs, while permitting the children to share in the good fortune of those parents whose incomes and abilities allow them to have more than a minimum standard of living." Family Court of the First Circuit, July 6, 2004, Memorandum Re: 2004 AMENDED CHILD SUPPORT GUIDELINES<sup>1</sup>.

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<sup>1</sup> The existing Guidelines were reviewed by the Family Court Judges, representatives from the Child Support Enforcement Agency, the Family Support Division of the Department of Corporation Counsel, the Office of Child Support Hearings, attorneys from the Hawaii State Bar Association's Family Law Section who represent clients from all income levels and walks of life, and concerned others who made recommendations with the goals of continuing a CHILD-FOCUSED approach to child support, simplifying the calculation methods and forms, and addressing the concerns of parents and children involved in child support cases.

If the non-custodial parent earns about \$3,000 per month in gross income, his or her child support may be approximately \$300 per month per child, depending also on the amount of health insurance premium paid to cover the child and the amount of child care expenses, if any, paid for that child. How much of \$300 per month could a custodial parent misuse, when that parent has to pay for the child's housing, transportation, food, clothing, etc.?

In most cases, the amount of child support is barely sufficient to pay for that child's housing and transportation costs but at the same, stretches the non-custodial parent's ability to also provide for the child during the child's visitation time with said parent.

Complaints about the alleged misuse of child support usually come from the obligor parent or the non-custodial parent. He or she complains because there are no separate checks or receipts evidencing payment for rent, utilities, homeowner's or renter's insurance, gas, car maintenance, auto insurance, food, and other expenses incurred for the child's benefit. No custodial parent keeps a separate accounting for the child. On the other hand, common sense would indicate that housing, transportation, and other living expenses incurred by the custodial parent are incurred in part for the child's benefit, even without a separate accounting.

Because child support is established based on the child's needs, there is little room for misuse. If, however, there are actual misuse and when a child or his or her guardian needs to complain about the misuse of child support, that child must be in dire strait where he or she is neglected or abused. In those situations, the Department of Human Services and the Child Protective Services would intervene and protect that child. There is no basis for the CSEA to intervene and investigate.

There may be rare occasions when a teenage child alleges misuse of child support. One can imagine what the teenager would be complaining about – he or she wants a car or some other 'wants' when the parent is using the child support to pay that teenager's needs. No agency or court should play the role of a referee between parent and child when it comes to spending. However, if

the misuse amounts to abuse or neglect, other agencies are already established to address and remedy such situations.

Moreover, HB2804 seeks to establish a duty of the Child Support Enforcement Agency ("CSEA") to receive and investigate allegation of misuse of child support funds, which are duties and responsibilities beyond the scope of the CSEA's current function. This is problematic and unnecessary for numerous reasons. These additional obligations would severely tax the CSEA's resources and impair the CSEA's ability to meet the CSEA's current primacy as an initiator and processor of the majority of the State's child support payments. HB2804 does not address funding in general, and specifically fails to provide a mechanism whereby the CSEA would receive resources specifically enabling the CSEA to meet these new obligations.

The proposed statutory language of HB2804 is also impracticable and unenforceable. It provides that "misuse of child support' means the use of child support for purposes other than as set forth in the order of support." Because child support is calculated based on a child's needs, there is no language in court orders that specifies how child support is to be used. It is implicit that the custodial parent would provide housing, transportation, and other necessities for the child. If the custodial parent fails to do that, then DHS or CPS would intervene because of the custodial parent's failure to provide a safe home for that child. Eventually, custody may be modified because that parent's failure to provide for the child in his or her misuse of child support. That, however, should be dealt by CPS and the family court, not CSEA.

The proposed statutory language of HB2804 could therefore be at odds with the standard language of many support orders originating in Hawaii; but additionally, it must be considered that the CSEA is obligated to enforce support orders from other states and countries, as well as those originating in Hawaii, so that there can be no certainty as to what provisions would be included in original support orders from other jurisdictions.

Likewise, HB2804 potentially would create an affirmative duty and a nightmare upon the parent receiving child support to account for the use of all funds received. It would place an undue and unwarranted burden and obligation on the recipient parent, way beyond the general accounting practices of most households.

Finally, the proposed statutory language of HB2804 could create a process within the CSEA which could have unintended negative consequences: A) as an avenue of continuing harassment and abuse of a former partner/a disgruntled parent via the child; or B) as a method to attack/and/or avoidance of years of accumulated child support arrears, when raised as a defense to CSEA collection actions.

Thank you for the opportunity to provide my testimony in opposition to HB2804.

February 10, 2010

The Honorable Jon Riki Karamatsu,  
Chair Committee on Judiciary  
Hawaii State Capitol, Room 302  
Honolulu, Hawaii 96813

Re: H.B. 2804, HD1 - RELATING TO CHILD SUPPORT ENFORCEMENT.  
Hearing: Thursday, February 11, 2010 at 2:00 p.m.

Dear Chair Karamatsu, Vice Chair Ito, and Members of the Committee on Judiciary:

Thank you for the opportunity to testify on this measure. I work in Representative Yamane's Office, but I am testifying as a private citizen. I strongly support H.B. 2804. I know, from experience, that the misuse of child support can have devastating effects on children.

Growing up I was abused. At the time, I didn't know it though. I learned to endure the pain, and accept it. I did not think I was eligible to receive help from government agencies that handled complaints of child abuse because I did not recognize my mother as an abuser. As a child, the only right I thought I had was the right to complain about the misuse of the child support money my father provided while my mother starved and abused me.

In 2005, when I was 17-years-old I called the Hawaii Department of Human Services Child Support Enforcement Agency for help. By that time, things had gotten so bad that I didn't think I would see my 18<sup>th</sup> birthday. But instead of helping me find a way to escape my mother's abuse or receive the monetary support that was rightfully mine, they said that there was nothing they could do to help me, and explained the bureaucratic procedures and legal processes which would require me to have my mother, the abuser, assist me in filing a complaint. They did not even refer me to another agency that would have been able to help.

There needs to be a system that holds custodial parents accountable for their use of child support monies. Since the Hawaii State Child Support Enforcement Agency's role is to enforce court orders, the agency should be responsible for ensuring that the child support is being used correctly.

Thank you ,

A handwritten signature in black ink that reads "Maria Grant". The signature is written in a cursive, flowing style.

Maria Grant