

Hawaii Divorce Laws

CHAPTER 572 MARRIAGE

§572-1 Requisites of valid marriage contract.

In order to make valid the marriage contract, which shall be only between a man and a woman, it shall be necessary that:

(1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew, whether the relationship is the result of the issue of parents married or not married to each other;

(2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;

(3) The man does not at the time have any lawful wife living and that the woman does not at the time have any lawful husband living;

(4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;

(5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;

(6) The man and woman to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and

(7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the man and the woman to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony.

[§572-1.5] Definition of marriage.

Whenever used in the statutes or other laws of Hawaii, "marriage" means the union licensed under section 572-1.

CHAPTER 576D CHILD SUPPORT ENFORCEMENT

§576D-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 576D-2.

"Child support" means payment for the necessary support and maintenance of a child as required by law that includes but is not limited to spousal support when being enforced in conjunction with child support or medical support when a court or administrative order requires the debtor parent to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.

"Compliance with an order of support" means that an obligor:

(1) Is not delinquent in payments in an amount equal to or greater than the sum of payments for child support for a three-month period with regard to driver's licenses and recreational licenses and a six-month period with regard to professional and vocational licenses;

(2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-13(d); or

(3) Has obtained or maintained health insurance coverage as required by a child support order.

"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 child support payments or who owes a public assistance debt.

"Department" means the department of attorney general, unless otherwise specified.

"License" means any license, certification, registration, or permit issued by a licensing authority for recreational purposes, or to conduct a trade or business, including a license to practice a profession or vocation, or a license to operate any motor vehicle, boat, airplane, or helicopter.

"Licensing authority" means any unit of the state or county government, including agencies, departments, boards, commissions, or authorities, or any other entity within the State or county authorized by statute to grant or deny licenses.

"Obligor" means a responsible parent obligated by court or administrative order to pay child support.

"Office" means the office of child support hearings established pursuant to chapter 576E.

"Order of support" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief. An order of support may include spousal support when ordered to be paid in conjunction with the support and maintenance of a child; provided that the spousal support provision in an order of support shall only be enforced by the agency when the support and maintenance of a child is being enforced. An order of support may also include medical support when the debtor parent is ordered to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.

"Public assistance debt". DELETED.

"Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or a former spouse who is living with a child or children for whom the individual also owes support.

§576D-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. 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.

§576D-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, the county attorneys, or the attorney general, 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 for 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, regardless of whether public assistance payments have been made on the child's behalf.

§576D-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 modified 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; provided that earnings be the net amount, after deductions for taxes, and social security. Overtime and cost of living allowance may be deducted where appropriate;

(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;

(5) The existence of other dependents of the obligor parent;

(6) To foster incentives for both parents to work;

(7) To balance the standard of living of both parents and child and avoid placing any below the poverty level whenever possible;

(8) To avoid extreme and inequitable changes in either parent's income depending on custody; and

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

(b) The guidelines shall be:

(1) Applied statewide;

(2) To simplify the calculations as much as practicable;

(3) 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;

(4) Established by October 1, 1986; and

(5) 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, shall update the guidelines at least once every four years.

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

(e) The responsible or custodial parent for which child support has previously been ordered shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment of the child support order more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances.

§576D-8 Transmittal of money collected to department of human services.

The moneys collected by the agency on behalf of the department of human services shall be transmitted to the department of human services as required by Title IV-D of the Social Security Act.

§576D-10 Collection and disbursement of child support; direct payment exception.

(a) The agency shall collect and disburse child support payments when an order requires the collection and disbursement. In the event of any default by the obligor, upon notification of the default by the custodial parent, the agency shall proceed against the obligor for the arrearage and the agency shall have jurisdiction over future child support payments. Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment.

The interest realized from this account shall be used:

(1) For related costs of the maintenance and operation of the account; and

(2) To improve the child support enforcement agency's ability to promptly disburse payments to the custodial parent.

The balance shall be deposited into the state treasury to the credit of the general fund.

(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.

(c) At the time a child support obligation is first established or at any time thereafter, the court may approve an alternative arrangement for the direct payment of child support from the obligor to the custodial parent as an exception to the provisions for income withholding through the agency, as required by sections 571-52.2(a)(1), 571-52.3, and 576E-16(a).

(d) The court may approve an alternative arrangement for the direct payment of child support where either:

(1) The obligor or custodial parent demonstrates and the court finds that there is good cause not to require immediate withholding; or

(2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court, either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court's conclusion.

(e) Any alternative arrangement for direct payment shall provide that either parent may void the arrangement at any time and apply for services from the agency to act as agent to receive payments from the obligor parent. The alternative arrangement for direct payment also shall provide that, if the subject dependents of the obligor parent commence receiving public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or if either parent applies for services from the agency, the agency may immediately void the direct payment arrangement by sending written notice by regular mail to the custodial and obligor parents at their last known addresses, as disclosed in the alternative arrangement agreement.

(f) The alternative arrangement for direct payment agreement shall include the most recent addresses of the custodial and obligor parent. If the obligor parent alleges direct payment of child support to the custodial parent after the subject dependents of the court-approved alternative arrangement become recipients of public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or after the custodial parent applies for services from the agency, and after receiving proper notification of the change of payee to the agency, then the obligor shall have the burden of proving that the child support payments were made by presenting written evidence, including but not limited to cancelled checks or receipts.

(g) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D or where the dependents of the obligor receive public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or where the obligor owes child support for a period during which public assistance was provided to the child or children by the department of human services.

(h) Any alternative arrangement for direct payment shall pertain only to the method of payment of child support. The amount of child support shall be determined according to the child support guidelines pursuant to section 576D-7 and section 576E-15.

(i) The alternative arrangement for direct payment shall become effective upon approval and filing by the court. For any order approved pursuant to this section on or after October 1, 1998, each party must send a certified copy of the order to the state case registry established under section 576D-6.

(j) The agency shall not be required to maintain records while an order obtained pursuant to this section is in effect, except for any payments received and disbursed by the agency.

§576D–10.5 Liens.

(a) Whenever any obligor through judicial or administrative process in this State or any other state 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 in conjunction with child support, and the obligor becomes delinquent in those payments, a lien shall arise on the obligor's real and personal property and the obligor's real and personal property shall be subject to foreclosure, distraint, seizure, and sale, or notice to withhold and deliver, which shall be executed in accordance with this section or applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(b) Upon the establishment of an order of support for a prior period, a lien shall arise on the obligor's real and personal property and the obligor's real and personal property shall be subject to foreclosure, distraint, seizure, and sale, or notice to withhold and deliver, which shall be executed in accordance with this section or applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(c) Every order or judgment regarding child support filed in judicial or administrative proceedings in this State shall be recorded in the bureau of conveyances. An order or judgment regarding child support filed in judicial or administrative proceedings of any other state may be recorded in the bureau of conveyances. This recorded lien shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The statutory lien becomes effective when it arises under subsection (a) or (b) and shall attach to all interests in real or personal property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

(d) No fee shall be charged the child support enforcement agency or its designated counsel for recording or filing of the liens provided for in this section or for the recording or filing of any releases requested in conjunction with the liens.

(e) A recorded order or judgment regarding child support or public assistance debt becomes effective and takes priority from the time it is recorded or the time the child support obligation described therein becomes delinquent, whichever is later. A statutory lien that is provided for by and becomes effective under this section shall take priority over any unrecorded lien whenever acquired, except tax liens previously acquired.

(f) A lien shall be enforceable by the child support enforcement agency or its designated counsel or by the obligee in the following manner:

- (1) By suit in the appropriate court;
- (2) By bringing an action in an administrative tribunal;
- (3) By filing and serving a notice of child support lien; or
- (4) By any lawful means of collection.

A notice of child support lien shall state the name and social security number (if available) of the obligor, the child support enforcement case number, the amount of the lien and the through date (if applicable), the accruing monthly amount, and the date on which the order or judgment regarding child support or public assistance debt was recorded with the bureau of conveyances. The notice shall require that whoever is served with a notice of child support lien either satisfy the lien or obtain a release of the lien prior to disbursing any funds to the obligor. The method of service of a notice of child support lien shall be by certified mail, return receipt requested, or by personal delivery to the individual or entity referred to. A copy of the notice of child support lien shall also be sent to the obligor by regular mail at the obligor's last known address. Upon service of

a notice of child support lien, the individual or entity served shall withhold the amount of the lien from the proceeds of any estate, judgment, settlement, compromise, vacation or holiday pay, or other benefits due the obligor and deliver the funds to the child support enforcement agency. A notice of child support lien may be amended from time to time until extinguished or released, each amendment taking effect upon proper service. A notice of child support lien shall remain in effect until satisfied, extinguished, or released.

(g) A lien shall be enforceable by the child support enforcement agency or its designated counsel without the necessity of obtaining a court order in the following manner:

(1) By intercepting or seizing periodic or lump-sum payments from:

(A) A state or local agency, including unemployment compensation, and other benefits; and

(B) Judgments, settlements, and lotteries;

provided that unemployment compensation benefits may be intercepted only to the extent authorized by section 303(e) of the Social Security Act;

(2) By attaching and seizing assets of the obligor held in financial institutions;

(3) By attaching public and private retirement funds; and

(4) By imposing liens in accordance with this section and, in appropriate cases, to force the sale of property and distribution of proceeds.

These procedures shall be subject to due process safeguards, including, as appropriate, requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(h) The child support enforcement agency, its designated counsel or the obligee, where appropriate, shall issue certificates of release upon satisfaction of the lien. Certificates of release of any real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court. Recordation of the certificate of release shall be the responsibility of the obligor.

(i) If there is a dispute between the obligor and the child support enforcement agency concerning the amount of the child support lien, the obligor may request in writing an account review. Upon receipt of a written request, the child support enforcement agency shall conduct a review of the obligor's account balance pursuant to its administrative rules.

(j) Any person or entity failing to satisfy a notice of child support lien as required by this section, even though able to do so, shall be personally liable to the child support enforcement agency or the obligee for the full amount of all sums required to be withheld and delivered.

§576D-13 Suspension or denial of licenses.

(a) Upon a determination that an obligor is not in compliance with an order of support as defined in section 576D-1 or that an individual failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and that the obligor or individual is the holder of or an applicant for a license issued by a licensing authority in this State, the agency shall serve notice upon the obligor or individual of the agency's intent to certify the obligor or individual as noncompliant with an order of support or a subpoena or warrant relating to a paternity or child support proceeding, which shall direct the appropriate licensing authority to deny or suspend the license, or to deny the application for renewal, reinstatement, or restoration of such license.

(b) The notice shall be sent by regular mail to both the last known address of record of the obligor or individual as shown in the records of the licensing authority and the address of record of the obligor or individual as shown in the agency's child support record. For purposes of this section, the

date of service means two days following the date of mailing. The notice shall contain the following information:

- (1) Identification of the license, certificate, permit, or registration subject to suspension, nonrenewal, nonreinstatement, nonrestoration, or denial;
- (2) The name, social security number, if available, date of birth, if known, and each applicable child support case number or numbers of the obligor or individual;
- (3) The amount of the arrears, the amount of the monthly child support obligation, and reference to the support order upon which the support amount and arrears are based or the subpoena or warrant that the individual has failed to comply with;
- (4) A statement that the obligor or individual may contest the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of a license by requesting a hearing in writing within thirty days of the date of service of the notice of intent to suspend, not renew, not reinstate, not restore, or deny the license;
- (5) A statement that the obligor may contact the agency in writing within thirty days of the date of service of the notice and enter into a monthly payment agreement for the arrears owed, and if an agreement is entered into within thirty days of making contact with the agency, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license;
- (6) A statement that an individual not in compliance with a subpoena or warrant relating to a paternity or child support proceeding may contact the agency in writing within thirty days of the date of service of the notice and enter into an agreement to provide the information or appear at the proceedings, and if so, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license; and
- (7) A statement that if the obligor or individual makes a timely request as specified in paragraph (4), the agency shall stay the action until a decision is made.

(c) If the obligor or individual:

- (1) Fails to contact the agency in writing within thirty days of the date of service of the notice;
- (2) Is not in compliance with an order of support or failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and does not timely enter into an agreement under subsection (d); or
- (3) If the office issues a decision that the obligor or an individual is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the agency shall certify in writing to the licensing authority that the obligor is not in compliance with an order of support or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, and shall authorize the immediate suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of any license held or applied for by the obligor or individual. The agency shall provide a copy of the certification to the obligor or individual. Upon receipt of the certification, the licensing authority shall suspend any license that the obligor or individual holds or deny any license for which the obligor or individual applies without further review or hearing concerning the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial. Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal, reinstatement, or restoration of a license, a certification issued by the agency suspending, not renewing, not reinstating, not restoring, or denying a license shall be implemented by the licensing authority and continue in effect until the licensing authority receives a written release of suspension or denial from the agency, the office of child support hearings, or the family court.

(d) The obligor may enter into a payment agreement with the agency if the obligor makes contact with the agency within thirty days of the date of service of the notice, or the individual may enter

into an agreement to provide the information requested in the subpoena or appear at the proceeding required by the warrant.

(e) If the obligor or the individual requests an administrative hearing in writing within thirty days of the date of service of the notice as provided in subsection (b), the office shall schedule a hearing to determine whether the obligor is not in compliance with a support order or whether the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding. The hearing shall be conducted in accordance with chapters 91 and 576E. The issues before the hearings officer shall be limited to whether the obligor is in compliance with an order of support or whether the individual is in compliance with a subpoena or warrant relating to a paternity or child support proceeding. The hearings officer shall issue a written decision within ten days of the hearing. If the hearings officer decides that the obligor is not in compliance with a support order or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, the license held or applied for by the obligor or individual shall be denied or suspended and shall not be renewed, reinstated, or restored.

(f) The decision of the hearings officer shall be final and shall be subject to judicial review as provided in chapter 91. Any suspension or denial under this section shall not be stayed pending judicial review.

(g) When the conditions which resulted in the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial no longer exist, the agency shall provide the obligor or individual with written confirmation that the obligor is in compliance with the order of support or that the individual is in compliance with the subpoena or warrant relating to a paternity or child support proceeding, and the agency, office, or the family court shall issue an authorization canceling the certification in writing to the licensing authority.

(h) If a license is suspended or denied under this section, any funds paid by the obligor or individual to the licensing authority shall not be refunded by the licensing authority, and the licensing authority may charge a fee for reinstating or restoring a license. The licensing authority may also charge the obligor or individual a reasonable fee to cover the administrative costs incurred by the licensing authority in complying with this section.

(i) The agency shall adopt rules necessary for the implementation and administration of this section. The licensing authority shall adopt rules necessary for the implementation and administration of this section. The appropriate licensing authority shall require that the social security number of any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application for those licenses. The social security number shall be used solely for purposes of this chapter for child support enforcement and identification.

§576D-14 Implementation of income withholding.

(a) For cases being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the income of an obligor who receives income on a periodic basis and who has a support obligation imposed by a support order issued or modified in the State before January 1, 1994, if not otherwise subject to withholding, shall become subject to withholding as provided in subsection (b) if arrearages or delinquency occur, without the need for a judicial or administrative hearing. The agency shall implement such withholding without the necessity of any application in the case of a child with respect to whom services are already being provided under Title IV-D and shall implement on the basis of an application for services under Title IV-D in the case of any other child on whose behalf a support order has been issued or modified. In either case, such withholding shall occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued such order.

(b) If the obligor who receives income on a periodic basis becomes delinquent in making payments under a support order in an amount at least equal to the support payable for one month, the agency shall issue an income withholding order that shall include an amount to be paid towards the delinquency. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. The order shall be

served upon the employer by regular mail, by personal delivery, or by transmission to the employer through electronic means.

(c) Upon the agency's receipt of an interstate income withholding request from another jurisdiction, the agency may issue an income withholding order to collect the support imposed upon the obligor by a support order issued or modified by the other state. The order shall include an amount adequate to ensure that past due payments and payments that will become due in the future under the terms of the support order will be paid.

(d) A copy of the order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued.

(e) Upon sending the order of income withholding to the employer, the agency shall send a notice of the withholding by regular mail to each obligor to whom subsections (b) and (c) apply. The notice shall inform the obligor:

(1) That the withholding has commenced;

(2) That the obligor may request a hearing in writing within fourteen days of the date of the notice;

(3) That, unless the obligor files a written request for a hearing within fourteen days of the date of the notice, the money received from the income withholding will be distributed to the custodial parent or, in an interstate case, the obligee in the other jurisdiction, or in the case where the children are receiving public assistance, to the State;

(4) That the only defense to income withholding is a mistake of fact; and

(5) Of the information that was provided to the employer with respect to the employer's duties pursuant to section 576E-16.

(f) The agency may delay the distribution of collections toward arrearages or delinquency until the resolution of any requested hearing regarding the arrearages or delinquency.

(g) Upon timely receipt of a request for a hearing from the obligor pursuant to the notice provided under subsection (e), the agency shall refer the matter to the office and a hearing shall be conducted pursuant to chapters 91 and 576E.

(h) Upon receiving an order of income withholding from the agency, the employer is subject to the requirements of section 576E-16(b) through (h).

(i) In a case being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the agency may:

(1) Enforce the existing order of support by sending to the employer by regular mail, by personal delivery, or by transmission through electronic means, a notice to withhold child support issued by the agency that reflects the terms and conditions specified in the order for support or income withholding order. Upon receiving a notice to withhold child support, the employer is subject to the requirements of section 576E-16(b) to (h); and

(2) Terminate income withholding by sending a notice to the employer by regular mail or transmission by electronic means. The notice shall be issued upon determination by the agency that the obligor no longer owes the child support or that the obligation is being satisfied through withholding by another employer.

CHAPTER 576E ADMINISTRATIVE PROCESS FOR CHILD SUPPORT ENFORCEMENT

§576E-1 Definitions.

As used in this chapter, unless the context otherwise requires:

"Administrative order" means the order resulting from an administrative adjudication by a hearings officer or the attorney general, through the agency, of the final disposition of a matter before the agency.

"Agency" means the child support enforcement agency established by section 576D-2.

"Arrearage" means past due child support under an existing court or administrative order.

"Child support" means payment for the necessary support and maintenance of a child as required by law that includes but is not limited to spousal support when being enforced in conjunction with child support or medical support when a court or administrative order requires the debtor parent to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.

"Compliance with an order of support" means that an obligor:

(1) Is not delinquent in payments in an amount equal to or greater than the sum of payments which would become due for child support, for a three-month period with regard to driver's and recreational licenses and for a six-month period with regard to professional and vocational licenses;

(2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-13(d); or

(3) Has obtained or maintained health insurance coverage as required by a child support order.

"Court" means the family courts of this State and, when the context requires, a court or agency of any other state having jurisdiction to establish, modify, and enforce support obligations.

"Custodial parent" means a parent, guardian, or other person having physical custody of the child.

"Department" means the department of the attorney general.

"Dependent child" means any person to whom a duty of support is owed.

"Duty of support" means any duty of support imposed or imposable by law, or by any court order, decree, or judgment, whether interlocutory or final or whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

"Employee" means any person working for another for hire, including but not limited to, an individual employed in domestic service or at a family's or person's home or any individual employed by the individual's parent or spouse, or independent contractors.

"Employer" means any person who uses or engages the services of any person in exchange for the payment of wages or other means of exchange, including the United States government, the State, and any political subdivision thereof, and anyone who is or shall become obligated for payment of income.

"Hearings officer" means a public official appointed and commissioned pursuant to section 576E-10.

"License" means any license, certification, registration, or permit issued by a licensing authority for recreational purposes, or to conduct a trade or business, including a license to practice a profession or vocation, or a license to operate any motor vehicle, boat, airplane, or helicopter.

"Licensing authority" means any unit of the State or county government, including agencies, departments, boards, commissions, or authorities, or any other entity within the State or county authorized by statute to grant or deny licenses.

"Obligee" means any person to whom payments are required to be made under the terms of a court or administrative order for child support, or child support and spousal support.

"Obligor" means a responsible parent obligated by court or administrative order to pay child support.

"Office" means the office of child support hearings established pursuant to section 576E-10.

"Order of support" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief. An order of support may include spousal support when ordered to be paid in conjunction with the support and maintenance of a child; provided that the spousal support provision in an order of support shall only be enforced by the agency when the support and maintenance of a child is being enforced. An order of support may also include medical support when the debtor parent is ordered to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including but not limited to the custodial parent and the responsible parent.

"Public assistance" means any cash paid or medical assistance provided by the department of human services to or for the benefit of any dependent child, including amounts paid to or on behalf of the child's custodian.

"Responsible parent" means any person who does not have physical custody of the child and who has a legal duty of support.

"Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or a former spouse who is living with a child or children for whom the individual also owes support.

"Support order" means an obligation determined by a court or duly authorized administrative agency, for the maintenance of a dependent child, which is owed to or on behalf of the child, or to the parent or custodian with whom the child is living.

"Uniform statewide procedures" means a written set of instructions prepared by the agency which describe step by step actions to be taken by agency personnel in the performance of duties under this chapter.

§576E-9 Hearings in contested cases.

Hearings in contested cases shall be conducted in accordance with this chapter, and when otherwise applicable, chapter 91, and shall be presided over by a hearings officer appointed and commissioned by the attorney general pursuant to section 576E-10. The attorney general may adopt such administrative rules pursuant to chapter 91, as may be necessary to carry out this section. In any hearing conducted under this section, all parties shall have the right to confront and cross-examine witnesses, to present witnesses and evidence, to be represented by counsel or other person, and to be notified of these rights in writing. Hearings may be conducted by telephone or other electronic telecommunications methods at the discretion of the hearings officer.

§576E-14 Modification, suspension, or termination of court and administrative orders.

(a) The responsible parent, the agency, or the person having custody of the dependent child may file a request for suspension, termination, or modification of the child support provisions of a Hawaii court or administrative order with the agency. Such request shall be in writing, shall set

forth the reasons for suspension, termination, or modification, including the change in circumstances since the date of the entry of the order, and shall state the address of the requesting party. The agency shall thereafter commence a review of the order and, if appropriate, shall commence administrative proceedings pursuant to sections 576E-5 through 576E-9. The need to provide for the child's health care needs through health insurance or other means shall be a basis for the agency to commence administrative proceedings pursuant to section 576E-5.

(b) Only payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The agency shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify.

(c) The establishment of the guidelines or the adoption of any modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.

(d) The responsible parent or custodial parent shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment of child support more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances.

(e) Upon satisfaction of a responsible parent's support obligation toward the dependent child and the State, the agency or hearings officer without application of any party may issue an order terminating child support and may concurrently, if applicable, issue an order terminating existing assignments against the responsible parent's income and income withholding orders.

(f) In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency upon the child reaching the age of nineteen years. In addition, if applicable, the agency or hearings officer may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

§576E-15 Guidelines to be followed.

When an administrative order establishes or modifies the amount of child support required to be paid by a party, the guidelines established under section 576D-7 shall be applied, except when exceptional circumstances warrant departure. The most current guidelines shall be used to calculate the amount of the child support obligation.

§576E-16 Income withholding.

(a) Whenever an administrative order is entered establishing, modifying, or enforcing support, or establishing an arrearage that has accrued under a previous judicial or administrative order of support, there shall concurrently be issued an order that shall operate as an assignment to the agency for the benefit of the child or in the case of spousal support, for the benefit of a spouse or former spouse, of such amounts at such times as may be specified in the order, from the responsible parent's income due or to become due in the future from the responsible parent's

employer, or successor employers, except when alternative arrangements are ordered pursuant to section 576D-10. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued along with the copy of the support order as provided in section 576E-12.

(b) The income withholding order issued pursuant to subsection (a) or the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall be effective immediately after service upon an employer of a copy of the order or the notice to withhold child support, which service may be effected by regular mail, by personal delivery, or by transmission through electronic means. Thereafter, the employer shall for each pay period, withhold from the income due to the responsible parent from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the designated obligee, or upon request, to the child support enforcement agency of this State, as much as may remain payable to the responsible parent for such pay period up to the amount specified in the order or the notice to withhold child support as being payable during the same period. The employer shall immediately inform the agency of any change that would affect the income withholding order or the notice to withhold child support or the disbursement thereof.

(c) Compliance by an employer with the income withholding order issued pursuant to subsection (a) or with the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall operate as a discharge of the employer's liability to the responsible parent for that portion of the responsible parent's earnings withheld and transmitted to the agency, whether or not the employer has withheld the correct amount. For each payment made pursuant to an income withholding order or a notice to withhold child support, the employer may deduct and retain as an administrative fee an additional amount of \$2 from the income owed to the responsible parent. The total amount withheld from the obligor's income, including the administrative fee, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)). Any income withholding order or notice to withhold child support shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653. An employer who fails to comply with an income withholding order under this section or with an income withholding order or notice to withhold child support issued pursuant to section 576D-14 shall be liable to the obligee or the agency for the full amount of all sums ordered to be withheld and transmitted. An employer receiving an income withholding order or a notice to withhold child support shall transmit amounts withheld to the agency within five working days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within seven business days following the date a copy of the order or the notice to withhold child support is mailed to the employer.

As used in this subsection, the term "business day" means a day on which the employer's office is open for regular business. The employer shall withhold funds as directed in the order or the notice to withhold child support, except that when an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding order or a notice to withhold child support that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

An employer who is required to withhold amounts from the income of more than one employee may remit to the agency a sum total of all such amounts in one check with a listing of the amounts applicable to each employee.

Within two working days after receipt of the amounts withheld by the employer, the agency shall disburse the amounts to the obligee for the benefit of the child, except that the agency may delay the distribution of collections toward arrearages until resolution of any timely requested hearing with respect to such arrearages.

(d) An income withholding order or a notice to withhold child support shall remain in effect until terminated when appropriate by court or administrative order, except that an employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding order or the notice to withhold child support. The agency shall promptly refund any amount withheld in error to the responsible parent.

(e) It shall be unlawful for any employer to refuse to hire a prospective employee, to discharge an employee, or to take any other disciplinary action against an employee, based in whole or in part upon an order or notice to withhold child support authorized by this section. Any employer violating this section shall be guilty of a misdemeanor and shall be punished under section 710-1077(1)(g).

(f) Notwithstanding any other provision of law, for the purposes of this section, the term "income" shall include, without limitation, salaries, wages, earnings, workers' compensation, unemployment compensation, disability benefits, commissions, independent contractor income, and any other entitlement to money including moneys payable as a pension or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon from the United States government, or from the State or political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

(g) Any responsible parent may request withholding of the parent's income prior to entry of an administrative order. The employer shall comply with that request as if so ordered under this section.

(h) If there is more than one obligee, the amounts withheld from the income of a responsible parent shall be allocated among the obligees. The allocation may be based on each obligee's proportionate share of the amount of the withholding orders or the notices to withhold child support that were served on the employer of the obligor. If concurrent assignment orders or notices to withhold child support would cause the amounts withheld from the responsible parent's income to exceed applicable wage withholding limitations, the amount withheld shall be allocated so that in no case shall the allocation result in a withholding for one of the support obligations not being implemented. Thereafter, arrearages due under the income withholding orders or the notices to withhold child support shall be satisfied in the order of service, up to the applicable limitation.

(i) If a responsible parent changes employment when an income withholding order or a notice to withhold child support is in effect, the agency shall notify the responsible parent's new employer of the responsible parent's obligation in accordance with subsections (b) to (f). The new employer shall be bound by the income withholding order or the notice to withhold child support until further court or administrative order or until further notified by the agency pursuant to section 576D-14.

§576E-17 Medical support enforcement.

(a) Where the responsible parent is ordered to provide medical insurance coverage for the dependent child, the standard notice for such medical support prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency, shall be issued. The agency

shall forward a copy of the notice, by registered or certified mail or by personal service, to the responsible parent's employer or union when the responsible parent fails to provide written proof to the agency, within thirty days of receipt of the order, that the insurance has been obtained or that application for insurance coverage has been made or within two business days after the date of entry of a responsible parent in a Title IV-D case in the state directory of new hires, whichever shall first occur.

(b) Upon receipt of the copy of the notice, or upon request of the responsible parent pursuant to the order, the employer or union shall enroll the dependent child as a beneficiary in the group medical insurance plan and withhold any required premium from the responsible parent's income. If more than one plan is offered by the employer or union, the child shall be enrolled in the plan in which the responsible parent is enrolled or the least costly plan otherwise available to the responsible parent that is comparable to the plan in which the responsible parent is enrolled.

(c) A dependent child whom a responsible parent is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the responsible parent until the duty of support expires or until further court or administrative order. The insurance coverage shall not be terminated prior to entry of such an order relieving the responsible parent of the duty to provide insurance coverage.

(d) The signature of the custodial parent of the insured dependent child is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of medical services. When an order for dependent insurance coverage is in effect and the responsible parent's employment is terminated, or the insurance coverage is terminated, the insurer shall notify the agency within ten days of the termination date with notice of conversion privileges, if any.

(e) Notwithstanding any other law to the contrary, when an order for insurance coverage is in effect, the responsible parent's employer or union shall release to the agency, upon request, information on the dependent coverage available to the responsible parent, including the name of the insurer. The employer or union shall also provide any other information and perform all tasks as required by the notice issued pursuant to this section.

(f) Any responsible parent who fails to comply with an order requiring the maintenance of insurance coverage for the dependent child shall be liable for any medical expenses incurred by the obligee or the State after the effective date of the order.

[§576E-18] Contempt; procedure for punishment.

In any hearing in a contested case before a hearings officer, any adult who wilfully violates, neglects, or refuses to obey or perform any lawful order of the hearings officer, may be proceeded against in the family court for contempt of court according to law.

[§576E-19] Wilful violations; penalties.

Unless otherwise provided herein, any person who knowingly, intentionally or wilfully violates any section of this chapter shall be guilty of a petty misdemeanor.

CHAPTER 580 ANNULMENT, DIVORCE, AND SEPARATION

PART I. GENERAL PROVISIONS

§580-1 Jurisdiction; hearing.

Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor. No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous

period of at least six months next preceding the application therefor. A person who may be residing on any military or federal base, installation, or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section.

§580-2 Commencement of action; summons.

An action for annulment, divorce, or separation is commenced by filing a complaint with the court, which complaint shall be signed and sworn to by the applicant and shall set forth sufficient facts to constitute a claim for relief. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service to a person authorized to serve process in civil actions. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which the defendant is required to appear and defend which shall not be less than twenty days after the service of the summons and complaint upon the defendant, and shall notify the defendant that in case of the defendant's failure to appear and defend as required, further proceedings may be taken including judgment for the relief demanded in the complaint without further notice to the defendant. Alternative complaints for annulment, divorce, or separation may be set forth or combined in one complaint.

§580-3 Service.

(a) The complaint for annulment, divorce, or separation, and the summons shall be served by an authorized process server on the defendant personally if the defendant is within the State, unless the defendant enters an appearance in the case, and except as hereinafter otherwise provided.

(b) If service by an authorized process server is not feasible or is inconvenient or if the defendant is without the State, the court may authorize the service to be made by any other responsible person, or the court may authorize notice of the pendency of the action and of a time and place of hearing, which shall be not less than twenty days after the giving of personal notice, to be given to the defendant personally by such person and in such manner as the court shall designate and the case may be heard and determined at or after the time specified in the notice.

(c) If the defendant is without the circuit, the court may authorize service by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the defendant shall be prima facie evidence that the defendant accepted delivery of the complaint and summons on the date set forth on the receipt. Actual receipt by the defendant of the complaint and summons sent by registered or certified mail shall be equivalent to personal service on the defendant by an authorized process server as of the date of the receipt.

(d) If it appears that the defendant has refused to accept service by mail, or is concealing oneself, or evading service, or that plaintiff does not know the address or residence of the defendant and has not been able to ascertain the same after reasonable and due inquiry and search for at least fifteen days either before or after the filing of the complaint, the court may authorize notice of the pendency of the action and of a time and place of hearing, which shall not be less than twenty days after the last publication of the published notice, to be given to the defendant by publication thereof at least once in each of three successive weeks in a newspaper suitable for the advertisement of notices of judicial proceedings, published in the State, and the case may be heard and determined at or after the time specified in the notice.

(e) If the plaintiff, as a result of impoverishment, is unable to publish notice as required by subsection (d), the plaintiff shall file an affidavit attesting to impoverishment and to the fact that after due and diligent search, the whereabouts of the individual sought to be served are unknown. Upon those filings, the court shall order that service be made by forwarding a certified copy of the pleadings and process to the individual at the last known address by registered or certified mail, with a return receipt requested and a directive to deliver to addressee only, sending a certified copy of the pleadings and process to the defendant's closest known relative, if any can be found, and by posting a copy of the pleadings and process at the courthouse in which the pleadings and process has been filed. Service shall be completed thirty days after mailing. The plaintiff shall

attest to the fact of the mailing and the date thereof by affidavit, attaching the sender's receipt for that mail and, if available, the return receipt and envelope.

§580-3.5] Personal judgment against absent defendant.

In any proceeding in the family court, the court shall have the power to render a personal judgment against a party who is outside of this State and over whom jurisdiction is acquired by service of process in the manner set forth in section 580-3(b) or (c), if the party was personally served with a copy of the summons or order to show cause and complaint or other pleading upon which the judgment is based and if the party was a domiciliary of this State (1) at the time that the cause of action which is the subject of the proceeding arose, or (2) at the time of the commencement of the proceeding, or (3) at the time of service.

§580-4 Cross-complaint.

In any action for annulment, divorce, or separation, a cross-complaint for annulment, divorce, or separation may be filed and affirmative relief granted thereon as fully and effectually as on an original complaint. The cross-complaint shall be signed and sworn to by the cross-complainant and shall be served in the same manner as an original complaint.

§580-5 Proof.

Upon the hearing of every complaint for annulment, divorce, or separation, the court shall require exact legal proof upon every point, notwithstanding the consent of the parties. Where the matter is uncontested and the court, in its discretion, waives the need for a hearing, then the court shall require exact legal proof upon every point by affidavit.

§580-6 Guardian ad litem for incompetent defendant.

In any case where the court has reason to believe that the defendant in a matrimonial action is not fully competent to conduct the defendant's defense or to comprehend the nature of the proceedings, the court may appoint a guardian ad litem to represent the interests of the defendant. The court may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify.

§580-7 Examination of parties to prevent collusion.

Upon the hearing of any complaint for a divorce or separation, the court may examine either or both of the parties, upon oath, in order to prevent collusion.

§580-8 Procedure when collusion suspected.

If there is any reason to suspect collusion, or that important testimony can be procured which has not been produced, the court shall continue the cause from time to time while such reason for suspicion continues. The attorney general or other prosecuting officer and parties not of record shall be heard, to establish the fact of collusion or of the existence of testimony not produced.

§580-9 Temporary support, etc.

After the filing of a complaint for divorce or separation the court may make such orders relative to the personal liberty and support of either spouse pending the complaint as the court may deem fair and reasonable and may enforce the orders by summary process. The court may also compel either spouse to advance reasonable amounts for the compensation of witnesses and other expenses of the trial, including attorney's fees, to be incurred by the other spouse and may from time to time amend and revise the orders.

§580-10 Restraining orders; appointment of master.

(a) When a complaint for annulment, divorce, or separation, is filed in this State, the court, on an application by either party, supported by affidavit or a statement made under penalty of perjury,

without a hearing, may enjoin and restrain each of the parties to that action from transferring, encumbering, wasting, or otherwise disposing of any of their property, whether real, personal, or mixed, over and above current income, except as necessary for the ordinary course of a business or for usual current living expenses, without the consent and concurrence of the other party to such action for divorce, or further specific order of the court. Where such restraining orders are issued against the other party to the action, such person shall be served promptly with the order and shall be entitled to a prompt hearing to show cause why such order should not be enforced.

(b) In all actions for annulment, divorce, or separation, the court shall have the power to issue such restraining orders against a person or persons not a party to the action, as shall be reasonably required during the pendency of such action, to preserve the estates of the parties. Where such restraining orders are issued against a person or persons not a party to the action, such persons shall be promptly served with the order and shall be entitled to a prompt hearing within a reasonable time to show cause why such order should not be enforced.

(c) In all actions for annulment, divorce, or separation, the court shall have the power to appoint a master, or masters, to make preliminary findings and to report to the court on any issue. The written reports of a master 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 contained therein. 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.

(d) Whenever it is made to appear to the court after the filing of any complaint, that there are reasonable grounds to believe that a party thereto may inflict physical abuse upon, threaten by words or conduct, or harass the other party, the court may issue a restraining order to prevent such physical abuse, threats, or harassment, and shall enjoy in respect thereof the powers pertaining to a court of equity. Where necessary, the order may require either or both of the parties involved to leave the marital residence during the period of the order, and may also restrain the party to whom it is directed from contacting, threatening, or physically abusing the children or other relative of the spouse who may be residing with that spouse at the time of the granting of the restraining order. The order may also restrain a party's agents, servants, employees, attorneys, or other persons in active concert or participation with the respective party.

(1) A knowing or intentional violation of a restraining order issued pursuant to this section is a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

(A) For a first conviction for violation of the restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and

(B) For the second and any subsequent conviction for violation of the restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under subparagraphs (A) and (B), upon condition that the defendant remain alcohol and drug-free, conviction-free or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this section.

(2) Any law enforcement officer shall enforce a restraining order issued pursuant to this subsection, including lawfully ordering the restrained party to voluntarily leave for a three-hour cooling off period, or, with or without a warrant, where the law enforcement officer has reasonable grounds to believe that the restrained party has violated the restraining order, arresting the restrained party.

(e) Any fines collected pursuant to subsection (d) shall be deposited into the spouse and child abuse special account established under section 601-3.6.

§580-11 Care, custody, education, and maintenance of children pendente lite.

During the pendency of any action for divorce or separation the court may make such orders concerning the care, custody, education, and maintenance of the minor children of the parties to the action as law and justice may require and may enforce the orders by summary process. The court may revise and amend the orders from time to time.

§580-12 Sequestration of property.

All property within the State of a party to a matrimonial action may by order of the court be sequestered and applied to the payment of any allowance in such action by the court for the support and maintenance of either spouse or for the support, maintenance, and education of minor children, whether temporary or permanent, where service or notice has been effected by any of the methods set forth in section 580-3.

§580-13 Security and enforcement of maintenance and alimony.

Whenever the court makes an order or decree requiring a spouse to provide for the care, maintenance, and education of children, or for an allowance to the other spouse, the court may require the person subject to such order or decree to give reasonable security for such maintenance and allowance. Upon neglect or refusal to give the security, or upon default of the person subject to such order or decree and such person's surety to provide the maintenance and allowance, the court may sequester such person's personal estate, and the rents and profits of such person's real estate, and may appoint a receiver thereof and cause such person's personal estate and the rents and profits of such person's real estate to be applied towards such maintenance and allowance, as to the court shall from time to time seem just and reasonable.

§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 chapter 576D.

[§580-16] Divorce decree, support order; social security number.

The social security number of any individual who is party to a divorce decree or subject to a support order issued under this chapter shall be placed in the records relating to the matter.

PART II. ANNULMENT

§580-21 Grounds for annulment.

The family court, by a decree of nullity, may declare void the marriage contract for any of the following causes, existing at the time of the marriage:

(1) That the parties stood in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as the whole blood, uncle and niece, aunt and

nephew, whether the relationship is the result of the issue of parents married or not married to each other;

(2) That the parties, or either of them, had not attained the legal age of marriage;

(3) That the husband had an undivorced wife living, or the wife had an undivorced husband living;

(4) That one of the parties lacked the mental capacity to consent to the marriage;

(5) That consent to the marriage of the party applying for annulment was obtained by force, duress, or fraud, and there has been no subsequent cohabitation; and

(6) That one of the parties was a sufferer of or afflicted with any loathsome disease and the fact was concealed from, and unknown to, the party applying for annulment.

§580-22 Nonage.

An action to annul a marriage on the ground that one of the parties was under legal age, may be brought by the parent or guardian entitled to the custody of the minor, or by any person admitted by the court to prosecute as the friend of the minor. In no case shall the marriage be annulled on the application of a party who was of legal age at the time it was contracted; nor when it appears that the parties, after they attained the legal age, had for any time freely cohabited as man and wife.

§580-23 Former husband or wife living.

A marriage may be declared null on the ground that one of the parties has an undivorced husband or wife living, on the application of either of the parties during the lifetime of the other, or on the application of the former husband or wife.

§580-24 Allowance for spouse and family.

Every person who is deceived into contracting an illegal marriage with a man or woman having another spouse living, under the belief that he or she was unmarried, may be entitled to a just allowance for the support of the deceived spouse and family out of the property of the deceiving spouse, which the deceived spouse may obtain at any time after action commenced upon application to the family court having jurisdiction. In addition to the allowance, the court may also compel the defendant to advance reasonable amounts for the compensation of witnesses and other reasonable expenses of trial to be incurred by the plaintiff.

§580-25 Inheritance by children.

The children of such illegal marriage shall be entitled to succeed in the same manner as legitimate children, to all the real and personal estate of both parents in the State.

§580-26 Lack of mental capacity.

The marriage of a person who lacked the mental capacity to consent to the marriage may be annulled on the application of either party, or on the application of a guardian of the party who lacked such capacity; but in such case, no sentence of nullity shall be pronounced if it appears that the parties freely cohabited as husband and wife after the party who lacked such mental capacity attained the mental capacity necessary to consent to marriage.

§580-27 Legitimacy in case of annulment.

Upon the annulment of a marriage on account of nonage, lack of mental capacity of either party to consent to the marriage, or of a marriage that is prohibited on account of consanguinity between the parties, or for any other ground specified in section 580-21, the issue of the marriage shall be legitimate.

§580-28 Physical incapacity.

An action to annul the marriage on the ground of physical incapacity of one of the parties at the time of marriage, shall only be maintained by the injured party, against the party whose incapacity is alleged, and shall in all cases be brought within two years from the solemnization of the marriage.

§580-29 No annulment solely on confessions.

No sentence of nullity of marriage shall be pronounced solely on the declarations or confessions of the parties. The court shall, in all cases, require other satisfactory evidence of the facts on which the allegation of nullity is founded.

PART III. DIVORCE

§580-41 Divorce.

The family court shall decree a divorce from the bond of matrimony upon the application of either party when the court finds:

- (1) The marriage is irretrievably broken;
- (2) The parties have lived separate and apart under a decree of separation from bed and board entered by any court of competent jurisdiction, the term of separation has expired, and no reconciliation has been effected;
- (3) The parties have lived separate and apart for a period of two years or more under a decree of separate maintenance entered by any court of competent jurisdiction, and no reconciliation has been effected; or
- (4) The parties have lived separate and apart for a continuous period of two years or more immediately preceding the application, there is no reasonable likelihood that cohabitation will be resumed, and the court is satisfied that, in the particular circumstances of the case, it would not be harsh and oppressive to the defendant or contrary to the public interest to a divorce on this ground on the complaint of the plaintiff.

§580-41.5

Battered spouses; exemption from mediation in divorce proceedings. (a) In contested divorce proceedings where there are allegations of spousal abuse, the court shall not require a party alleging the spousal abuse to participate in any component of any mediation program against the wishes of that party.

(b) A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of family violence between the parties. A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that family violence has occurred unless:

- (1) Mediation is authorized by the victim of the alleged family violence;
- (2) Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in family violence; and
- (3) The victim is permitted to have in attendance at mediation, a supporting person of the victim's choice including but not limited to an attorney or advocate. If the victim chooses to exercise such option, any other party to the mediation will be permitted to have in attendance at mediation, a supporting person of the party's choice including but not limited to an attorney or advocate.

(c) In a proceeding concerning the custody or visitation of a child, if a protective order is in effect, the court shall not require a party alleging family violence to participate in any component of any mediation program against the wishes of that party.

(d) In a proceeding concerning the custody or visitation of a child, if there is an allegation of family violence and a protective order is not in effect, the court may order mediation or refer either party to mediation only if:

(1) Mediation is authorized by the victim of the alleged family violence;

(2) Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in family violence; and

(3) The victim is permitted to have in attendance at mediation, a supporting person of the victim's choice including but not limited to an attorney or advocate. If the victim chooses to exercise such option, any other party to the mediation will be permitted to have in attendance at mediation, a supporting person of the party's choice including but not limited to an attorney or advocate.

§580-42 Irretrievable breakdown.

(a) If both of the parties by complaint or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken. The court, in its discretion, may waive a hearing on an uncontested divorce complaint and admit proof by affidavit.

(b) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall:

(1) Make a finding whether the marriage is irretrievably broken, or

(2) Continue the matter for further hearing not less than thirty or more than sixty days later, or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken.

[§580-42.5] Recrimination no defense.

Recrimination shall not be a defense to an application for divorce or separation.

§580-44 Persons affected with Hansen's disease represented by attorney general.

Upon application of the director of health, the attorney general or the attorney general's deputies shall represent any person affected with Hansen's disease detained at any hospital, settlement, or place for the care and treatment of persons affected with Hansen's disease in proceedings for divorce.

§580-45 Decree.

If after a full hearing, the court is of opinion that a divorce ought to be granted from the bonds of matrimony a decree shall be signed, filed and entered, which shall take effect from and after such time as may be fixed by the court in the decree. The court, in its discretion, may waive a hearing on an uncontested divorce complaint and admit proof by affidavit. In case of a decree dissolving the bonds of matrimony, such time so fixed shall not be more than one month from and after the date of the decree.

§580-46 Final judgment; nunc pro tunc entry; validation of certain marriages.

Whenever either party to a divorce action is entitled to a final decree dissolving the bonds of matrimony, but by mistake, negligence, or inadvertence the final decree has not been entered, the court on motion of either party or upon its own motion may cause a final decree to be entered granting the divorce as of the date when the decree could have been entered. Upon the entry of the final decree, the parties to the divorce action shall be deemed to have been restored to the status of single persons as of the date set forth in the final decree, and any marriage of either party after such date shall not be subject to attack on the grounds that the marriage was contracted at a time when the party was undivorced in the divorce action. The court may cause a final decree to be entered nunc pro tunc as provided in this section even though another final decree may have been entered previously but by mistake, negligence, or inadvertence was not entered as soon as a final decree could have been entered.

§580-47 Support orders; division of property.

(a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d), jurisdiction of those 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 any 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 these 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 576D-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 petition is made before or after the child has attained the age of majority. In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

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; and

(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.

(b) An order as to the custody, management, and division of property and as to the payment of debts and the attorney's fees, costs and expenses incurred in the divorce shall be final and conclusive as to both parties subject only to appeal as in civil cases. The court shall at all times, including during the pendency of any appeal, have the power to grant any and all orders that may be necessary to protect and provide for the support and maintenance of the parties and any children of the parties to secure justice, to compel either party to advance reasonable amounts for the expenses of the appeal including attorney's fees to be incurred by the other party, and to amend and revise such orders from time to time.

(c) No order entered under the authority of subsection (a) or entered thereafter revising so much of such an order as provides for the support, maintenance, and education of the children of the parties shall impair the power of the court from time to time to revise its orders providing for the support, maintenance, and education of the children of the parties upon a showing of a change in the circumstances of either party or any child of the parties since the entry of any prior order relating to the support, maintenance, and education. The establishment of the guidelines or the adoption of any modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The need to provide for the child's health care needs through health insurance or other means shall be a basis for petitioning for a modification of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.

(d) Upon the motion of either party supported by an affidavit setting forth in particular a material change in the physical or financial circumstances of either party, or upon a showing of other good cause, the moving party, in the discretion of the court, and upon adequate notice to the other party, may be granted a hearing. The fact that the moving party is in default or arrears in the performance of any act or payment of any sums theretofore ordered to be done or paid by the party shall not necessarily constitute a bar to the granting of the hearing. The court, upon such hearing, for good cause shown may amend or revise any order and shall consider all proper circumstances in determining the amount of the allowance, if any, which shall thereafter be ordered.

(e) The responsible parent or the custodial parent shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and

adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances.

(f) Attorney's fees and costs. The court hearing any motion for orders either revising an order for the custody, support, maintenance, and education of the children of the parties, or an order for the support and maintenance of one party by the other, or a motion for an order to enforce any such order or any order made under subsection (a) of this section, may make such orders requiring either party to pay or contribute to the payment of the attorney's fees, costs, and expenses of the other party relating to such motion and hearing as shall appear just and equitable after consideration of the respective merits of the parties, the relative abilities of the parties, the economic condition of each party at the time of the hearing, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case.

[580-47.5] Notice to parties with children.

When a party files for divorce and there are minor children involved, or when a party institutes a proceeding under chapter 576D or 576E, the court or the office of child support hearings shall provide notice to each party informing them of the opportunity to enter into an alternative arrangement for direct payment of child support under chapter 576D. A party may petition the court at any time, under chapter 576D or 576E, to opt out of the child support enforcement agency system and such a petition shall be assigned priority on the docket and be acted on expeditiously by the court.

§580-49 Support of insane spouse after divorce.

In every action for divorce where a decree is granted to the plaintiff and the defendant is insane at the time of the decree, the court may, at any time after entering the decree, revise and alter the same so far as the support and maintenance of the insane person is concerned, and may provide for such maintenance by the plaintiff out of any property or earnings acquired by the plaintiff subsequently, as well as previously, to the decree of divorce. The court making the order for maintenance, may, in its discretion, require the plaintiff to give security to the satisfaction of the court for the faithful execution of the same.

§580-51 Modification of alimony on remarriage.

(a) Upon the remarriage of a party in whose favor a final decree or order for support and maintenance has been made, all rights to receive and all duties to make payments for support and maintenance shall automatically terminate for all payments due after the date of the remarriage, unless the final decree or order, or an agreement of the parties approved by the final decree or order, provides specifically for the payments to continue after such remarriage.

(b) The remarried party shall file a notice of the remarriage with the court which made the order for support and maintenance and serve within thirty days of such marriage, by personal service or registered or certified mail, a copy of the notice on the former paying party. In any proceeding relating to the payment of support and maintenance to a remarried party, the failure of that party to file a notice of remarriage shall be considered by the court in awarding attorney's fees and costs for the proceeding and in determining reimbursement to the former paying party.

§580-52 Marriage after divorce.

Whenever a marriage is dissolved, either party to the divorce may marry again at any time.

§580-56 Property rights following dissolution of marriage.

(a) Every decree of divorce which does not specifically recite that the final division of the property of the parties is reserved for further hearing, decision, and orders shall finally divide the property of the parties to such action.

(b) Following the entry of a decree of divorce in any matrimonial action in which the final division of the property of the parties to such action is reserved for further hearings, decisions, and orders, notwithstanding the provisions of section 560:2-802, or any other provisions of the law to the contrary, each party to such action shall continue to have all of the rights to and interests in the property of the other party to such action as provided by chapter 533 and chapter 560, or as otherwise provided by law to the same extent he or she would have had such rights or interests if the decree of divorce had not been entered, until the entry of a decree or order finally dividing the property of the parties to such matrimonial action, or as provided in subsection (d) of this section.

(c) When a party to a matrimonial action has remarried following the entry of a decree of divorce, in which the final division of the property of the parties is reserved for further hearings, decisions, and orders, but prior to the entry of a decree or order finally dividing the property owned by the parties to that action, notwithstanding the provisions of chapter 533 and chapter 560, the spouse of such remarried party shall have none of the rights or interests in the former spouse's real property or personal estate as provided in chapter 533 and chapter 560, or as otherwise provided by law, until such time as a decree or order finally dividing the property owned by the parties or either of them as of the effective date of the entry of the decree of divorce dissolving his or her prior marriage shall be entered. Upon the entry of a decree or order finally dividing the property of the parties to a matrimonial action in which a decree of divorce has been entered, the spouse of a party to such action who has remarried shall have all of the rights of a spouse as provided by chapter 533 and chapter 560, or as otherwise provided by law, in and to the property of the former spouse vested in such spouse by such decree or order finally dividing the property of the parties or either of them, as of the effective date of the entry of the decree of dissolution of the prior marriage.

(d) Following the entry of a decree of divorce, or the entry of a decree or order finally dividing the property of the parties to a matrimonial action if the same is reserved in the decree of divorce, or the elapse of one year after entry of a decree or order reserving the final division of property of the party, a divorced spouse shall not be entitled to dower or curtesy in the former spouse's real estate, or any part thereof, nor to any share of the former spouse's personal estate.

PART IV. SEPARATION

§580-71 Grounds for separation.

The family court may decree a separation from bed and board for a period not to exceed two years in any matrimonial action upon a petition for separation when the court finds the marriage is temporarily disrupted.

§580-71.5 Separation no bar to divorce.

Any party to a matrimonial action in which a decree of separation from bed and board has been entered, or any party to an action for separate maintenance in which a decree has been entered, may, notwithstanding the existence of such a decree, institute a matrimonial action and petition for the dissolution of that marriage, on any ground other than those set forth in paragraphs (2) and (3) of section 580-41, and in support of such petition may introduce evidence relating to events and facts occurring and existing both prior and subsequent to the entry of the decree of separation from bed and board in the prior matrimonial action, or the prior action for separate maintenance.

§580-72 Married persons may bring action in own name.

Whenever any married person has the right to sue for separate maintenance, that person may bring the action in that person's own name.

§580-74 Support of spouse and children.

Upon decreeing a separation, the court may make such further decree for the support and maintenance of either spouse and for the support, maintenance, and education of minor children, by either spouse, or out of the property of either spouse, as may appear just and proper; provided

that the court shall apply the considerations required by section 580-47(a) in formulation of any support decree in any action under this part; and provided further that the court may amend or revise any such decree in the same manner and under the same circumstances as provided for by section 580-47(d).

§580-75 Status of spouse during separation.

Every decree of separation shall have the effect of allowing each of the spouses to sue or be sued, to alienate and convey property, to make contracts, and to do all other acts as if the spouse were an unmarried person.

§580-76 Revocation or modification of separation decrees.

Where a decree of separation from bed and board has been entered, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation. The court may also, for good cause shown from time to time, increase or decrease the period of separation decreed, provided that the maximum period of separation does not exceed two years from the effective date of the original decree of separation.