



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2749, S.D. 1, RELATING TO CHILD SUPPORT GUIDELINES.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Friday, February 23, 2018

TIME: 9:55 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Lynette J. Lau, Administrator, Child Support Enforcement
Agency

Chairs Taniguchi and Dela Cruz and Members of the Committees:

The Department of the Attorney General supports this bill.

This bill amends section 576D-7 of the Hawaii Revised Statutes in order to bring the State of Hawaii into compliance with federal regulations.

Final rule amendments affecting child support programs nationwide were published in the Federal Register on December 20, 2016. Revisions made to 45 C.F.R. § 302.56 require the states to implement changes that must be included in the state's child support guidelines. The changes provide for more opportunities for the public to be involved in the review of the child support guidelines and to have access to information on how the review was conducted. Other changes require that the guidelines consider specific factors relating to the situation of the parents such as employment and earnings history, job skills, educational attainment, age, health, and criminal record and other employment barriers; economic data on the cost of raising children; labor market data such as unemployment rates, employment rates, hours worked, and earnings; and the analysis of case data to ensure that deviations from the guidelines are limited and guideline amounts are appropriate. By considering these factors, the child support amounts established pursuant to the guidelines are intended to be more reliable, result in less conflict between the parents, and improve collections.

Compliance with these requirements is necessary to maintain eligibility for federal funding of the child support enforcement program.

Because of the concerns raised by the Judiciary in their testimony before the Senate Committee on Human Services, we had further discussion with representatives of the Family Court and reached an agreement as to the amendments to this bill whereby the Family Court would support this bill. We request the following agreed upon amendments to the bill:

1. Add a new section 1, to amend 571-52.5, Hawaii Revised Statutes (HRS), by adding a new subsection (b) to read, "(b) Whenever the court imputes income, deviates from the guidelines, or the child support order is issued by default, it shall note the same, including the amount of income imputed and the child support amount that would have been required under the guidelines, in the order for income withholding issued at the time that child support is ordered." This is to assist in the collection of the required data for the quadrennial review.

2. On page 3, lines 3 through 15, in the new paragraph (8) of section 576D-7(a), HRS, we would prefer to have the wording in the original bill with an additional sentence at the end to read, "The factors listed above shall be considered if imputation of income is determined to be appropriate for incarcerated individuals." Line 12 should be amended to have a period at the end rather than a semicolon and lines 13 through 15 should be amended to read, "Incarceration may not be treated as voluntary unemployment in establishing or modifying an order of support. The factors listed above shall be considered if imputation of income is determined to be appropriate for incarcerated individuals." This would make clear that the factors for imputation applies in all situations, not just for incarcerated individuals, and that imputation is not automatically required for incarcerated individuals.

3. On page 5, at the end of line 4, add to section 576D-7(c)(1) the phrase, "as provided by the agency". This is to clarify that collection of the data necessary for the quadrennial review will be performed by the Child Support Enforcement Agency (CSEA).

4. On page 5, line 6, add to section 576D-7(c)(2) the phrase, "as provided by the agency", after the word, "methods". Line 6 should be amended read, "methods as provided by the agency, on the application of and deviation from the . . ." This is to clarify that collection of the data necessary for the quadrennial review will be performed by CSEA.

5. On page 5, line 13, add to the same paragraph (2) the phrase, "as provided by the agency", after the word, "characteristics". Line 13 should be amended to read, "characteristics as provided by the agency, including whether the order was . . ." This is to clarify that collection of the data necessary for the quadrennial review will be performed by CSEA.

6. On page 8, amend section 3 of the bill on line 8 to read as follows: "This Act, upon its approval, shall take effect on January 1, 2019." This is to prevent any confusion or delay with the review of the child support guidelines currently taking place.

Because identifying and obtaining such information as economic data on the costs of raising children, labor market data, and factors that influence employment rates are not within the purview of CSEA, we are also requesting that a \$25,000 appropriation be added to the bill. The funds will be used to acquire the data necessary for the quadrennial review in order for the State to be in compliance with the federal requirement.

We do want to re-emphasize that, because this is a federal requirement, federal funding provided to the Child Support Enforcement Agency may be jeopardized for noncompliance. Although we do not know the exact amount of federal funding that will be jeopardized, we estimate that the State could lose up to \$9 million. We are waiting for further information from the federal Office of Child Support Enforcement, Department of Health and Human Services, on the possible penalty to the State if this federal requirement is not implemented.

We respectfully ask the Committee to pass this bill with the proposed amendments and have attached a copy of the amended bill for your reference.

S.B. NO. 2749

A BILL FOR AN ACT

RELATING TO CHILD SUPPORT GUIDELINES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 571-52.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§~~571-52.5~~§~~ **Guidelines to determine child support**
4 **amounts.** (a) When the court establishes or modifies the
5 amount of child support required to be paid by a parent, the
6 court shall use the guidelines established under section 576D-7,
7 except when exceptional circumstances warrant departure.

8 (b) Whenever the court imputes income, deviates from the
9 guidelines, or the child support order is issued by default, it
10 shall note the same, including the amount of income imputed and
11 the child support amount that would have been required under the
12 guidelines, in the order for income withholding issued at the
13 time that child support is ordered."

14 SECTION 2. Section 576D-7, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§~~576D-7 **Guidelines in establishing amount of child**
17 **support.** (a) The family court, in consultation with the
18 agency, shall establish guidelines to establish the amount of

1 child support when an order for support is sought or being
2 modified under this chapter. The guidelines shall be based on
3 specific descriptive and numeric criteria and result in a
4 computation of the support obligation.

5 The guidelines [~~may~~] shall include consideration of the
6 following:

- 7 (1) All earnings, income, other evidence of ability to
8 pay, and resources of both parents; provided that
9 earnings be the net amount, after deductions for
10 taxes, and social security. Overtime and cost of
11 living allowance may be deducted where appropriate;
- 12 (2) The earning potential, reasonable necessities, and
13 borrowing capacity of both parents;
- 14 (3) The needs of the child for whom support is sought[+],
15 including health care needs through private or public
16 health care coverage and through cash medical support;
- 17 [~~+4~~] ~~The amount of public assistance which would be paid~~
18 ~~for the child under the full standard of need as~~
19 ~~established by the department;~~
- 20 +5)] (4) The existence of other dependents of the obligor
21 parent;
- 22 [+6)] (5) [~~To foster incentives~~] Incentives for both
23 parents to work;

1 ~~[(+7)]~~ (6) ~~[To balance]~~ Balancing the standard of living of
2 both parents and child and avoid placing any below the
3 poverty level whenever possible;

4 ~~[(+8)]~~ (7) ~~[To avoid]~~ Voiding extreme and inequitable
5 changes in either parent's income depending on
6 custody; and

7 ~~[(+9)]~~ ~~If any obligee parent (with a school age child or~~
8 ~~children in school), who is mentally and physically~~
9 ~~able to work, remains at home and does not work,~~
10 ~~thirty (or less) hours of weekly earnings at the~~
11 ~~minimum wage may be imputed to that parent's income.]~~

12 (8) If imputation of income is authorized, the age of the
13 child and the specific circumstances of both parents
14 to the extent known, including such factors as assets,
15 residence, employment and earnings history, job
16 skills, educational attainment, literacy, age, health,
17 criminal record and other employment barriers, record
18 of seeking work, the local job market, the
19 availability of employers willing to hire the parent,
20 prevailing earnings level in the local community, and
21 other relevant background factors in the case.
22 Incarceration may not be treated as voluntary
23 unemployment in establishing or modifying an order of

1 support. The factors listed above shall be considered
2 if imputation of income is determined to be
3 appropriate for incarcerated individuals.

4 (b) The guidelines shall be:

5 (1) Applied statewide;

6 (2) [~~Te~~] Established to simplify the calculations as much
7 as practicable;

8 (3) Applied to ensure, at a minimum, that the child for
9 whom support is sought benefits from the income and
10 resources of the obligor parent on an equitable basis
11 in comparison with any other minor child of the
12 obligor parent;

13 (4) Established by October 1, 1986; and

14 (5) Transmitted to the agency and all family court judges
15 when available or updated, and shall be considered by
16 the judges in the establishment and modification of
17 each child support order. The most current guidelines
18 shall be used to calculate the amount of the child
19 support obligation.

20 (c) The family court [~~, in consultation with the agency,~~
21 ~~shall update~~] shall convene a guidelines reviewing committee to
22 review and revise, if appropriate, the guidelines at least once

1 every four years[-] in consultation with the agency. The review
2 shall:

3 (1) Consider economic data on the cost of raising
4 children; labor market data, such as unemployment
5 rates, employment rates, hours worked, and earnings,
6 by occupation and skill level for the state and local
7 job markets; the impact of guidelines, policies, and
8 amounts on custodial and noncustodial parents who have
9 family incomes below two hundred per cent of the
10 federal poverty level; and factors that influence
11 employment rates among noncustodial parents and impact
12 compliance with an order of support as provided by the
13 agency;

14 (2) Analyze case data, gathered through sampling or other
15 methods as provided by the agency, on the application
16 of and deviations from the child support guidelines
17 and the rates of default and imputed orders of support
18 and orders that considered the basic subsistence needs
19 of the parents and child, including orders determined
20 using the minimum child support amount. The analysis
21 shall also include a comparison of payments on child
22 support orders by case characteristics as provided by
23 the agency, including whether the order was entered by

1 default, based on imputed income or based on
2 consideration of the basic subsistence needs of the
3 parents and child, including orders determined using
4 the minimum child support amount;

5 (3) Use the analysis of data as described in paragraph (2)
6 to ensure that deviations from the guidelines are
7 limited and that guideline amounts are appropriate;
8 and

9 (4) Provide a meaningful opportunity for input from the
10 public, including low-income custodial and
11 noncustodial parents and their representatives.

12 All reports of the guidelines reviewing committee, the
13 membership of the reviewing committee, the effective date of the
14 guidelines, the date of the next quadrennial review, and the
15 guidelines shall be published on the Internet and be made
16 accessible to the public by the family court.

17 (d) There shall be a rebuttable presumption, in any
18 judicial or administrative proceeding for the establishment and
19 modification of an order of support, that the amount of the
20 order that would result from the application of the child
21 support guidelines is the correct amount of child support to be
22 ordered. A written finding or specific finding on the record of
23 a judicial or administrative proceeding for the establishment or

1 modification of an order of support that the application of the
2 guidelines would be unjust or inappropriate in a particular case
3 shall be sufficient to rebut the presumption in that case;
4 provided that:

5 (1) The judicial or administrative tribunal considers the
6 best interest of the child; and

7 (2) The finding that rebuts the guidelines also states the
8 amount of support that would have been required under
9 the guidelines and includes a justification for the
10 variation from that amount.

11 [~~d~~] (e) The establishment of the guidelines or the
12 adoption of any modifications made to the guidelines set forth
13 in this section may constitute a change in circumstances
14 sufficient to permit review of the support order. A material
15 change of circumstances [~~will~~] shall be presumed if support as
16 calculated pursuant to the guidelines is either ten per cent
17 greater or less than the support amount in the outstanding
18 [~~support~~] order[~~of~~] of support. [~~The most current guidelines~~
19 ~~shall be used to calculate the amount of the child support~~
20 ~~obligation.~~

21 ~~(e) The responsible or custodial parent]~~ (f) Both parents
22 for which child support has previously been ordered shall have a
23 right to petition the family court or the [~~child support~~

1 ~~enforcement~~] agency not more than once every three years for
2 review and adjustment of the [~~child support~~] order of support
3 without having to show a change in circumstances. [~~The~~
4 ~~responsible or custodial parent~~] Both parents shall not be
5 precluded from petitioning the family court or the [~~child~~
6 ~~support enforcement~~] agency for review and adjustment of the
7 [~~child support~~] order of support more than once in any three-
8 year period if the second or subsequent request is supported by
9 proof of a substantial or material change of circumstances."

10 SECTION 3. There is appropriated out of the general
11 revenues of the State of Hawaii, the sum of \$25,000 or so much
12 thereof as may be necessary for fiscal year 2018-2019 to the
13 Child Support Enforcement Agency for the purpose of collecting
14 data to be considered in the quadrennial review pursuant to
15 section 2 of this Act.

16 The sum appropriated shall be expended by the department of
17 the attorney general for the purposes of this Act.

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act, upon its approval, shall take effect
21 on January 1, 2019.



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary

Senator Brian T. Taniguchi, Chair

Senator Karl Rhoads, Vice Chair

Testimony to the Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

Friday, February 23, 2018 at 9:55 am

State Capitol, Conference Room 211

By

Catherine H. Remigio

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2749, S.D.1, Relating to Child Support Guidelines.

Purpose: Amends the child support guidelines requirements to provide for more opportunity for the public to be involved in the review of the guidelines and to require consideration of additional factors relating to the situation of the parents.

Judiciary's Position:

The Judiciary respectfully opposes this Bill in its current form, and submits proposed modifications to address our concerns. We note that the modifications proposed herein have been reached after negotiation with the Department of the Attorney General and allows the Child Support Enforcement Agency to be in compliance with the Final Rule.

We respectfully propose the following modifications to the Bill:

1. On Page 3, lines 12-15: the lines should read: "...other relevant background factors in the case [;] . ~~[provided that]~~ Incarceration ~~[shall]~~ may not be treated as voluntary unemployment in establishing or modifying an order of support. The factors listed above shall be considered if imputation of income is determined to be appropriate for incarcerated individuals."



2. On Page 5, line 4: the line should read: "...compliance with an order of support; as provided by Agency."
3. On Page 5, lines 5 and 6: the lines should read: "(2) Analyze case data, gathered through sampling or other methods, as provided by the Agency, on the application of and deviations from the...".
4. On Page 5, lines 11-13: the lines should read: "...support amount. The analysis shall also include a comparison of payments on child support orders by case characteristics, as provided by the Agency, including whether the order was...".
5. Add a new section to this bill to amend HRS § 571-52.5 by adding a new subsection (b). HRS § 571-52.5 should read:

[§571-52.5] Guidelines to determine child support amounts.

(a) When the court establishes or modifies the amount of child support required to be paid by a parent, the court shall use the guidelines established under section 576D-7, except when exceptional circumstances warrant departure.

(b) Whenever the court imputes income, deviates from the guidelines, or the child support order is issued by default, it shall note the same, including the amount of income imputed and the child support amount that would have been required under the guidelines, in the order for income withholding issued at the time that child support is ordered.

With these modifications, the Judiciary would respectfully support the Bill, as amended.

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



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 22, 2018

TO: The Honorable Senator Brian T. Taniguchi, Chair
Senate Committee on Judiciary

The Honorable Senator Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2749 SD1 – RELATING TO SUPPORT GUIDELINES**

Hearing: Friday, February 23, 2018, 9:55 a.m.
Conference Room 211, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration measure and provides comments.

PURPOSE: The purposes of this bill are to amend the child support guidelines requirements to provide for more opportunity for the public to be involved in the review of the guidelines and to require consideration of additional factors relating to the situation of the parents.

DHS takes no position regarding the process to or considerations required to establish child support guidelines.

If this measure does not pass and the Child Support Enforcement Agency's (CSEA) funding is affected, CSEA's ability to collect and pass on the child support payments to DHS will impact DHS. Currently funds received from CSEA are returned to HMS 211 which is used to issue financial benefits to families with minor children.

For background purposes, as a condition of eligibility for financial assistance through the Temporary Assistance for Needy Families (TANF) or the state funded Temporary

Assistance for Other Needy Families (TAONF), all individuals are required to assign to the state any rights the individuals may have to receive child, spousal, or medical support, per section 17-653-17(a), Hawaii Administrative Rules (HAR). Failure to comply with this assignment may result in termination of financial assistance to the entire household. See section 17-653-17(d), HAR.

This process of assignment is one part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 that mandated states penalize TANF recipients' benefit amounts if recipients do not cooperate with the CSEA in establishing child support.

As required, DHS regularly refers TANF/TAONF recipients to CSEA to establish child support orders. Currently, CSEA then collects child support payments from non-custodial parents, and those funds are returned to DHS per the signed assignment. Funds received from CSEA are returned to HMS 211, program ID for cash assistance used for TANF and TAONF benefit payments.

Thus far, in state fiscal year (SFY) 2018 CSEA collection to date for TANF and TAONF households (July 2017-January 2018) is: \$1,868,815.04. In last two fiscal years, CSEA has remitted to DHS:

- SFY 2017: \$4,252,102.74 and
- SFY 2016: \$4,996,455.99.

In comparison to the total annual TANF budget of \$98.9 million, the impact to DHS programs may not be immediate and apparent. However, with the recent federal tax reform, and proposed changes to health and human services programs currently being discussed at the federal level, we are concerned with any loss of funding to families with minor children. As we continue to analyze this issue through session and we monitor discussion on the federal level, we will update the legislature in our testimony.

Child support is an important source of income for families with children; passing this measure will support the state's compliance with federal law.

Thank you for the opportunity to testify on this measure.

SB-2749-SD-1

Submitted on: 2/20/2018 11:52:30 AM

Testimony for JDC on 2/23/2018 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments: