# H.B. NO. 3135

# A BILL FOR AN ACT

RELATING TO FEDERAL REVENUE MAXIMIZATION IN THE JUDICIARY.

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

SECTION 1. The legislature, in the regular session of 2006, passed Act 194, which authorized the judiciary to establish and implement, in collaboration with the department of human services, a federal revenue maximization program for all services that may be eligible for federal financial participation the federal title IV-E program. The legislature in passing Act 194 recognized that implementing this title IV-E revenue maximization program would help to ensure that the state receives maximum federal reimbursement for eligible services provided by the judiciary to children under the care of the state's district and family courts.

To date, a title IV-E revenue maximization program has not been implemented by the judiciary and the services available through the district and family courts in Hawaii are funded overwhelmingly by state revenues.

Through the pursuit and optimal utilization of the available federal funds, the judiciary should be able to

increase the moneys available for services to the children under its care and supervision by twenty-five percent.

In 2002, the last full year for which complete data is available, Hawaii received $17,045,476 in title IV-E reimbursements. This figure put the state of Hawaii in thirty-eighth place among the fifty states, the District of Columbia, and the Commonwealth of Puerto Rico in terms of total reimbursements. Hawaii's youth population, on the other hand, is increasing faster than the rest of the country. In 1995, Hawaii already ranked twenty-fourth in the nation in the percentage of its population under twenty years of age and it is estimated by the U.S. Census Bureau to rank sixth in the nation by 2025.

Title IV-E, in particular, is in imminent danger of being converted to a block grant from its current status as a federal entitlement program. This would eliminate the required federal financial participation contribution by the federal government, instead capping federal funding at the block grant appropriation amount. A block grant would freeze allocations at current reimbursement levels and have a devastating impact on the state, particularly in light of the projected rapid increase in the youth population.

1 Hawaii's allocation would be capped based on its current
2 reimbursement levels. It is therefore critical that the State
3 maximize its claims for federal reimbursement before the block
4 grant conversion occurs.
5 As of June 2000, twenty-two states had already availed
6 themselves of the opportunity to access title IV-E dollars for
7 their juvenile justice populations. At least two other major
8 states (Illinois and Louisiana) have since joined the fold. So
9 commonplace has this funding mechanism become that Pennsylvania
10 among others mandates in legislation that "no state or local
11 funds may be expended on behalf of a juvenile until all
12 available federal funds (primarily title IV-E, TANF, and
13 Medicaid) and private funds for which the juvenile is eligible
14 have been exhausted."
15 In an editorial, published in the *Honolulu Advertiser* on
16 Thursday, August 2, 2007, a leading jurist in the family court
17 called for the development of community-based, non-restrictive
18 alternatives to the current detention system. For example, the
19 department of human services has developed and is currently
20 expanding a series of "safe houses" for non-violent juvenile
21 offenders that offer just such an alternative. The department,
22 however, has been unable to secure all of the available federal

1 funding for these programs because court order language and case
2 planning and case management practices do not meet the
3 requirements of the federal program.
4 The changes required are not monumental. The judiciary
5 already meets all of the federal standards for those children
6 involved with the child welfare system. The change required is
7 to extend to the juvenile justice population the same safeguards
8 and protections already afforded the child welfare population.
9 By seeking federal reimbursements for all the children
10 under its jurisdiction (juvenile justice and child welfare
11 alike), the judiciary can free up millions of dollars in state
12 general revenues that can be reallocated for program expansion
13 as highlighted in the aforementioned editorial. Moreover, these
14 federal reimbursements, when they are reinvested in eligible
15 activities, can themselves serve as matching dollars to draw
16 down even more federal revenue.
17 It is imperative, therefore, that the state do everything
18 in its power to increase the level of its federal reimbursements
19 as quickly as possible, so as to augment the baseline upon which
20 a future block grant would be based.
21 The purpose of this Act is to amend Act 194, Session Laws
22 of Hawaii 2006, to require the judiciary to: (1) report to the

1 governor and the legislature on the reasons why it should
2 continue to receive state general revenues on behalf of children
3 in their juvenile justice system, when it has not implemented a
4 program to draw down readily available federal funds, for
5 example, as twenty-two states have done with title IV-E, and as
6 has been approved by the U.S. General Accounting Office in its
7 report of June 2000, "Foster Care: HHS Should Ensure That
8 Juvenile Justice Placements Are Reviewed" (GAO/HEHS-00-42) and
9 endorsed by the National Council of Juvenile and Family Court
10 Judges; and (2) require the judiciary to maximize the benefits
11 for which a child is eligible under all relevant federal
12 programs (title IV-E, medicaid, SSI) before state general fund
13 revenues can be expended.
14 SECTION 2. Act 194, Session Laws of Hawaii 2006, is
15 amended as follows:
16 (1) By adding a new section to read as follows:
17 "SECTION 2A. No state general funds may be expended on
18 behalf of a child within the juvenile justice system until the
19 judiciary has maximized the benefits for which a child is
20 eligible under all relevant federal programs (title IV-E,
21 medicaid, SSI)."
22

(2) By amending section 3 to read as follows:

"SECTION 3. (a) The judiciary shall, if the program is implemented, submit a report each year to the legislature no later than twenty days prior to the convening of each of the 2007 to 2010 regular sessions that shall include but not be limited to:

(1) The amount of federal reimbursements received for the prior federal fiscal year;

(2) The amount of additional federal funding that has been secured;

(3) The amount of claims pending;

(4) The amount of additional federal funding that is projected to be secured over the next five years; and

(5) Plans for the reinvestment of additional federal funds to expand needed services to the State's children.

(b) If the judiciary does not implement a federal revenue maximization program, the judiciary shall report to the governor and the legislature on the reasons why the judiciary should continue to receive state general revenues for children in the juvenile justice system, when the judiciary has not implemented a program to draw down readily available federal funds.

1 The judiciary shall submit the report to the governor and
2 legislature no later than twenty days prior to the convening of
3 the 2009 regular session."
4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.
6 SECTION 4. This Act shall take effect upon its approval.
7
8 INTRODUCED BY: Calvin K.Y. Say
9 BY REQUEST
JAN 22 2008

**Report Title:**
Federal revenue maximization

**Description:**
Requires the District and Family Courts to report to the Governor and the Legislature on the reasons for not establishing and implementing a federal revenue maximization program for all services they provide to children in their care that may be eligible for federal financial participation and the Family Court's plan to do so in the future.

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# JUSTIFICATION SHEET

DEPARTMENT: Human Services.

TITLE: A BILL FOR AN ACT RELATING TO FEDERAL REVENUE MAXIMIZATION IN THE JUDICIARY.

PURPOSE: To require the Judiciary to report to the Governor and the Legislature on the reasons why the Judiciary should continue to receive state general revenues on behalf of children in their juvenile justice system, when the Judiciary has not implemented a program to draw down readily available federal funds such as 22 states have done with Title IV-E, and as has been approved by the U.S. General Accounting Office in their report of June 2000, "Foster Care: HHS Should Ensure That Juvenile Justice Placements Are Reviewed" (GAO/HEHS-00-42) and endorsed by the National Council of Juvenile and Family Court Judges.

To require the Judiciary to maximize the benefits for which a child is eligible under all relevant federal programs before state general funds can be expended.

MEANS: Amend Act 194, Session Laws of Hawaii(SLH) 2006.

JUSTIFICATION: The Hawaii State Legislature in the 2006 Legislative Session passed and the Governor signed into law S.B. No. 2323 as Act 194, that authorized the Judiciary to establish a federal revenue maximization program for all services provided to children in their care that may be eligible for federal financial participation. This Act did not require the Judiciary to establish and implement a revenue maximization program since such language was deemed to be a violation of the separation of powers. The Judiciary was also to submit a report to the Legislature.

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To date, the federal revenue maximization program has not been implemented.

In passing Act 194, the Legislature recognized that implementing this program would help to ensure that the State receives federal reimbursement for eligible services provided by the Judiciary to children under the care of the State's District and Family Courts.

This bill proposes to amend Act 194, SLH 2006, to require the Judiciary to report to the Governor and the Legislature on the reasons why the Judiciary should continue to receive state general funds when the Judiciary has not implemented a program to draw down readily available federal funds such as 22 states have done with Title IV-E, and as has been approved by the U.S. General Accounting Office's report of June 2000, "Foster Care: HHS Should Ensure That Juvenile Justice Placements Are Reviewed" (GAO/HEHS-00-42) and endorsed by the National Council of Juvenile and Family Court Judges.

The State Judiciary, through its District and Family Courts, provides important services to children in Hawaii who have been placed in foster care or are deemed to be at risk of removal from their homes.

Many of the activities that court staff engages in are eligible for partial reimbursement under the provisions of Title IV-E of the *Social Security Act* (Public Law No. 96-272, the *Adoption Assistance and Child Welfare Act of 1980*). Title IV-E offers federal financial participation (FFP) for eligible activities specified in federal statute and regulation, including the costs of room, board and supervision for children and youth placed in eligible non-restrictive settings as well as associated administrative costs such as preparation for

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court, case planning, and case management among others.

Several years ago, the Judiciary began to explore innovative uses of Title IV-E moneys by developing student internships for law students and social workers serving these families in collaboration with the Department of Human Services and the University of Hawaii. This project has won great support from the Family Court judges and lays the foundation for continued collaboration.

This successful internship project represents only a small fraction of the potential for enhanced services available through a fuller utilization of these federal funding streams that have been largely untapped in Hawaii. Currently, the services available through the District and Family Courts in Hawaii are funded overwhelmingly by state revenues. Through the pursuit and optimal utilization of the available federal funds, the Judiciary should be able to increase the funds available for services to the children under its care and supervision by 25 percent.

In an editorial, published in the *Honolulu Advertiser* on Thursday, August 2, 2007, a leading jurist in the Family Court called for the development of community-based, non-restrictive alternatives to the current detention system. The department of human services has developed and is currently expanding a series of "safe houses" for non-violent juvenile offenders that offer just such an alternative. Unfortunately, the State has been unable to secure all of the available federal funding for these programs due to the failure of the Judiciary/Family Court to modify the language of its court orders and its case planning and case management practices to meet the requirements of the federal program.

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Monumental changes are not required. The Judiciary/Family Court already meets all of the federal standards for those children involved with the child welfare system. All that needs to be done is to extend to the juvenile justice population the same safeguards and protections already afforded the child welfare population.

Although the Department of Human Services ("Department"), over the last three years, through the aggressive pursuit of federal dollars has successfully managed to generate almost a fourfold increase in the amount of funds dedicated to community-based prevention and rehabilitative services, the demand for effective support services for at-risk youth and their families continues unabated. By seeking federal reimbursements for all the children under its jurisdiction (juvenile justice and child welfare alike), the Judiciary/Family Court can free up millions of dollars in State general revenues that can be reallocated for program expansion as highlighted in the aforementioned editorial. Moreover, these federal reimbursements, when they are reinvested in eligible activities, can themselves serve as matching dollars to draw down even more federal revenue.

As of June 2000, 22 states had already availed themselves of the opportunity to access Title IV-E dollars for their juvenile justice populations. At least two other major states (Illinois and Louisiana) have since joined the fold. So commonplace has this funding mechanism become that Pennsylvania among others mandates in legislation that "no state or local funds may be expended on behalf of a juvenile until all available federal funds (primarily Title IV-E, TANF, and Medicaid) and private funds for which the juvenile is eligible have been exhausted."

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Title IV-E, in particular, is in imminent danger of being converted to a block grant from its current status as a federal entitlement program. This would eliminate the required, currently unlimited, FFP contribution by the federal government, instead, capping federal funding at the block grant appropriation amount. This means that Hawaii's allocation would be capped based on its current reimbursement levels. It is, therefore, critical that the State maximize its claims for federal reimbursements before the block grant conversion occurs.

In 2002, the last full year for which complete data is available, Hawaii received $17,045,476 in Title IV-E reimbursements. This figure put the State of Hawaii in thirty-eighth place among the 50 States, the District of Columbia and the Commonwealth of Puerto Rico in terms of total reimbursements. Hawaii's youth population, on the other hand, is increasing faster than the rest of the country. In 1995, Hawaii ranked twenty-fourth in the nation in the percentage of its population under 20 years of age and it is estimated by the U.S. Census Bureau to rank sixth in the nation by 2025. A block grant which would freeze allocations at current reimbursement levels would have a devastating impact on the State, particularly in light of the projected rapid increase in the youth population.

It is imperative, therefore, that the State do everything in its power to increase the level of its reimbursements as quickly as possible, so as to augment the baseline upon which a future block grant would be based.

Following the passage of Act 194, the Department asked its consultants to meet with representatives of the Judiciary to inform them about the opportunities for drawing down federal dollars for the

services the courts are currently providing for the juvenile offenders they serve. On September 29, 2006, a presentation, explaining the relevant federal funding streams and the administrative steps necessary to secure the funding, was made to representatives from the Family Court, Adult Parole, Adult Probation, the Office of Youth Services, and Juvenile Probation.

As a follow-up to the presentation, the Department's consultants requested permission from the Judiciary to review a sample of client records in order to establish the percentage of juveniles who would be eligible for federal reimbursement and ascertain a reliable estimate of the total amount of currently untapped federal revenue to which the Judiciary would be entitled. In a letter dated October 9, 2006, the Judiciary denied the Department's consultants access to the records. Thus, the Department's efforts to assist the Judiciary have effectively been stymied.

At the federal level, in light of the mounting deficits, efforts to restrain the growth and curtail the use of Title IV-E reimbursements (particularly in juvenile justice) continue to gather strength. It is all the more imperative that Hawai'i moves quickly to secure this funding base for all of our children involved with the courts before a limit on access to these funds is enacted.

Impact on the public: Millions more of state general funds would be available for other programs if the Judiciary maximized its claims for federal reimbursements for eligible services to children and youth.

Impact on the department and other agencies: The Judiciary will have to implement a process for claiming federal Title IV-E reimbursements. The DHS will provide

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technical assistance and support to the Judiciary for Title IV-E claiming efforts.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 301.

OTHER AFFECTED AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.