

## ACT 332

S.B. NO. 1843-86

A Bill for an Act Relating to Child Support.

*Be It Enacted by the Legislature of the State of Hawaii:*

## SECTION 1. This Act:

- (1) Establishes procedures which will bring the State into compliance with federal statutory and regulatory requirements established under the authority of Title IV, part D of the Social Security Act as amended by the Child Support Amendments of 1984 (P.L. 98-378). The Act will assure that assistance in obtaining support will be available to all children for whom such assistance is requested, by substantially increasing the effectiveness of the state child support enforcement program.
- (2) Establishes a special court trustee to assist any parent, guardian, or custodian materially affected by a court order or decree in approaching the court to modify any provision of the order or decree pertaining to support payments or to enforce visitation rights.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
CHILD SUPPORT ENFORCEMENT**

§ -1 **Definitions.** For the purpose of this chapter:

“Absent parent” means a parent who is absent from the family, whether or not the parent is a debtor parent.

“Agency” means the child support enforcement agency established under section -2.

“Child support” means payment for the necessary support and maintenance of a child as required by law.

“Custodial parent” means a parent, guardian, or other person having custody of the child.

“Debtor parent” means any person who is delinquent in payment of court-ordered child support payments or who owes a public assistance debt.

“Department” means the department of social services and housing until June 30, 1987 and the department of attorney general from July 1, 1987, unless otherwise specified.

“Obligor” means an absent parent obligated by court order to pay child support.

“Public assistance debt” means a debt owing to the department of social services and housing under section 346-37.1.

“Title IV-A”, “Title IV-D”, and “Title IV-E” mean Title IV-A, Title IV-D, and Title IV-E, respectively, of the federal Social Security Act (August 14, 1935, chapter 531, 49 Stat. 620), as amended.

§ -2 **Designation of child support enforcement agency; duties.** There is created the child support enforcement agency for the State as required under Title IV-D. Until June 30, 1987, the agency shall be within the department of social services and housing. From July 1, 1987, the agency shall be within the department of the attorney general. The child support enforcement agency shall:

- (1) Be responsible for formulating the state child support enforcement plan as required under Title IV-D; and
- (2) Administer this chapter consistent with Title IV-D and applicable state laws.

§ -3 **Obtaining or enforcing child support.** (a) The agency shall undertake any legal or administrative action to secure support for a child by enforcing an existing court order or obtaining a court order of support.

(b) In order to carry out its responsibilities imposed under this chapter, the agency, through the offices of the corporation counsel or the county attorneys, may commence or appear in any proceeding before any court or administrative agency for the purpose of establishing paternity for children born out of wedlock or for the purpose of obtaining, enforcing, or modifying an order of support on behalf of any dependent or any other person for whom the agency has a duty to obtain or enforce an order of support under this chapter. The agency may commence or appear in any action on its own behalf, on behalf of any dependent child or custodial parent, or on behalf of any other person for whom the agency has a duty to obtain or enforce an order of support under this chapter. The agency shall obtain or enforce a child support order for the following children:

- (1) A child on whose behalf public assistance payments have been or are being made;
- (2) A child on whose behalf foster care payments have been or are being made under Title IV-E; or
- (3) A child on whose behalf a custodial parent, guardian, or other person having custody applies to the agency for assistance in obtaining or enforcing a child support order, whether or not public assistance payments have been made on the child’s behalf.

§ -4 **Establishment of paternity.** When necessary to obtain child support for a child under section -3, the agency shall take any legal or administrative action to establish the paternity of the child. The agency shall undertake the action on behalf of the State, child, custodial parent of the child, or any other person for whom the agency has a duty to obtain or enforce a child support order.

§ -5 **Fee for obtaining or enforcing nonpublic assistance order.** The agency shall require the payment of a reasonable fee on the application of a person under section -3(b)(3) who is not receiving public assistance for support of the child for assistance in obtaining or enforcing a child support order. The payment and amount of the fee shall be in compliance with applicable federal regulations promulgated under Title IV-D.

§ -6 **Other duties of agency.** The agency shall:

- (1) Establish a state parent locator service;
- (2) Cooperate with other states in:
  - (A) Establishing paternity, if necessary;
  - (B) Locating an absent parent who is present in the State and against whom any action is being taken under a Title IV-D program in any other state; and
  - (C) Securing compliance by such an absent parent with a support order issued by a court of competent jurisdiction in another state.
- (3) Perform periodic checks of whether a debtor parent is collecting unemployment compensation and, if so, to arrange, either through agreement with the debtor parent or by bringing legal process, to have a portion of the compensation withheld, to fulfill the parent's delinquent child support obligations;
- (4) Notify annually each custodial parent, guardian, protective payee, or other person having custody of the child of an Aid to Families with Dependent Children family of the amount of child support collected on behalf of the child in the family. For the purpose of this section, "Aid to Families with Dependent Children family" means a family which receives financial assistance under the federal Aid to Families with Dependent Children program;
- (5) Establish and utilize procedures which shall require a debtor parent to give security, post bond, or give some other guarantee to secure payment of delinquent child support. The procedures shall apply to all debtor parents of children described under section -3. The procedures shall include advance notice to the debtor parent in full compliance with the State's procedural due process requirements. The agency shall develop guidelines, which are available to the public, to determine whether the case is inappropriate for application of this requirement.
- (6) Establish and utilize procedures by which information regarding the amount of delinquent child support owed by a debtor parent residing in the State will be made available to any consumer reporting agency. The procedures shall be effectuated after the delinquency reaches \$1,000, shall be in compliance with the limitations under Title IV-D, and shall include provisions on advance notice to the debtor parent of the procedures, which shall be in full compliance with the State's procedural due process requirements, to contest the accuracy of the information;
- (7) Establish and utilize procedures which will impose liens against the real and personal property of a debtor parent who owes overdue support and who resides or owns property in the State. The agency shall further establish guidelines which are available to the public to determine whether the case is inappropriate for application of this paragraph;

- (8) Establish and utilize procedures for the notification of a custodial parent that any income tax refund setoff under section 231-53 shall be credited to child support debts for past public assistance or foster care maintenance before any other debt;
- (9) Establish and utilize procedures for prompt reimbursements of overpayments of child support debts from income tax refund setoffs under section 231-53. The procedures shall provide for the reimbursements to be made by the custodial parent or agency; and
- (10) Perform other duties required under Title IV-D.

(b) The procedures required under paragraphs (5), (6), (7), (8), and (9) shall be established by rule in accordance with chapter 91.

§ -7 **Guidelines in establishing amount of child support.** (a) The family court, in consultation with the agency, shall establish guidelines to establish the amount of child support when an order for support is sought or being enforced under this chapter. The guidelines shall be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

The guidelines may include consideration of the following:

- (1) All earnings, income, and resources of both parents;
- (2) The earning potential, reasonable necessities, and borrowing capacity of both parents;
- (3) The needs of the child for whom support is sought;
- (4) The amount of public assistance which would be paid for the child under the full standard of need as established by the department; and
- (5) The existence of other dependents of the obligor parent.

(b) The guidelines shall be:

- (1) Applied statewide;
- (2) Applied to ensure, at a minimum, that the child for whom support is sought benefits from the income and resources of the obligor parent on an equitable basis in comparison with any other minor child of the obligor parent;
- (3) Established by October 1, 1986; and
- (4) Transmitted to the agency and all family court judges when available or updated, and shall be considered by the judges in the establishment of each child support order.

(c) The family court, in consultation with the agency, may update the guidelines when the family court deems it necessary.

§ -8 **Moneys collected for public assistance debt; transmittal to department of social services and housing.** The moneys collected by the agency on behalf of the department of social services and housing for public assistance debt shall be transmitted to the department of social services and housing. The department of social services and housing shall transmit to the federal government that portion of the money required to be transmitted under Title IV-D. The remaining portion of the moneys collected, with the exception of incentive payments or other monetary performance awards to which the State is entitled under Title IV-D, shall be retained by the department of social services and housing to offset Title IV-A public assistance payments.

§ -9 **Incentive payments to State and political subdivision.** If one or more political subdivisions of the State participate in the costs of carrying out the child support enforcement activities during any particular period, each such subdivision shall be entitled to receive an appropriate share of any federal incentive payments made to the State for such period. The exact amount of the

share shall be determined by taking into account the efficiency and effectiveness of the activities carried out by the political subdivisions, and measured by a standard methodology which shall be developed by the agency, for passing through an appropriate share of its incentive payment to participating political subdivisions.

§ -10 **Collection and disbursal of child support.** (a) The agency shall collect and disburse child support payments when a court order requires the collection and disbursal.

(b) Any child support payments required by a court order effective on June 30, 1986 to be made to a court or clerk of the court and disbursed to a custodial parent shall be made to the agency after June 30, 1986. The agency shall disburse the payments as appropriate under the court order.

§ -11 **Staff.** The head of the appropriate department shall appoint, pursuant to chapters 76 and 77, an administrator and such other personnel as may be required to discharge the functions of the child support enforcement agency. The head of the appropriate department shall commission child support enforcement investigators who shall have and may exercise all the powers and authority of a police officer or a deputy sheriff to fulfill their official responsibilities, provided that persons so appointed and commissioned shall not carry firearms. The duties of the commissioned investigators shall be to locate absent parents, to establish paternity, and to obtain and enforce court orders of support. The child support enforcement investigators shall have access to the records of any agency, board, commission, authority, court, or committee of the State or its political subdivisions notwithstanding any provisions for confidentiality.”

SECTION 3. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§231-57.5 **Notification of address and social security number of debtor parent.** The department of accounting and general services shall notify the child support enforcement agency of the address and social security number of each debtor who has been subject to a setoff because of a child support debt.”

SECTION 4. Chapter 571, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§571- **Guidelines to determine child support amounts.** 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 -7, except when exceptional circumstances warrant departure.

§571- **Child support order, judgment, or decree; accident and sickness insurance coverage.** Each order, judgment, or decree under this chapter or chapter 576, 580, or 584 ordering a person to pay child support shall include a provision concerning the liability of that person for accident and sickness insurance coverage when available at reasonable cost.”

SECTION 5. Section 231-52, Hawaii Revised Statutes, is amended by amending the definition of “claimant agency” to read as follows:

““Claimant agency” includes any state agency, board, commission, department, institution, or other state organization, or any subdivision thereof. In the case of delinquent child support, “claimant agency” means the [department of social services and housing] child support enforcement agency or an agency under cooperative agreement with the department[.] whenever the

department is required by law to enforce a support order on behalf of an individual.”

SECTION 6. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of social services and housing and its agents shall keep such records as may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, or social services; [or]
- (2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any and all forms of public assistance, food stamps, medical assistance, or social services, including but not limited to disclosure by the department of information and documents to police departments, prosecutors’ offices, the attorney general’s office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any and all aspects of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel is permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;
- (3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, such determination to include but not be limited to verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services[,] needed;
- (4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any and all information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
- (5) Federal agencies responsible for the administration of federally assisted programs, which provide assistance, in cash or in kind, for services, directly to individuals on the basis of need; and certification of receipt of aid to families with dependent children to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;
- (6) Employees acting within the scope and course of their employment of such recognized social welfare organizations as may be approved by the department; [and]
- (7) [[Text of paragraph effective July 1, 1986.]] Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an

adult day care center, including but not limited to disclosure by the department of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations[.]; and

- (8) Disclosure to the child support enforcement agency for obtaining or enforcing a child support order under chapter ."

SECTION 7. Section 346-37.1, Hawaii Revised Statutes, is amended to read as follows:

**"§346-37.1 Payment of public assistance for child constitutes debt to department by natural or adoptive parents.** (a) Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents who are responsible for support of such children in an amount equal to the amount of public assistance money so paid or as established pursuant to subsection (b), except that debts under this section shall not be incurred by nor at any time be collected from a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status, and, provided that where there has been a family court order, the debt shall be limited to the amount provided for by the order.

(b) If there is no existing court order, the debt may be established by agreement of the parties or by order of the family court wherein the following criteria shall be considered:

- (1) All earnings, income, and resources of the absent parent or parents including real or<sup>1</sup> personal property;
- (2) The earnings potential, reasonable necessities, and borrowing ability of the absent parent or parents;
- (3) The needs of the child for whom the support is sought;
- (4) The amount of assistance which would be paid to the child under the full standard of need as established by the department; and
- (5) The existence of other dependents.

These criteria shall be applied so as to ensure, at a minimum, that the child for whom support is sought benefits from the income and resources of the absent parent or parents on an equitable basis in comparison with any other minor child of the absent parent."

SECTION 8. Section 346-37.2, Hawaii Revised Statutes, is amended to read as follows:

**"[ [ ]§346-37.2[ ] ] Department subrogated to rights.** The department shall be subrogated to the right of [said] such child or children or person having the care, custody, and control of [said] such child or children to [prosecute or maintain any support action or execute any administrative remedy existing under the laws of the State to obtain reimbursement of moneys thus expended. If a family court order enters judgment for an amount of support to be paid by an obligor parent, the department shall be subrogated to] the debt created [by such order, and said money judgment shall be deemed to be in favor of the department.] under section 346-37.1. Any judicial or administrative action to collect the debt for the department shall be undertaken by the child support enforcement agency under chapter ."

SECTION 9. Section 346-37.3, Hawaii Revised Statutes, is amended to read as follows:

“[[§346-37.3]] **Notice of child support debt.** The department [may issue a notice of] shall notify the child support enforcement agency of each support debt accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. [Said notice of debt shall be served upon the debtor in the manner prescribed for the service of summons in a civil action including summons by publication where appropriate and necessary.]”

SECTION 10. Section 383-163.5, Hawaii Revised Statutes, is amended as follows:

1. Subsections (a), (b), (c), and (d) are amended to read:

“(a) An individual filing a new claim for unemployment compensation, at the time of filing such claim, shall disclose whether or not that individual owes child support obligations as defined under subsection (g). If any individual owes child support obligations and is determined to be eligible for unemployment compensation, the department shall notify the [state or local] child support enforcement agency [enforcing the obligation] that the individual has been determined to be eligible for unemployment compensation.

(b) The department shall deduct and withhold, from any unemployment compensation payable to an individual who owes child support obligations, one of the following:

- (1) The amount specified by the individual to the department to be deducted and withheld under this subsection, if neither paragraph (2) nor (3) is applicable;
- (2) The amount, if any, determined pursuant to an agreement submitted to the department under section 454(20)(B)(i) of the Social Security Act by the [state or local] child support enforcement agency, unless paragraph (3) is applicable; or
- (3) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the department.

(c) Any amount deducted and withheld under subsection (b) shall be paid by the department to the [appropriate state or local] child support enforcement agency.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the [state or local] child support enforcement agency in satisfaction of the individual’s child support obligations.”

2. Subsection (f) is amended to read:

“(f) This section applies only if appropriate arrangements have been made for reimbursement by the [state or local] child support enforcement agency for the administrative costs incurred by the department under this section.”

3. Subsection (h) is amended to read:

“(h) As used in this section, the term “[state or local] child support enforcement agency” means [any] the agency [of a state or a political subdivision thereof operating pursuant to a plan described in subsection (g).] established under chapter .”



SECTION 11. Section 571-52, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Whenever any person has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and maintenance of a spouse or former spouse, and fails or refuses to obey or perform the order, and has been adjudged guilty of contempt of court for such failure or refusal, the court may make an order which shall operate as an assignment by the person [to the clerk of the court where the order is entered,] for the benefit of the child or spouse, of such amounts at such times as may be specified in the order, from the salary, wages, or other income due or to become due in the future to such person from the person’s employer or successor employers, until further order of the court. The assignment of the amounts shall be to the clerk of the court where the order is entered if for the support or maintenance of a spouse or former spouse, or to the child support enforcement agency if for the support, maintenance, or education of a child or if child support and spouse support are contained in the same order. The order of assignment shall be effective immediately after service upon an employer of a true copy of the order, which service may be effected by certified or registered mail or by personal delivery. Thereafter, the employer shall for each pay period withhold from the salary, wages, or other income due to the person from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the clerk of the court or child support enforcement agency as set forth in the order, as much as may remain payable to the person for such pay period up to the amount specified in the order of assignment as being payable during the same period. The person ordered to pay shall inform the court immediately of any change which would affect the order of assignment or the disbursement thereof. Compliance by an employer with the order of assignment shall operate as a discharge of the employer’s liability to the employee for that portion of the employee’s earnings withheld and transmitted to the clerk of court[,] or child support enforcement agency, as the case may be, whether or not the employer has withheld the correct amount. The term “employer” as used in this section includes the United States government, the State, and any political subdivision thereof.

(b) Notwithstanding the provisions of subsection (a), whenever a court has ordered any person (hereinafter “obligor”) to make periodic payments toward the support of a child and, upon petition of the person to whom such payments are ordered to be made, or that person’s assignee, the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments which would become due over a one-month period under the order, judgment, or decree providing for child support, the court [may] shall order an assignment of future earnings or income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments which will become due in the future under the terms of the support order will be paid. Such an order shall operate as an assignment by the obligor to the [clerk of the court where the order is entered,] child support enforcement agency and shall be binding upon any person who is or shall become obligated to the obligor for payment of earnings or income and who has been served with a certified copy of the assignment order. For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional amount of \$2 from the earnings or income owed to the obligor. Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order unless otherwise ordered by the court and

the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this subsection, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment, and the fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment.”

SECTION 12. Section 571-52.1, Hawaii Revised Statutes, is amended to read as follows:

**“§571-52.1 Determination and enforcement of support orders.** During the course of any proceeding in which the court is considering making or modifying an order for spouse support or child support, the court on its own motion or on motion of any interested person may refer the problem to the court trustee for investigation.

At any time when a support order payable through the court for spouse support or through the child support enforcement agency for child support or child and spouse support appears or is alleged to be inequitable or unsuitable, the court trustee on his own motion may, and when directed by the court shall, institute an investigation into the situation.

In connection with any such referral or inquiry, the court trustee shall investigate all matters pertinent to the determination of just and suitable allowances for the spouse and children, and shall submit his findings and recommendations in writing to the court. Recommendations of amounts of child support shall be consistent with the guidelines established under section -7, except when exceptional circumstances warrant departure.

The written reports of the court trustee shall be available to interested parties and may be received in evidence if no objection is made, or, if objection is made, may be received in evidence; provided the person or persons responsible for the reports are available for cross-examination as to any matter which has been investigated. When a report is received in evidence, any party may introduce other evidence supplementing, supporting, modifying, or rebutting the whole or any part of the report.

Every order for spouse support or child support or child and spouse support which provides for payments to be made through the court or child support enforcement agency may be enforced pursuant to this section.

The court trustee shall maintain files of the support orders and papers referred to him, shall maintain follow-up records to determine whether the payments ordered therein are being made, may make oral or written demand for overdue payments, and, in the event of a default and after such time as the court trustee may deem reasonable, may, and when directed by the court shall, institute contempt of court proceedings for the purpose of enforcing support orders.

The court trustee may utilize the services of public or private social agencies in conducting the investigations and making the reports and recommendations occasioned by this section. Reports of such agencies may be received in evidence under the same conditions as reports of the court trustee.

Court costs, service fees, and the expenses of any investigation conducted by the court trustee may, in the discretion of the court, be assessed wholly or partially against the party ordered to make the support payments.

As used in this section, support includes amounts ordered to be paid as reimbursement or advancement for expenses incurred or to be incurred by or on

behalf of a spouse or child, including attorney's fees, court costs, and other expenses in connection with relevant litigation, unpaid amounts due under existing or prior support orders, and payments required by a valid sentence, order, judgment, or decree under chapters 575, 576, 580, and 584 or section 571-51."

SECTION 13. Section 571-52.2, Hawaii Revised Statutes, is amended to read as follows:

**"§571-52.2 Automatic assignment by court order of future wages for payment of child support.** (a) Notwithstanding [the provisions of] section 571-52, the court [may] shall order an assignment of future earnings or income when:

- (1) The court has ordered any person (hereinafter the "obligor") to make periodic payments toward the support of a child pursuant to a court order, judgment, or decree; [and]
- (2) The court order, judgment, or decree provides for an automatic assignment of the obligor's wages upon the obligor's failure to timely pay any child support that the obligor is required to pay through the [clerk of the court;] child enforcement support agency or directly to the obligee; and
- (3) The [court or clerk of the court] child support enforcement agency finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments which would become due over a one month period under the order, judgment, or decree providing for child support[.] and notifies the court.

The order shall take effect without necessity of further action of the court or application of the custodial parent or child support enforcement agency, except when a hearing is requested under subsection (c).

(b) The court, on its own motion, may order an assignment of future earnings or income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments which will become due in the future under the terms of the support order will be paid.

(c) The court or the clerk of the court shall provide the obligor written notice at least fourteen days in advance of entering an automatic wage assignment and inform the obligor the automatic wage assignment will issue on a certain date unless the obligor files with the court or the clerk of the court a written objection to the automatic assignment and a written request for a hearing. If the obligor files the written objection and the written request, the court or the clerk of the court shall not issue the automatic assignment of future earnings or income until a hearing is held and the matter is resolved. The court shall establish and implement other notice procedures as may be necessary to adequately protect the obligor's right to procedural due process.

(d) The order for automatic assignment shall operate as an assignment by the obligor to the [clerk of the court where the order is entered,] child support enforcement agency and shall be binding upon any person who is or shall become obligated to the obligor for payment of earnings or income and who has been served with a certified copy of the assignment order. The assignment shall remain in effect throughout the employment of the obligor and shall be terminated when appropriate by the child support enforcement agency [or department which initiated the assignment.]; provided that payment of all overdue support shall not be the sole basis for terminating the assignment. In the event that the obligee retains private counsel or proceeds pro se, the obligee shall have primary responsibility for terminating the assignment[, the agency or

department having secondary responsibility]. If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee[,] or the child support enforcement agency[, or the department]. The child support enforcement agency shall establish procedures by rule in accordance with chapter 91 for the prompt reimbursement for any overpayment to the obligor.

(e) An employer receiving an assignment order shall send the amounts withheld to the child support enforcement agency within ten days after the employee is paid. The employer shall begin withholding no later than the first pay period occurring within fourteen days following the date a certified copy of the order is mailed to the employer. An employer who is required to withhold amounts from the earnings or income of more than one employee may remit a sum total of the amounts in one check, with a listing of the amounts applicable to each employee.

(f) For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional amount of \$2 from the earnings or income owed to the obligor. Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order unless otherwise ordered by the court and the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this section, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment, and the fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment.

[(e)] (g) Any employer who fails to comply with an order of assignment of future earnings or income, as provided for under this section, shall be liable to the obligee or the obligee's assignee for whom support was required to be paid, for the full amount of all sums ordered to be withheld and transmitted and not otherwise done so.

(h) The only basis for contesting a withholding under this section is a mistake of fact, which, for purposes of this section, means an error in the amount of current or overdue support or in the identity of the alleged absent parent.

(i) In contested cases, the State shall notify the obligor within forty-five days, as to whether the withholding of the obligor's earnings or income will occur.

(j) Obligors may request withholding of their earnings or income prior to the entry of an order for the repayment of a delinquency.

(k) Notice of automatic wage assignment after a one-month delinquency shall be included in every child support order entered hereafter in the State.

(l) The child support enforcement agency may allocate amounts withheld from the earnings or income of an obligor among more than one obligee if so ordered by the court.

[(f)] (m) The provisions of section 571-52(c) and (d) shall apply to all orders for automatic assignments issued under this section."

SECTION 14. Section 575-3, Hawaii Revised Statutes, is amended to read as follows:

“§575-3 **Complaint.** Proceedings under this chapter may be instituted upon complaint made under oath or affirmation by the spouse, child, or children, or either of them, by the child support enforcement agency, or by any other person or persons, or organization, against any person guilty of either of the above named offenses.”

SECTION 15. Section 576-25, Hawaii Revised Statutes, is amended to read as follows:

“§576-25 **Officials to represent plaintiff.** Where in any case initiated in a court of this State the plaintiff is unable to hire private counsel, the county attorney or corporation counsel upon request of the [department of social services and housing] child support enforcement agency shall represent the plaintiff, except that fees may be charged as provided for by [the provisions of] chapter [346; the]     . The county attorney or corporation counsel of each county shall represent the plaintiff in any case in which the State is the responding state, provided that [in the latter case] the plaintiff may employ private counsel and in such event the county attorney or corporation counsel shall not be obligated to act save as requested by the court.”

SECTION 16. Section 576-30, Hawaii Revised Statutes, is amended to read as follows:

“§576-30 **State information agency.** The [department of social services and housing] child support enforcement agency is designated as the state information agency under this chapter, and it shall:

- (1) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit the same to the state information agency of every state which has adopted this or a substantially similar act;
- (2) Maintain a register of such lists received from the states and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter.”

SECTION 17. Section 580-15, Hawaii Revised Statutes, is amended to read as follows:

“§580-15 **County attorneys to represent court.** The county attorneys of Maui and Kauai and the corporation counsels of the city and county of Honolulu and the county of Hawaii, within their respective counties, shall, when and to the extent authorized by their respective county governing bodies and upon request of the family court, represent the court in any contempt proceeding for the enforcement of any order or decree for support of a spouse or child support or both, except that fees may be charged as provided for by [the provisions of] chapter [346.]     .”

SECTION 18. Section 580-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d) [of this section], jurisdiction of such matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make such further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; (2) compelling either party to provide for the support and maintenance of the other party; (3) finally dividing and distributing the estate of the parties, real,

personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate, and the attorney's fees, costs, and expenses incurred by each party by reason of the divorce. In making such further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case. In establishing the amounts of child support, the court shall use the guidelines established under section -7. Provision may be made for the support, maintenance, and education of an adult or minor child and for the support, maintenance, and education of an incompetent adult child whether or not the application is made before or after the child has attained the age of majority.

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;
- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;
- (9) Needs of the parties;
- (10) Custodial and child support responsibilities;
- (11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;
- (12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made;
- (13) Probable duration of the need of the party seeking support and maintenance.

The court may order support and maintenance to a party for an indefinite period or until further order of the court; provided that in the event the court determines that support and maintenance shall be ordered for a specific duration wholly or partly based on competent evidence as to the amount of time which will be required for the party seeking support and maintenance to secure adequate training, education, skills, or other qualifications necessary to qualify for appropriate employment, whether intended to qualify the party for a new occupation, update or expand existing qualification, or otherwise enable or enhance the employability of the party, the court shall order support and maintenance for a period sufficient to allow completion of the training, education, skills, or other activity, and shall allow, in addition, sufficient time for the party to secure appropriate employment."

SECTION 19. Section 584-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A child, or personal representative of the child, the child's natural mother, including a mother who is an unmarried woman or a mother who is a married woman who was separated from and was not living with her husband

prior to and at the time the child was conceived, or her personal representative or parent if the mother has died; or a man alleged or alleging himself to be the natural father, or his personal representative if the father has died; or the child support enforcement agency if the department of social services and housing [if it] is providing or has provided public assistance for the support or maintenance of the child under chapter 346, may bring an action for the purpose of declaring the existence or nonexistence of the father and child relationship within the following time periods:

- (1) If the child is the subject of an adoption proceeding,
  - (A) Within thirty days after the date of the child's birth in any case when the mother relinquishes the child for adoption during the thirty-day period; or
  - (B) Any time prior to the date of execution by the mother of a valid consent to the child's adoption, or prior to placement of the child with adoptive parents, but in no event later than three years after the child's birth; or
- (2) If the child has not become the subject of an adoption proceeding within three years after the child's birth; provided that any period of time during which the man alleged or alleging himself to be the natural father of the child is absent from the State or is openly cohabitating with the mother of the child or is contributing to the support of the child, shall not be computed."

SECTION 20. Section 584-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The county attorney or corporation counsel, upon request of the child support enforcement agency, shall represent the child's custodial parent, or the custodial parent's personal representative or parent if the custodial parent has died, or any agency authorized to seek the determination and establishment of paternity or maternity under chapter [346.] \_\_, if an application for services is made. Fees may be charged of the applicant as provided for by [the provisions of] chapter [346.] \_\_."

SECTION 21. Section 584-15, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall [consider all relevant facts, including:

- (1) The needs of the child;
- (2) The standard of living and circumstances of the parents;
- (3) The relative financial means of the parents;
- (4) The earning ability of the parents;
- (5) The need and capacity of the child for education, including higher education;
- (6) The age of the child;
- (7) The financial resources and the earning ability of the child;
- (8) The responsibility of the parents for the support of others; and
- (9) The value of services contributed by the custodial parent.] use the guidelines established under section -7."

SECTION 22. Section 584-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The court may order support payments to be made to the mother, the [clerk of the court,] child support enforcement agency, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.”

SECTION 23. Sections 346-37.4 to 346-37.6, Hawaii Revised Statutes, are repealed.

SECTION 24. Section 346-55.5, Hawaii Revised Statutes, is repealed.

SECTION 25. All rights, powers, functions, and duties of the judiciary related to the collection and disbursement of child support as ordered by a court are transferred to the child support enforcement agency of the department of social services and housing. The positions of the special court trustees, created in Section 571- , which relate to the modification of support payments and the enforcement of visitation rights, and not with the collection and disbursement of child support, shall be established within the judiciary.

All officers and employees of the Judiciary and the Department of Social Services and Housing whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to state personnel laws and this Act.

No officer or employee of the State having tenure who is transferred by this Act shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

In the event that an officer or position held by an officer or employee having tenure is abolished and the officer, employee, or position is not transferred to the child support enforcement agency by this Act, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position of the State for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, computer software and data, other personal property, and leases of real property used or held by the judiciary on June 30, 1986, for the operations of the child support enforcement unit and Title IV-D agency or other functions relating to child support enforcement and paternity determination shall be transferred to the child support enforcement agency on July 1, 1986.

SECTION 26. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the



extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 27. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§571- Modification of support and visitation decrees.** (a) The special court trustee may assist any parent, guardian, or custodian materially affected by a court order or decree with the modification of any provision of the order or decree pertaining to support payments or with the enforcement of visitation rights; provided the special court trustee may assist in modifying support payments only upon finding, after investigation, reasonable cause to believe that the relative financial condition between the obligor and the person who receives the child support payments has substantially changed. For purposes of this section, such a substantial change has occurred if:

- (1) the obligor has involuntarily suffered a material reduction in financial resources; or
- (2) the person who receives child support payments has enjoyed a material increase in financial resources.

(b) The special court trustee may conduct an investigation for the purposes of subsection (a) where a person notifies the special court trustee that the relative financial condition between the obligor and the person who receives the child support payments has substantially changed.

(c) The special court trustee may utilize the services of public or private social agencies in conducting investigations under this section and in making the written findings to the court. Such written findings shall be received in evidence under the same conditions as would those of the special court trustee.

(d) The special court trustee shall submit findings and recommendations pertaining to the modification of support payments or enforcement of visitation rights in writing to the court after investigation under subsection (b). The special court trustee shall provide copies of the findings and recommendations to all persons materially affected by the proposed modification or enforcement. Any person materially affected by the proposed modification or enforcement who opposes the findings and recommendations shall file a written objection with the court or the clerk of the court no later than fifteen days after receipt of the findings and recommendations.

(e) When warranted, the court shall hold a hearing on the recommendations of the special court trustee no later than thirty days after the expiration of the fifteen day period under subsection (d).

(f) Whenever the court, in accordance with this section, approves in full or in part the recommendations of the special court trustee, the court, within a period of not more than ten days after the hearing, shall modify the decree or order to reflect the approved recommendations.

(g) Court costs, service fees, and the expenses of any investigation conducted by the special court trustee, in the discretion of the court, may be assessed wholly or partially against any parent, guardian, or custodian.

(h) For purposes of this section, support includes those amounts included as support under section 571-52.1.

(i) Nothing in this section shall be construed to the effect that child support and visitation compliance be conditioned upon each other. Each shall be treated as an independent right of the child as well as of a parent.”

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SECTION 28. There is appropriated out of the general revenues of the State of Hawaii the sum of \$51,561, or so much thereof as may be necessary for fiscal year 1986-1987, to carry out the purposes of section 27 of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the judiciary.

SECTION 29. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,341,456, or so much thereof as may be necessary for fiscal year 1986-1987, to carry out the purposes of all sections of this Act, except for sections 27 and 28, including the hiring of necessary staff. The sum appropriated shall be expended by the department of social services and housing.

SECTION 30. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 31. This Act shall take effect on July 1, 1986; provided that upon the approval of this Act, the department of attorney general, the department of social services and housing and the judiciary shall commence preparation for the transfer of functions, personnel, and property required under this Act.

(Approved June 9, 1986.)

### Notes

1. Prior to amendment "and" appeared here.
2. Edited pursuant to HRS §23G-16.5.