



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Human Services

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair

Monday, February 12, 2018 at 3:00 pm
State Capitol, Conference Room 16

By

Catherine H. Remigio
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2749, 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 will still allow the Agency to be in compliance with the Federal Rules.

As written, the Bill removes judicial discretion to determine appropriate child support on a case by case basis. Page 3, lines 9-11 provide that "[I]ncarceration may not be treated as voluntary unemployment in establishing or modifying an order of support." This appears to place an absolute prohibition on imputing income for all incarcerated parents, and is contrary to current state law. The Child Support Guidelines provide (page 20, Section V.J.3) that a court may impute income for unemployed or underemployed individuals, but must consider the reasons for the condition first.



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The Bill also places a burden on the Judiciary to gather economic data and analyze various child support payment characteristics. Page 4, lines 10-19, requires the Family Court to consider labor market data "by occupation and skill level for the state and local job markets." The Judiciary does not have the staff (economists or statisticians) necessary to gather this information.

This section also requires the court to consider "factors that influence employment rates ... and impacts compliance with an order of support." Page 5, lines 3-5, states that the Court must provide "a comparison of payments on child support orders by case characteristics." The only agency that collects and keeps track of child support payments is the Child Support Enforcement Agency. The Judiciary does not collect or keep track of child support payments.

Furthermore, our courts decide issues involving allegations of non-payment of child support. If we collected and tracked child support payments, we would be precluded from deciding these cases as we could potentially be called to testify as witnesses.

Page 5, line 10-13 states that we should ensure that deviations are limited. This does not take into account the vast income differences in the parties who appear before us and purports to remove our discretion to determine appropriate child support on a case by case basis.

Finally, the Bill provides no funding for added positions necessary to perform these mandated functions that are outside of our primary function.

In an effort to address the Judiciary's and the Child Support Enforcement Agency's concerns, we respectfully propose the following modifications to the Bill:

1. On page 3, line 11: Add the following language: "Imputation of income based on other factors will still apply to incarcerated individuals."
2. On page 4, line 10: the line should read: "Consider economic data, as provided by Agency."
3. On page 4, line 20: the line should read: "Analyze case data, as provided by the Agency, gathered through sampling or other ...".
4. On page 5, between lines 9 and 10, add the following sentence: "Whenever the Family Court imputes income or deviates from the child support guidelines, it shall note the same, including the amount of imputation and deviation, in all Income Withholding Orders provided to the Child Support Enforcement Agency for collection."



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

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



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Monday, February 12, 2018 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 16

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

Chair Green and Members of the Committee:

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 welfare funding received by the Department of Human Services and federal funding of the child support enforcement program.

The provisions of this bill have been discussed with the Family Court and we are requesting that the following amendments be made to the bill:

1. On page 3, at the end of line 11, add an additional sentence that states, “The factors listed above shall be considered if imputation of income is determined to be appropriate for incarcerated individuals.” This is to clarify that income may be imputed to individuals who are incarcerated if the person has assets or other resources, or the facts of the situation warrant the imputation of income.

2. On page 8, amend line 7 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.

In our discussion with the Family Court, we have also been made aware of their concern regarding the factors that the review must consider on page 4, lines 10 through 19, under the new federal requirements. We understand that identifying and obtaining such information as labor market data and factors that influence employment rates are not within the purview of either the Family Court or the Child Support Enforcement Agency. However, as the Family Court is tasked with the responsibility of updating the guidelines every four years, it should be the Family Court that takes the lead in ensuring that the information is obtained and considered during the review. If an appropriation is necessary to accomplish this, we would fully support the Family Court’s request for additional funding to acquire the necessary data. We do want to re-emphasize that, because this is a federal requirement, federal funding provided to the Department of Human Services and to the Child Support Enforcement Agency may be jeopardized for noncompliance. Although we do not know exactly how the federal funding will be jeopardized, we estimate that we could lose at a minimum of \$1-2 million, and possibly up to \$9 million.

We respectfully ask the Committee to pass this bill with the proposed amendments.