

S .B. NO. /337

IAN 2 2 2007

A BILL FOR AN ACT

RELATING TO CONTEMPT OF COURT.

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

1 SECTION 1. Section 571-81, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§571-81 Contempt of court. Any adult who wilfully
4 violates, neglects, or refuses to obey or perform any lawful
5 order of the court may be proceeded against for contempt of
6 court. When a court of competent jurisdiction issues an order
7 compelling a parent to furnish support, including child support,
8 medical support, or other remedial care, for the parent's child,
9 proof that the order was made, filed, and served on the parent
10 or proof that the parent was present in court at the time the
11 order was pronounced and proof that the parent did not comply
12 with the order shall constitute prima facie evidence of a civil
13 contempt of court. Any adult found in contempt of court may be
14 punished as provided by law."

15 SECTION 2. Section 584-17, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) Wilful failure to obey the judgment or order of the
18 court shall be a civil contempt of the court. When a court of

1 competent jurisdiction issues an order compelling a parent to
2 furnish support, including child support, medical support, or
3 other remedial care, for the parent's child, proof that the
4 order was made, filed, and served on the parent or proof that
5 the parent was present in court at the time the order was
6 pronounced and proof that the parent did not comply with the
7 order shall constitute prima facie evidence of a civil contempt
8 of court. All remedies for the enforcement of judgments shall
9 apply to this chapter."

10 SECTION 3. Section 710-1077, Hawaii Revised Statutes, is
11 amended by amending subsection (6) to read as follows:

12 "(6) Nothing in this section shall be construed to alter
13 the court's power to punish civil contempt. When the contempt
14 consists of the refusal to perform an act which the contemnor
15 has the power to perform, the contemnor may be imprisoned until
16 the contemnor has performed it. In such a case the act shall be
17 specified in the warrant of commitment. In any proceeding for
18 review of the judgment or commitment, no presumption of law
19 shall be made in support of the jurisdiction to render the
20 judgment or order the commitment. When a court of competent
21 jurisdiction issues an order compelling a parent to furnish
22 support, including child support, medical support, or other

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1 remedial care, for the parent's child, proof that the order was
2 made, filed, and served on the parent or proof that the parent
3 was present in court at the time the order was pronounced and
4 proof that the parent did not comply with the order shall
5 constitute prima facie evidence of a civil contempt of court."

6 SECTION 4. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

BY REQUEST

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JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CONTEMPT OF COURT.

PURPOSE: To facilitate the enforcement of an order compelling a parent to pay child support, medical support, or other remedial care for his or her child, by providing that proof that the parent was present in court at the time the order was pronounced or that parent was served with said order, and proof that the parent did not comply with said order, constitutes prima facie evidence of a civil contempt of court.

MEANS: Amend sections 571-81, 584-17, and 710-1077, Hawaii Revised Statutes.

JUSTIFICATION: Presently, when a parent who is ordered to pay child support or provide other types of support for his or her child fails to do so, a party bringing a civil contempt of court action against the non-complying parent has the burden to prove that the non-complying parent has the ability to pay or provide the court-ordered support at the time of the civil contempt ruling. Even in a case where there was significant evidence of contumacious conduct by the parent in an effort not to pay or provide the court-ordered support, a civil contempt order was deemed improper by the Hawaii Supreme Court because the trial court did not make a specific finding that the parent was able to pay at the time of the contempt ruling. Murray v. Murray, 60 Haw. 160, 587 P.2d 1220 (1978). This has proven to be a difficult burden, as the information about the non-complying parent's ability to pay at a particular time is with the non-complying parent. This has made it difficult to pursue non-complying parents, even though there already exists a prior court order

establishing that they should provide child support.

This bill creates a statutory presumption that there is prima facie evidence of a civil contempt where there is proof that the parent was present in court at the time the support order was pronounced or that the parent was served with said order, and proof that the parent did not comply with said order. If the parent is actually unable to pay or provide the court-ordered support, it would be the parent's burden to explain to the court such inability. The proposed statutory language is modeled after a California statute, which the United States Supreme Court held was valid in a civil contempt action. Hicks v. Feiock, 485 U.S. 624 (1988).

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Office of Child Support Hearings.

EFFECTIVE DATE: Upon approval.