

# SB 714

Measure Title:	RELATING TO CHILD SUPPORT.
Report Title:	Child Support; Adult Child; Post-high School Education
Description:	<p>Requires both parents to pay child support if financial support for a child is ordered by the court and the child no longer resides full-time with the custodial parent. Requires a petition for child support be made prior to the child reaching the age of majority unless there is clear and convincing evidence of hardship. Mandates the suspension of child support payments for an adult child when the child turns nineteen if the custodial parent or adult child fails to provide proof the child is enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the upcoming semester. Establishes that child support payments for an adult child who is pursuing education must be paid directly to the adult child. Determines child support for an adult child pursuing education shall end if the adult child is not enrolled full-time or does not plan to attend full-time the upcoming semester or if the adult child fails to provide the payor with proof of full-time enrollment within fourteen days of the payor's request. Grants payors of child support access to the adult child's enrollment records at post-secondary educational establishments.</p>
Companion:	
Package:	None
Current Referral:	HSH, JDL
Introducer(s):	GABBARD, Chun Oakland



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2015**

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**ON THE FOLLOWING MEASURE:**

**S.B. NO. 714, RELATING TO CHILD SUPPORT.**

**BEFORE THE:**

**SENATE COMMITTEE ON HUMAN SERVICES AND HOUSING**

**DATE:** Tuesday, February 17, 2015 **TIME:** 1:20 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Russell A. Suzuki, Attorney General, or  
Garry L. Kemp, Administrator, Child Support Enforcement Agency

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Chair Chun Oakland and Members of the Committee:

The Department of the Attorney General opposes this bill.

The purpose of this bill is to address various aspects of the support of adult children.

The Department of the Attorney General opposes the provision on page 2, lines 11-16, requiring both parents to pay child support if the adult child no longer resides full-time with the custodial parent as it is unnecessary. Currently, the family court issues orders that provide for both parents to pay child support for an adult child when the court determines that such an order is appropriate. In doing so, the court may take into consideration whether the adult child resides with the custodial parent during the summer, during the spring and winter breaks, or even on weekends. The court may also consider whether the custodial parent is already providing support for the adult child in other ways. This amendment would take away the court's ability to make that type of determination and would limit the court's discretion. To have a provision in the law requiring both parents to pay child support if the adult child no longer resides full-time with the custodial parent ignores the value of the judicial process and results in poor public policy.

The Department of the Attorney General believes that the change of the word, "may", to "shall" on page 3, line 15, and the addition of the phrase, "unless good cause is shown", on lines 17-18, are also unnecessary. Currently, the Child Support Enforcement Agency, hearings officer, or the family court has the discretion to automatically suspend child support. The proposed change still provides for discretion but needlessly complicates the process. Will a hearing, either judicial or administrative, be necessary for a determination that good cause has

been shown? If so, there will be a delay in the agency's ability to either close its child support case or to get child support payments to the custodial parent and it will make processing of child support for adult children more difficult and time consuming.

The Department of the Attorney General opposes the provision in this bill regarding the direct payment of child support to the adult child on page 3, line 21, and page 4, lines 1-4, for the following reasons:

1. The family court can already issue orders that provide for child support to be paid directly to an adult child in those situations where the court determines that it is appropriate. This measure would take away the court's ability to make that determination.

2. There are many cases where the adult child continues to reside with the payee parent while pursuing his or her post-high school education. There has been no change in the living arrangement from the time the child was a minor and the payee parent continues to incur costs associated with the adult child living at home. By taking the child support away from the payee parent and giving it to the adult child, this measure increases the burden on the payee parent.

3. Federal law does not allow for the Child Support Enforcement Agency to enforce child support paid directly to a child. If the payor parent does not make payments to the adult child, the adult child's only recourse is to take appropriate action through the family court. When child support payments are required to be made to the payee parent, the agency may be authorized to take enforcement action and all federal and state enforcement remedies available to the agency may be utilized.

4. This provision will also have an adverse impact on the Child Support Enforcement Agency's operations and personnel. If the intent is to have payments continue through the agency to the adult child and not paid directly from the parent to the adult child, implementation of this provision will be difficult and time consuming. The agency will have to monitor the existing case where support is being paid to the custodial parent, stop the child support obligation, and set up a new case where the adult child is the payee. To redesign the agency's computer system to be able to make payments to an adult child would require that the agency incur costs that have not been budgeted for.

The Department of the Attorney General also wishes to point out that the provision allowing for the payor of child support to access current enrollment records of the adult child on page 4, lines 14 through 18, may conflict with federal law protecting the privacy of student education records.

Because there are similar provisions for the support of an adult child in sections 576E-14(f) and 584-18(b), Hawaii Revised Statutes, there will be conflicting requirements depending upon how the child support order was issued if this bill is passed as currently written.

The Department of the Attorney General respectfully requests that this bill be held in committee.



*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Human Services**

Senator Suzanne Chun Oakland, Chair

Senator Josh Green, Vice Chair

Tuesday, February 17, 2015

1:20 p.m.

State Capitol, Conference Room 016

By

R. Mark Browning

Deputy Chief Judge, Senior Family Judge

Family Court of the First Circuit

**Bill No. and Title:** Senate Bill No 714, Relating to Child Support.

**Judiciary's Position:**

The family court respectfully expresses grave concerns regarding this bill.

First and foremost, this bill may inadvertently restrict parents of disabled minor and adult children from receiving child support. The bill removes the existing provision that petitions for child support may be filed after the child reaches age 18 (p.2, lines 16-21). There are myriad and varied reasons for divorced parents' failure to provide for their disabled child in their divorce decrees. For example, the disability may increase in severity over time; something might occur that renders the custodial parent unable to care for the child at the same level; both divorced parents may be so exhausted and engrossed in the care of the child that they did not give enough thought to increased expenses when the child ages; the non-custodial parent enters a new relationship and a once amicable sharing of expenses could turn sour leaving the custodial parent with crippling costs.

The original intent of this statute, i.e., parents being afforded more flexibility to access the court for remedies to care for adult disabled children, must be preserved.

Also, the bill should recognize that an adult child not living full-time in the custodial parent's home means that the adult child comes home to a home even if she/he lives part-time in



Senate Bill No. 714, Relating to Child Support  
Senate Committee on Human Services  
Tuesday, February 17, 2015, 1:20 p.m.  
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that home. Therefore, the bill should make an allowance for this when it requires both parents to pay child support and to pay it directly to the adult child.

Thank you for the opportunity to provide testimony on this matter.

**TESTIMONY OF THOMAS D. FARRELL**  
Regarding Senate Bill 714, Relating to the Child Support

Committee on Human Services and Housing  
Senator Suzanne Chun Oakland, Chair

Tuesday, February 17, 2015 1:20 p.m.  
Conference Room 016, State Capitol

Dear Senator Chun Oakland and Members of the Committee:

I support SB 714, but recommend an amendment.

The issue of continuing child support for “adult educationally dependent” persons is a vexing one. I have seen numerous cases where the former “custodial parent” will have an adult child enroll in community college, even though the child has no intention of attending, simply to keep child support coming in. Making child support payable to the adult beneficiary, rather than the former custodial parent, will help to reduce this fraud. The requirement that the adult beneficiary provide proof of enrollment, and the provisions that the payor parent be able to access educational records to independently verify that fact, make a great deal of sense. The latter, however, may conflict with federal educational privacy laws, and therefore may not be enforceable.

Similarly, where the educationally dependent adult child is actually attending school, it makes sense for both parents to contribute, rather than just the former noncustodial parent. However, the mandatory use of the child support guidelines would overturn the decision of the Intermediate Court of Appeals in *Nabarette v. Nabarette*, which recognized that the adult child also has an obligation to contribute to his own educational support through part-time work, scholarships, grants, and loans. I recommend that SD1 delete the reference to the guidelines. The other reason to delete reference to the guidelines is that many divorce decrees and paternity judgments separate “higher education expenses” and child support. Where there are explicit provisions for room, board, and for reasonable living expenses as part of “higher education expenses,” payment of child support is duplicative.

Given the fact that parents who marry and do not divorce are not legally required to support their children post-majority, the legislature may consider whether parties to divorce decrees and paternity judgments should be forced to do so. Many states do not require this.

Thank you for the opportunity to testify this afternoon.

Divorce ♦ Paternity ♦ Custody ♦ Child Support ♦ TROs ♦ Arbitration  
*also handling national security cases involving revocation or denial of security clearances*

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February 16, 2015

TO: Senator Suzanne Chun Oakland, Chair  
Senator Josh Green, Vice-Chair  
Committee on Human Services and Housing

FROM: Elizabeth Paek-Harris, Legislative Committee of the HSBA Family Law Section  
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Phone: 522-7171

HEARING DATE AND TIME: February 17, 2015 at 1:20 p.m.

RE: Testimony in Opposition of SB 714 Relating to Child Support

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Good Morning Chair and Vice-Chair, and members of the Committee.

My name is Elizabeth Paek-Harris, a licensed attorney here in the State of Hawaii. I have practiced in Hawaii for about ten (10) years now mostly concentrating in family law matters. Today I not only speak for myself, but for the Family Law Section (FLS) of the Hawaii State Bar Association, which is comprised of approximately 136 licensed attorneys statewide all practicing or expressing an interest in practicing family law. I am the current Chair of FLS and also serve as co-chair of the Legislative Committee.

The Family Law Section strenuously opposes SB 714.

A. The first amendment to HRS 580-47(b) is confusing.

SB 714 requires parents of an adult child to both pay child support under the Guidelines (established under section 576D-7) if an adult child no longer resides full-time with the custodial parent **and** “support is ordered to provide for the financial support of the child.” This is confusing and unintelligible. If an adult child no longer resides full-time with the custodial parent and support is already ordered to provide for the financial support of the adult child, there is no need for either parent to pay additional child support.



In Family Court orders for child support, a majority of these orders either include a provision that:

1. Provides for the continuing payment of child support under the Guidelines for an adult child under certain circumstances;
2. Provides for one or both parents to contribute to the adult child's higher education expenses under certain circumstances;
3. Suspends child support for the adult child under certain circumstances; or
4. Terminates child support for the adult child under certain circumstances.

These Family Court orders are either ordered by the court following a contested hearing or trial, or memorialized via an agreement reached by the parents themselves.

Under the current Guidelines, if an adult child no longer resides full-time with the custodial parent, both parents may be required to pay child support under the Guidelines at the discretion of the Family Court. The reason why discretion of the Family Court is necessary is because of the following issues:

1. Whether "an adult child no longer resides full-time with the custodial parent" is never a permanent issue. Generally, an adult child may not reside full-time with the custodial parent for months, but then return to residing with the custodial parent for a period of time during school breaks. Under these circumstances, the Family Court needs to determine whether it's appropriate to suspend child support for one parent during those times, or to perhaps blend the child support amount paid by one parent, and SB 714 does not allow this because it requires both parents to pay child support.
2. There are many instances in which one parent has been ordered, or has agreed under a court order, to "provide for the financial support of the child," based on the specific facts of their case. SB 714 requires the other parent to pay child support as well under the Guidelines irrespective of the other parent's obligation, even if the other parent's obligation may cover all of the expenses needed by the adult child. The Family Court should be given discretion to consider what expenses the adult child needs, and determine whether the child's needs have already been met by one parent under the existing order such that the other parent is not required to unnecessarily pay.
3. SB 714 fails to acknowledge that the purpose of child support is to provide for the basic needs of the child, such as food, shelter and clothing. If "support is [already] ordered to provide for the financial support of the child," and this support includes the basic needs of the adult child, then it is not necessary to require both parents to also pay child support under the Guidelines. The Family Court should be given discretion to examine whether the basic needs of the adult child are already being met in the order.

**B. The second amendment to HRS 580-47(b) is unfair to the adult child.**

SB 714 requires that child support for an adult child must be made before the child attains the age of majority unless there is clear and convincing evidence of hardship. What constitutes hardship is unclear and ambiguous. Further, this amendment is unfair to the adult child because most children are not aware of their legal right to child support. Under the current law, an adult child may petition for child support on behalf of him or herself. As a result, an adult

child may not be aware of his or her legal rights to child support until after attaining the age of majority. SB 714 would unfairly prohibit an adult child under these circumstances to seek child support.

C. The third amendment to HRS 580-47(b) creates multiple problems.

SB 714 continuously uses the phrase “enrolled as a full-time student” and “proof of enrollment” as a standard. However, this is problematic because often times an adult child may “enroll” but not necessarily complete their enrollment. Proof of “enrollment” isn’t a fair justification to require both parents to pay child support given the potential fraud. Thus, the issue should be left with the Family Court to determine on a case-by-case basis. Or the parents of the adult child should be allowed to determine what they deem satisfactory as proof of attending higher education to justify continuing child support.

In sum, the issue of child support for adult children is complex because there are a myriad of factors that must be considered. The most effective way to ensure that the complex issue of child support for adult children is properly addressed is to allow the Family Court to use its discretion to consider these factors on a case-by-case basis. SB 714 restricts the Family Court’s discretion.

Additionally, the Child Support Guidelines Task Force is the proper entity to address the complex issue of child support for an adult child. Under Hawaii Revised Statutes (“HRS”) §576D-7, the Family Court in consultation with the Child Support Enforcement Agency (“CSEA”) is required to establish child support guidelines and update them at least once every four years. The Child Support Guidelines Task Force consists of statewide Family Court Judges, Family Court staff, CSEA, the Office of Child Support Hearings (“OCSH”), Attorney General’s office, practicing family law attorneys focusing in the areas of divorce and paternity, and CPAs. The complex issue of child support regarding adult dependent children should be left with the Child Support Guidelines Task Force to properly address given the diverse expertise of its members.

Our current laws regarding child support for an adult child is properly addressed in the Guidelines, which are reviewed and updated at least once every four years and allows Family Court discretion to determine what is appropriate on a case-by-case basis. Therefore, we see no need for amendment and ask that the Committee take no further action on SB 714.

**NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.**

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TO: Senator Suzanne Chun Oakland, Chair  
Senator Josh Green, Vice-Chair  
Senate Committee on Human Services and Housing

FROM: Dyan M. Medeiros  
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Phone: 524-5183

HEARING DATE: February 17, 2015 at 1:20 p.m.

RE: Testimony Regarding SB714 Relating to Child Support

Good morning Senator Shimabukuro, Senator Galuteria, Senator Chun Oakland, Senator Green, and members of the Committees. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than sixteen (16) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I submit this testimony regarding SB714.

SB714 seeks to clarify the law regarding child support for adult children who do not reside with a parent while pursuing higher education. While the issue of whether child support should be ordered for adult children who are pursuing higher education is a policy decision, I agree that both parents (rather than just one) should be ordered to pay child support for an adult child who is pursuing their higher education and not living with either parent. However, this should not be the case if provision has already been made (either by agreement or Court order) for the parents to share the child's higher education expenses including but not limited to room and board. Otherwise, parents would be contributing to the same expenses twice. The bill should therefore allow parents to agree on sharing a child's higher education expenses including room and board in lieu of paying child support.

In addition, I believe that some of the amendments to the current statute proposed by the bill are either unnecessary or harmful. For example, the bill states that child support for an adult child may be made if the petition for such support is made before a child attains the age of majority. However, some children attain the age of majority while still in high school. It would be unfair and unreasonable to deny those children support because a petition wasn't brought before an arbitrary deadline.

Similarly, some children wait a semester or two before starting their higher education. If the legislature believes (as it apparently does based on the current statute) that divorced parents should contribute to the support of their adult children who are pursuing a higher education, why should that only apply to children who pursue their higher education immediately after graduating from high school?

Finally, the bill provides that if an adult child fails to provide proof of his or her full-time enrollment within 14 days of a written request from a parent paying child support, child support for that child shall be terminated. This seems punitive and could lead to unnecessary conflict between parents and their adult children. Moreover, since the bill currently provides that a parent paying child support may have direct access to their child's enrollment records, I don't understand the point of requiring the child to provide proof of his or her enrollment directly to the parent. In fact, I would suggest changing "may" to "shall" so that payor parents have an absolute legal right to their child's enrollment information and then deleting the requirement that an adult child provide the information under the threat of losing his or her child support.

Thank you.

**COMMITTEE ON HUMAN SERVICES AND HOUSING**

Senator Suzanne Chun Oakland, Chair

Senator Josh Green, Vice Chair

DATE: Tuesday, February 17, 2015  
TIME: 1:20 pm  
PLACE: Conference Room 016  
State Capitol  
415 South Beretania Street

Testimony in Support of SB714 Child Support Payments Directed to Adult Children.

Dear Chair Senator Suzanne Chun Oakland and members,

Thank you for the opportunity to testify in support of SB 714. I am strongly in support of payments being paid directly to adult children attending college.

1. ***Assumptions of the current law.***

That non-custodial parents (most significantly fathers) are a bunch a deadbeats who won't contribute to their children education otherwise. (Fathers who have significant time and maintained a healthy parenting relationship do contribute to college expenses)

2. That custodial parents (mostly mothers) will use money all the funds for their child's educational expenses. (This is just as much of a gender biased prejudice as above)

3. Other resources available to children of married parents are not available to children of divorce. (Absolutely not true, in fact, there are lots of scholarships directed toward children who come from disadvantaged situations.)

4. Once children are enrolled full-time will stay enrolled full-time for the entire semester and won't drop classes. (Many students drop classes or dropout mid semester.)

5. That CSEA will provide some kind of credit against child support for contributions made directly to the children, when significant contributions are made by the non-custodial parent.

(They provide no relief for financial contributions made directly by non-custodial parents)

***Response to Last Year's CSEA Testimony:***

I want to address the testimony from last year by the Gary Kemp from CSEA.

Mr. Kemp's assertion that it would take 3 Million dollars to implement these changes when a similar bill was introduced last year, is complete nonsense.

I am a veteran software developer with 20 years of database programming experience. This figure is an absolute lie. To alter the database structure to accommodate this information would require the addition of a handful of additional data fields in the existing data structure.

The rewrite a few stored procedures and updates to the user interface from which the data is entered.

The CSEA is willing to change laws so that it can qualify for more federal dollars, yet it isn't willing to modify their systems to assure that parents are being treated fairly. Why is that? We know that Federal dollars flow into CSEA based on how much money they can squeeze of already financially strapped parents.

### ***My Personal Experience:***

Both my Daughters attended college out-of-state. I was being told to pay child support of over nearly \$600.00 per month. The mother of my daughters refused to give any money paid to her for their needs. This meant even though I was unemployed for a year, I need to tap my wives savings and run up our credit cards so my daughters would have her basic needs at college provided for. Both my daughters worked and were able to get scholarships. My older daughter needed medical services that I had to pay out of pocket. She needed a vehicle to drive for her job in the summer. Both my daughters had other expenses, such as books, and dorm expenses. I paid these expenses even though, but received no credit against my child support.

### ***Giving funds directly to the Student:***

Currently, there is no mechanism for adult children of divorce to ensure that child support payments meant for their benefit are being spent on their needs. By requiring payments go directly to the adult supported child just like married parents, the court can be assured that those funds will be available for expenses that are incurred as students. Currently if non-custodial parents need to provide direct support to their college attending child, they receive no credit for monies. This is patently unfair!

### ***Visitation Assumption:***

Child support is based on a visitation schedule while the child is a minor. When a child moves away from home and is attending college, what is the visitation schedule? Answer: There isn't any. Forcing parents to pay child support under a bogus visitation schedule is patently wrong.

### ***Inequitable Obligation gives Custodial Parents Free Ride:***

It would seem inequitable that only one parent is being legally mandated to provide support to the custodial parent. At the same time, the custodial parent gets a free ride. **Firstly**, by not having any legal financial obligation to direct those funds for the direct purpose of covering tuition costs for the college student. **Secondly**, they are not being mandated to provide financial support even when the child resides elsewhere.

If children are attending college out of state, how can we possibly assert that it is fair for only one parent to be financially mandated under the law to provide support while the other gets away or in fact, receives a windfall from CSEA?

***Current Hurts Second Families:***

The current statutes are based on a kind of subtle anti-father bigotry that persists with most issues regarding the family court system. This law like so many that reside in statutes are designed to ensure fathers pay their fair share of expenses.

These same fathers have second families and find themselves in financially untenable situations where they are stretched too thin. Of course, there are a litany of studies that show kids that don't have meaningful relationships with both parents tend not to even get through high school. Let alone, graduate from college. In fact, today there is a 2 female to 1 male ratio throughout our college population. But these issues a little to do with financial capabilities to finance. There are as we know, a myriad of programs to provide funds for qualified students who wish to attend college.

Lastly, if a child who is attending college should be prepared to demonstrate they are a full time student. If a student for no good reason reduces their class load below a full-time student, then the child support should be the option of the parents to determine if they want to continue to support their students just like parents who are married.

Thank You for allowing me to submit testimony on this important legislation.

Best Regards,

Chris Lethem

(415) 845 4370

TO: Senator Suzanne Chun Oakland, Chair  
Senator Josh Green, Vice-Chair  
Senate Committee on Human Services and Housing

FROM: Jessi L.K. Hall  
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HEARING DATE: February 17, 2015 at 1:20 p.m.

RE: Testimony in Opposition to SB714

Good day Senator Chun Oakland, Senator Green, and members of the Committee. My name is Jessi Hall. I am an attorney whose practice concentrates in Family Law. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am writing in opposition to SB714.

Although I agree with the general concept of providing child support directly to an adult child, I have concerns with the language of this Bill. First of all, currently child support for an adult educationally dependent child continues until the age of 23 years. Stopping child support at 21 years would not allow the child enough time to complete a four-year degree.

Next, it would be more appropriate for a parent to pay educational support instead of child support in these circumstances. This would allow for the support to be used not only for living expenses but also tuition expenses. Currently child support does not specifically cover tuition expenses, this could leave the child unable to meet their expenses to continue their education.

Finally, it would be concerning in certain situations for the payor to have direct access to a child's enrollment records in situation where there is abuse. This information could be used against the child to further the abuse.

Thank you for the opportunity to testify in opposition to SB714.