



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Monday, February 1, 2010 **TIME:** 8:30 AM

LOCATION: Conference Room 329

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

Chair Mizuno and Members of the Committee:

The Department of the Attorney General opposes this measure.

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 complaints of this nature.

2. In subsection (c), page 1, line 12, the requirement that the child support payments be held in trust for the duration of the investigation is contrary to state and federal law. Sections 571-52.2(e), 571-52.3, and 576E-16(c), Hawaii Revised Statutes, require that the agency disburse child support payments received by income withholding within two business days. 42 U.S.C. section 654b(c)(1) requires that all payments, except for intercepted federal tax refunds and distribution of collections toward arrearages, must be distributed within two business day. Failure to meet this federal requirement will jeopardize federal welfare funding and federal funding of the child support enforcement programs.

3. 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.

4. 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.

5. 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. Because this activity is not a federal requirement, it would have to be funded one hundred percent 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.

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Sunday, January 31, 2010 5:46 PM
To: HUSTestimony
Subject: HB2804 to be heard Monday, 02/01/10 at 8:30am in Room 329

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Members of the Committee on Human Services

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, HI 96734

LATE Testimony

DATE: Monday; February 1, 2010

RE: Opposition to HB2804, Relating To Child Support Enforcement

There are three concerns I have about this proposed measure that lend me to oppose its passage:

1. The broad and undefined term of "misused child support"
2. The section allowing a complaint to be registered by "The child for whom the order of support is issued"
3. Suspended child support payments to be held in-trust by the agency

Both as a DV Survivor Advocate and as a former Marriage & Family Therapist, I have heard the complaint about child support being "misused" by the custodial parent (- I think a pop artist recorded a song about it too not so long ago). In any case, this is a very hard thing to prove unless you have documented evidence of specific misuse such as the child is deprived of basic necessities while the custodial parent is living in the lap of luxury or the parent is supporting an addiction instead of the child. In absence of obvious extremes such as these, "misuse" is purely subjective. Child Support is "a hot topic" as is and I think that things'll get worse for children if "misused child support" is not clearly defined and itemized.

Allowing "a child" to file a complaint in terms of child support would set a very dangerous precedent. The majority of children are not mature enough to handle their own financial matters and even more lack the self-restraint and wisdom on what to spend their money on. Here's a real-life case:

A 17 year-old daughter intercepts her child support check and attempts to forge her mother's signature on it. Because she botched her mom's signature, the daughter threw the check into the trash where the mom found it. Why did the 17 year-old attempt to steal the check in the first place? Because she wanted it for a down payment on an apartment for her and her 19 year-old boyfriend and her mom said no, that's not what child support is supposed to be for. The daughter then went to her dad and told him to stop paying child support and just give the money directly to her. Thankfully, mom and dad spoke to each other and the child support check continued to pay for its intended purposes.

If this bill were in effect, I can guarantee that this girl would've been first in line to file a complaint. Taking this girl's complaint would've undermined and challenged mom's authority as the parent and clearly, what the girl wanted to do with the money is not something the CSEA should endorse (although the daughter did try to argue rent).

Allowing a child to file a complaint would also put further strain on post-divorce relationships that aren't as good as the above case and will exacerbate any strain on an existing problematic parent-child relationship (because if a child's going to report a parent, the relationship's already strained or will certainly become so with the filing of the complaint).

The CSEA holding payments in-trust may not be such a good idea either considering previous concerns:

"Judge Rules On Child Support: Agency Must Account For Unpaid Checks"

The Honolulu Advertiser (Honolulu, HI) October 23, 2002

A state judge has given the Hawaii Child Support Enforcement Agency until March 31st to account for more than \$3.5 million in uncashed child support checks, paving the way for thousands of parents to get payments they never received from the agency since its inception in 1986.

McKenna's decision followed a two-week trial on a class-action lawsuit filed in 1998 by Anne Kemp, a divorced mother whose initial checks from the state agency were delayed for several months even though child support payments were being withheld from her ex-husband's paycheck and turned over to the state agency.

For years, parents have complained bitterly about the agency, conveying frustrations over having to chase down payments. Many have written letters to the agency and visited time and again in a story familiar to hundreds in the system.

Thank you for this opportunity to provide testimony.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

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