

**HAWAII REVISED STATUTES SECTIONS 571-50 – 571-88**

**FAMILY COURTS**

[updated through 2004 Haw. Leg. Session]

571-50	Modification of decree; rehearing .....	1
571-51	Support of minor committed for study or care .....	2
571-51.5	Modification of support and visitation decrees .....	3
571-52	Assignment by court order of future income for payments of support.....	4
571-52.1	Repealed .....	6
571-52.2	Automatic assignment by court or administrative order of future income for payment of child support.....	6
571-52.3	Immediate income withholding.....	10
571-52.5	Guidelines to determine child support amounts .....	10
571-52.6	Child support order, judgment, or decree; accident and sickness insurance coverage.....	11
571-52.7	Award of costs and reasonable attorneys’ fees.....	12
571-53	Signing of Papers.....	12
571-54	Appeal [Effective until July 1, 2006] .....	12
571-54	Appeal [Effective July 1, 2006.....	15
571-55	Certification in lieu of oath .....	18
571-56	Offense .....	18
571-57	Penalty.....	18
571-61	Termination of parental rights; petition.....	19
571-62	Hearing; investigation and report .....	25
571-63	Findings and judgment .....	25
571-81	Contempt of court.....	28
571-82	Court sessions; quarters.....	29
571-83	Court and witness fees.....	29
571-84	Records.....	29
571-84.5	Support order, decree, judgment, or acknowledgment; social security number.....	32

571-84.6	Minor law violators; proceedings and records not confidential .....	32
571-85	Authority of probation officers; additional probation officers .....	33
571-86	Cooperation .....	33
571-87	Appointment of counsel and guardian ad litem; compensation .....	33
571-88	Orders expunging juvenile arrest records.....	34

**§ 571-50 Modification of decree, rehearing.**

Except as otherwise provided by this chapter, any decree or order of the court may be modified at any time.

At any time during supervision of a child the court may issue notice or other appropriate process to the child if the child is of sufficient age to understand the nature of the process, to the parents, and to any other necessary parties to appear at a hearing on a charge of violation of the terms of supervision, for any change in or modification of the decree or for discharge. The provisions of this chapter relating to process, custody, and detention at other stages of the proceeding shall be applicable.

A parent, guardian, custodian, or next friend of any child whose status has been adjudicated by the court, or any adult affected by a decree of the court, at any time may petition the court for a rehearing on the ground that new evidence, which was not known or not available through the exercise of due diligence at the time of the original hearing and which might affect the decree, has been discovered. Upon a satisfactory showing of this evidence, the court shall order a new hearing and make any disposition of the case that the facts and the best interests of the child warrant.

A parent, guardian, or next friend of a child whose legal custody has been transferred by the court to an institution, facility, agency, or person may petition the court for modification or revocation of the decree, on the ground that the legal custodian has wrongfully denied application for the release of the child or has failed to act upon it within a reasonable time, or has acted in an arbitrary manner not consistent with the welfare of the child or the public interest. An institution, facility, agency, or person vested with legal custody of a child may petition the court for a renewal, modification, or revocation of the custody order on the ground that the change is necessary for the welfare of the child or in the public interest. The court may dismiss the petition if on preliminary investigation it finds the petition without substance. If the court is of the opinion that the decree should be reviewed, it shall conduct a hearing on notice to all parties concerned, and may enter an order continuing, modifying, or terminating the decree.

Notwithstanding the foregoing provisions of this section the court's authority with respect to the review, rehearing, renewal, modification, or revocation of decrees, judgments, or orders entered in the hereinbelow listed classes of proceedings shall be limited by any specific limitations set forth in the statutes governing these proceedings or in any other specifically applicable statutes or rules. These proceedings are as follows:

- (1) Annulment, divorce, separation, and other proceedings under chapter 580;
- (2) Adoption proceedings under chapter 578;
- (3) Paternity proceedings under chapter 584;
- (4) Termination of parental rights proceedings under this chapter; and
- (5) State hospital commitment proceedings under chapter 334.

A decree, judgment, or order committing a child to the care of the director of human services shall be

reviewable under this section at the instance of others other than duly authorized representatives of the department only after a lapse of thirty days following the date of the decree, judgment, or order, and thereafter only at intervals of not less than one year.

Notwithstanding this section the court shall not conduct a rehearing of any petition, filed under [section 571-11\(1\)](#), which, following a hearing, has been denied or dismissed.

[L 1965, c 232, pt of § 1; Supp, § 333-26; HRS § 571-50; am L 1976, c 85, § 13; am L 1980, c 232, § 28; am imp L 1984, c 90, § 1; am L 1990, c 34, § 16; L 1995, c 189, § 13]

#### NOTES, REFERENCES, AND ANNOTATIONS

Award of custody to father upheld. --

Order modifying custody decree so as to award custody of 14-year old boy to father rather than mother upheld. [Otani v. Otani, 29 Haw. 866 \(1927\)](#) (decided under prior law).

Order amending decree of absolute divorce relative to custody of three minor daughters by awarding custody to father upheld. [Dacoscos v. Dacoscos, 38 Haw. 265 \(1948\)](#) (decided under prior law). Cited in [In re Doe, 1 Haw. App. 611, 623 P.2d 1262 \(1981\)](#).

#### **§ 571-51 Support of minor committed for study or care.**

Whenever legal custody of a minor is given by the court to someone other than the minor's parents, or when a minor is given medical, psychological, or psychiatric study or treatment under order of the court, and no provision is otherwise made by law for the support of the minor or for payment for such treatment, compensation for the study and treatment of the minor, when approved by order of the court, shall, if necessary, be paid out of such moneys as may be appropriated for the expenses of the court. After giving the parent a reasonable opportunity to be heard, the court may order and decree that the parent shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and treatment of the minor given after the decree is entered. If the parent wilfully fails or refuses to pay such sum, the court may proceed against the parent as for contempt, or the order may be filed and shall have the effect of a civil judgment.

Compensation may be made to a nongovernmental agency, provided that it shall make periodic reports to the court or to an agency designated by the court concerning the care and treatment the minor is receiving and the minor's response to such treatment. These reports shall be made as frequently as the court deems necessary and shall be made with respect to every such minor at intervals not exceeding six months. The agency shall also afford an opportunity for a representative of the court or of an agency designated by the court to visit, examine, or consult with the minor as frequently as the court deems necessary.

[L 1965, c 232, pt of § 1; Supp, § 333-27; HRS § 571-51; am imp L 1984, c 90, § 1]

**§ 571-51.5 Modification of support and visitation decrees.**

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

(1) The obligor has involuntarily suffered a material reduction in financial resources; or

(2) The person who receives child support payments has enjoyed a material increase in financial resources.

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

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

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

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

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

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

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

[L 1986, c 332, § 27; am L 1989, c 261, § 18]

## NOTES, REFERENCES, AND ANNOTATIONS

**ALR.**

[Denial or restriction of visitation rights to parent charged with sexually abusing child. 1 A.L.R.5th 776.](#)

[Decrease in income of obligor spouse following voluntary termination of employment as basis for modification of child support award. 39 A.L.R.5th 1.](#)

**§ 571-52 Assignment by court order of future income for payments of support.**

(a) Whenever any person has been ordered to pay an allowance for the support of a child or for the support and maintenance of a spouse or former spouse, and fails or refuses to obey or perform the order and has been adjudged guilty of contempt of court for such failure or refusal, the court may make an order that shall operate as an assignment by the person for the benefit of the child or spouse, of such amounts at such times as may be specified in the order, from any income due or to become due in the future to such person from the person's employer or successor employers, until further order of the court.

The assignment of the amounts shall be to the clerk of the court where the order is entered if for the support or maintenance of a spouse or former spouse, or to the child support enforcement agency if for the support of a child or if child support and spouse support are contained in the same order. The order of assignment to the child support enforcement agency 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 of assignment shall be effective immediately after service upon an employer of a true copy of the order, 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 any income due to the person from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the clerk of the court or child support enforcement agency as set forth in the order, as much as may remain payable to the person for such pay period up to the amount specified in the order of assignment as being payable during the same period. The person ordered to pay shall inform the court immediately of any change that would affect the order of assignment or the disbursement thereof.

Compliance by an employer with the order of assignment shall operate as a discharge of the employer's liability to the employee for that portion of the employee's income withheld and transmitted to the clerk of court or child support enforcement agency, as the case may be, whether or not the employer has withheld the correct amount.

(b) Notwithstanding the provisions of subsection (a) to the contrary, whenever a court has ordered any person (hereinafter "obligor") to make periodic payments toward the support of a child, upon petition of the person to whom such payments are ordered to be made or that person's assignee, and the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments that would become due over a one-month period under the order, judgment, or decree providing for child

support, the court shall order an assignment of future income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments that will become due in the future under the terms of the support order will be paid. Such an order shall operate as an assignment by the obligor to the child support enforcement agency and shall be binding upon any person who is or shall become obligated to the obligor for payment of income and who has been served with a copy of the assignment order.

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

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

(c) 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.

(d) 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 part upon an assignment authorized by this section. Any employer violating this section shall be guilty of a misdemeanor under [section 710-1077\(1\)\(g\)](#).

(e) As used in this section:

"Employer" includes the United States Government, the State, any political subdivision thereof, and any person who is or shall become obligated to the obligor for payment of income.

"Income" includes salaries, wages, earnings, workers' compensation, disability benefits, commissions, independent contractor income, and any other entitlement to money including moneys payable as a pension, annuity, retirement, disability, death, or other benefit, or as a return of contributions and interest from the United States government, the State, or other political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

[L 1967, c 56, § 6; HRS § 571-52; am L 1979, c 140, § 1; am L 1984, c 207, § § 1, 2; am L 1985, c 176, § 1; am L 1985, c 257, § 1; am L 1986, c 332, § 11; am L 1987, c 161, § 1; am L 2000, c 194, § 1]

#### NOTES, REFERENCES, AND ANNOTATIONS

## Cross references

As to child support intercept of unemployment benefits, see [§ 383-163.5](#).

U.S. Code. -- Title IV-D of the Social Security Act, referred to in this section, is codified as [42 USCS § 651](#) et seq.

## CASE NOTES

Use of lump sum workers' compensation payment to pay child support arrearage. --

[Section 386-57\(a\)](#), which exempts workers' compensation payments from the reach of a worker's creditors, does not bar the family court from ordering the worker to use a portion of his lump sum workers' compensation payment to pay his court-ordered child support arrearage. [Kishida v. Kishida, 6 Haw. App. 217, 716 P.2d 501](#), cert. denied, 68 Haw. 691 (1986).

## RESEARCH REFERENCES

### ALR.

[Wrongful discharge: employer's liability under state law for discharge of employee based on garnishment order against wages. 41 A.L.R.5th 31.](#)

Hawaii Legal Reporter. -- As to automatic wage assignment, see 85-1 Haw. Legal Rep. 85-0063.

### [§ 571-52.1 Repealed.](#)

L 1988, c 200, § 5.

### [§ 571-52.2 Automatic assignment by court or administrative order of future income for payment of child support.](#)

(a) Notwithstanding [section 571-52](#), the court shall order an assignment of future income when:

(1) The court has ordered any person (hereinafter the "obligor") to make periodic payments toward the support of a child pursuant to a court or administrative order, judgment, or decree;

(2) The court or administrative order, judgment, or decree provides for an automatic assignment of the obligor's income upon the obligor's failure to timely pay any child support that the obligor is required to pay through the child support enforcement agency or directly to the obligee; and

(3) The court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments which would become due over a one-month period under the order, judgment, or decree providing for child support.

The order shall take effect without necessity of further action of the court, except when a hearing is requested under subsection (c).

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

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

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

If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee or from the child support enforcement agency, to the extent the overpayment was disbursed to the department of human services.

The child support enforcement agency shall establish procedures by rule in accordance with chapter 91 for the prompt reimbursement for any overpayment to the obligor.

(e) An employer receiving an assignment order shall send the amounts withheld to the designated obligee or, if requested, to this State's child support enforcement agency within five working days after the obligor is paid. The employer shall begin withholding no later than the first pay period occurring within seven business days following the date a copy of the order 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, 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 assignment 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 assignment order 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 obligor may remit a sum total of the amounts in one check, with a listing of the amounts applicable to each obligor.

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

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

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

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

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

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

(j) Obligor's may request withholding of their income prior to the entry of an order for the repayment of a delinquency.

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

(l) If there is more than one obligee, the amounts withheld from the income of an obligor shall be allocated among the obligees. The allocation may be based on each obligee's proportionate share of the amount of the withholding orders that were served on the employer of the obligor. In no case shall the allocation result in a withholding for one of the support obligations not being implemented.

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

(n) Notwithstanding any other provision of law, for 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 other political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

The term "employer", as used in this section includes the United States government, the State, any political subdivision thereof and any person who is or shall become obligated to the obligor for payment of income.

[L 1984, c 207, § 3; am L 1985, c 176, § 2; am L 1986, c 332, § 13; am L 1987, c 161, § 2; am L 1990, c 152, § 1; am L 1990, c 176, § 2; am L 1992, c 212, § 1; am L 1995, c 125, § § 1, 2, 3; am L 1996, c 25, § 1; am L 1997, c 293, § § 22, 23; am L 2000, c 194, § 2; am L 2001, c 55, § 27]

#### NOTES, REFERENCES, AND ANNOTATIONS

U.S. Code. -- Title IV-D of the Social Security Act, referred to in this section, is codified as [42 USCS § 651](#) et seq.

**§ 571-52.3 Immediate income withholding.**

In any case where child support is an issue, and an order for child support is established or modified, and the obligor receives income on a periodic basis, the court shall concurrently enter an order for immediate income withholding which shall operate as an assignment by the person to the child support enforcement agency for the benefit of the child of such amounts at such times as may be specified in the support order. Such order may also include child support arrears and reimbursement of debt pursuant to [§ 346-37.1](#). The provisions of [section 571-52.2\(d\), \(e\), \(f\), \(g\), \(l\), \(m\), and \(n\)](#) shall apply to all orders for immediate income withholding issued under this section.

[L 1988, c 200, § 2; am L 1990, c 152, § 2]

NOTES, REFERENCES, AND ANNOTATIONS

Impracticability not a defense. --

Where defendant contended that it was impractical for an "Order for Income Assignment" to be entered because he works as a commercial fisherman on several boats, with no single employer and his income varies with each catch, the court ruled that, although impossibility is an excuse, impracticability is not. [Kreytak v. Kreytak, 82 Haw. 543, 923 P.2d 960 \(Ct. App. 1996\)](#).

**§ 571-52.5 Guidelines to determine child support amounts.**

When the court establishes or modifies the amount of child support required to be paid by a parent, the court shall use the guidelines established under [section 576D-7](#), except when exceptional circumstances warrant departure.

[L 1986, c 332, pt of § 4]

NOTES, REFERENCES, AND ANNOTATIONS

Question of exceptional circumstances is one of law. --

The question whether the circumstances constitute " exceptional circumstances" as used in this section is a question of law. [Ching v. Ching, 7 Haw. App. 221, 751 P.2d 93 \(1988\)](#).

Under this section, the question whether the facts as found by the family court constitute exceptional circumstances warranting a departure from the guidelines established under [§ 576D-7](#) is a question of law. [Tomas v. Tomas, 7 Haw. App. 345, 764 P.2d 1250 \(1988\)](#).

Exceptional circumstances not shown. --

Fact that father was entitled to an eight-week summer visitation period and was liable for one-half of

children's visitation transportation expenses from Pennsylvania to Hawaii and back did not constitute an exceptional circumstance warranting a departure from the guidelines established under [§ 576D-7. \*Tomas v. Tomas\*, 7 Haw. App. 345, 764 P.2d 1250 \(1988\).](#)

Fact that mother and children were recipients of public assistance benefits in Pennsylvania did not constitute an exceptional circumstance warranting a departure from guidelines established under [§ 576D-7. \*Tomas v. Tomas\*, 7 Haw. App. 345, 764 P.2d 1250 \(1988\).](#)

Modification improper. --

Finding in favor of the mother recipient was proper where the amended divorce decree barred the Child Support Enforcement Agency from recalculating child support and lowering it prior to the first day after three years after the entry of the divorce decree. [Hartman v. Thew, 101 Haw. 37, 61 P.3d 548 \(Ct. App. 2002\).](#)

Support guidelines of other jurisdictions. --

When family court established amount of father's child support obligation, § 571-52.5 required court to use amended support guidelines contained in [§ 576D-7](#), and support guidelines of initiating jurisdiction were not relevant. [Child Support Enforcement Agency v. Mazzone, 88 Haw. 456, 967 P.2d 653 \(Ct. App. 1998\).](#) Cited in [Mack v. Mack, 7 Haw. App. 171, 749 P.2d 478 \(1988\)](#); [Child Support Enforcement Agency v. Doe, 92 Haw. 276, 990 P.2d 1158 \(Ct. App. 1999\)](#); [State v. Doe, 98 Haw. App. 58, 41 P.3d 720, 2001 Haw. App. LEXIS 229 \(Ct. App. 2001\).](#)

## RESEARCH REFERENCES

### ALR.

[Parent's child support liability as affected by other parent's fraudulent misrepresentation regarding sterility or use of birth control, or refusal to abort pregnancy. 2 A.L.R.5th 337.](#)

### [§ 571-52.6 Child support order, judgment, or decree; accident and sickness insurance coverage.](#)

Each order, judgment, or decree under this chapter or chapter 576 or its successor [576B], 580, or 584 ordering a person to pay child support shall include the following provisions:

- (1) Both the obligor and the obligee are required to file with the state case registry, through the child support enforcement agency, upon entry of the child support order and to update as appropriate, information on the identity and location of the party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from social security number, and name, address, and telephone number of the party's employer; and
- (2) The liability of that person for accident and sickness insurance coverage when available at reasonable cost.

[L 1986, c 332, pt of § 4; am L 1997, c 293, § 24; am L 1997, c 295, § 3]

**§ 571-52.7 Award of costs and reasonable attorneys' fees.**

Whenever a party files a motion seeking to enforce a child support order, the court may award the prevailing party the party's costs and reasonable attorneys' fees incurred, except as this chapter otherwise provides. The award shall be made only when the prevailing party was represented by an attorney.

[L 1994, c 247, § 1]

NOTES, REFERENCES, AND ANNOTATIONS

Contingent fee agreements. --

Although a contingent fee agreement that comports with Haw. Prof. Conduct R. 1.5 is enforceable only between an attorney and a client, not against an adverse party, it may be considered in determining reasonable attorneys' fees under a fee-shifting statute such as § 571-52.7. [Doe v. Doe, 97 Haw. 160, 34 P.3d 1059, 2001 Haw. App. LEXIS 207 \(Ct. App. 2001\)](#).

**§ 571-53 Signing of papers.**

Unless otherwise specifically provided by law, any decree, order to show cause, injunction, summons, subpoena, warrant, or notice issued by the court in connection with any case or cause, shall have the same validity, force, and effect whether signed by a judge, a district family judge, or a clerk of the court.

[L 1967, c 56, § 3; HRS § 571-53; am L 1973, c 219, § 2]

**§ 571-54 Appeal. [Effective until July 1, 2006].**

An interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court and review shall be governed by chapter 602, except as hereinafter provided. Where the decree or order affects the custody of a child or minor the appeal shall be heard at the earliest practicable time. In cases under [section 571-11](#) the record on appeal shall be given a fictitious title, to safeguard against publication of the names of the children or minors involved.

The stay of enforcement of an order or decree, or the pendency of an appeal, shall not suspend the order or decree of the court regarding a child or minor or discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care the child or minor has been committed, unless otherwise ordered by the family court, or by the supreme or intermediate appealing final disposition of the case the family court, or the supreme or the intermediate appellate court after the appeal is taken, may make such order for temporary custody as is appropriate in the circumstances. If

the supreme or the intermediate appellate court does not dismiss the proceedings and discharge the child or minor, it shall affirm or modify the order of the family court and remand the child or minor to the jurisdiction of the court for disposition not inconsistent with the supreme or the intermediate appellate court's finding on the appeal.

An order or decree entered in a proceeding based upon [section 571-11\(1\), \(2\), \(6\), or \(9\)](#) shall be subject to appeal to the supreme court only as follows:

Within twenty days from the date of the entry of any such order or decree, any party directly affected thereby may file a motion for a reconsideration of the facts involved. The motion and any supporting affidavit shall set forth the grounds on which a reconsideration is requested and shall be sworn to by the movant or the movant's representative. The judge shall hold a hearing on the motion, affording to all parties concerned the full right of representation by counsel and presentation of relevant evidence. The findings of the judge upon the hearing of the motion and the judge's determination and disposition of the case thereafter, and any decision, judgment, order, or decree affecting the child and entered as a result of the hearing on the motion shall be set forth in writing and signed by the judge. Any party deeming oneself aggrieved by any such findings, judgment, order, or decree shall have the right to appeal therefrom to the supreme court upon the same terms and conditions as in other cases in the circuit court and review shall be governed by chapter 602; provided that no such motion for reconsideration shall operate as a stay of any such findings, judgment, order, or decree unless the judge of the family court so orders; provided further that no informality or technical irregularity in the proceedings prior to the hearing on the motion for reconsideration shall constitute grounds for the reversal of any such findings, judgment, order, or decree by the appellate court.

[L 1965, c 232, pt of § 1; Supp, § 333-28; HRS § 571-54; am L 1973, c 211, § 1[g]; am L 1979, c 111, § 21; am L 1983, c 27, § 1 and c 171, § 3; am imp L 1984, c 90, § 1]

#### NOTES, REFERENCES, AND ANNOTATIONS

Editor's note. --

As to authority of governor to modify provisions, see 1983 Haw. Sess. Laws, Act 171, § 6.

#### CASE NOTES

The purpose of this section is to allow the court and the parties to make a complete record of the proceedings and to set forth in writing the findings and disposition of the family court for appeal purposes; it requires them to focus their attention and, eventually, the appellate court's attention, on the errors to be relied upon on appeal. [In re Doe, 3 Haw. App. 391, 651 P.2d 492 \(1982\)](#).

Absent compliance with the statutory requirements of this section, a matter is not appealable, and the appellate court lacks jurisdiction and has no alternative but to dismiss the matter. There can be no doubt of the existence of legislative power to limit or curtail the right of appeal, and the argument that the general appeal statute applies cannot prevail as against special proceedings which prescribe the manner and limits of review. [In re Doe, 3 Haw. App. 391, 651 P.2d 492 \(1982\)](#).

Court would consider suppression order in juvenile defendant's drug case even though no motion for reconsideration filed. --

In a juvenile defendant's drug case, although no motion for reconsideration was filed, the court of appeals addressed the merits of the appeal where the motion, the opposing memorandum, the transcript from the suppression hearing, and the family court's order appeared to amount to the parties' and the family court's complete record of the suppression matter, and neither defendant nor the prosecution asserted on appeal that the purpose of the HRS § 571-54 motion for reconsideration provision had been violated. [In re Doe, 104 Haw. 403, 91 P.3d 485, 2004 Haw. LEXIS 372 \(2004\)](#).

Divorce decree is final and appealable. --

A decree of a family court in a matrimonial action terminating the marriage and dividing the real property is final and appealable, although questions of custody and support of minor children are left for future determination. [Cleveland v. Cleveland, 57 Haw. 519, 559 P.2d 744 \(1977\)](#).

Requirements for appeal from family court. --

This section is clear and unambiguous; it conditions the right of an aggrieved party to appeal by requiring him to petition the family court for a rehearing and reconsideration. Although the statute says the party "may" file such petition, this fact does not in any way mitigate the requirement; a party may or may not file such petition, but if he intends to appeal the decision, he must. [In re Doe, 3 Haw. App. 391, 651 P.2d 492 \(1982\)](#).

Family court's order correcting a mistake in its calculation of the net equity in the ex-wife's house was a final, appealable order. [Whitman v. Whitman, 91 Haw. 468, 985 P.2d 659 \(1999\)](#).

Stay pending appeal of waiver of jurisdiction. --

A juvenile has no constitutional right to an automatic stay on appeal of waiver of jurisdiction and trial as an adult. [In re Doe, 57 Haw. 413, 558 P.2d 483 \(1976\)](#).

State not a "party aggrieved" by denial of waiver of jurisdiction. --

The state was not a "party aggrieved," within the meaning of this section, for the purpose of appealing from the denial of a petition for an automatic waiver of jurisdiction. [In re Doe, 67 Haw. 466, 691 P.2d 1163 \(1984\)](#).

While the state is an interested party in a transfer proceeding, it is not one aggrieved by a judicial decision to promote the rehabilitation of a juvenile offender under family court auspices rather than subject him to adult procedures. [State ex rel. Marsland v. Town, 66 Haw. 516, 668 P.2d 25 \(1983\)](#), overruled on other grounds, [102 Haw. 326, 76 P.3d 569 \(2003\)](#).

Summary denial of motion for reconsideration. --

Parents were not entitled to a hearing prior to the family court's denial of their motions for reconsideration of a judgment in a proceeding based upon this section. [In re Male Child, 8 Haw. App. 66, 793 P.2d 669](#), cert. denied, [71 Haw. 668, 833 P.2d 900 \(1990\)](#).

[Hawaii Rules of Appellate Procedure Rule 4\(a\)\(3\)](#) is inapplicable to family court cases governed by § 571-54. In such cases, a notice of appeal is timely when it is filed within 30 days after the entry of the order resolving a motion for reconsideration. [In re Doe, 94 Haw. 485, 17 P.3d 217, 2001 Haw. LEXIS 30 \(2001\)](#).

No final judgment or decree. --

A Juvenile's appeal was dismissed, where he did not move for reconsideration of the disposition, no hearing to reconsider the disposition was held, and no final written judgment, order, or decree containing the findings and conclusions was entered. [In re Doe, 102 Haw. 246, 74 P.3d 998 \(2003\)](#). Cited in [Cleveland v. Cleveland, 57 Haw. 519, 559 P.2d 744 \(1977\)](#); [Lowther v. Lowther, 99 Haw. 569, 57 P.3d 494, 2002 Haw. App. LEXIS 215 \(Ct. App. 2002\)](#); [In re Doe, 102 Haw. 75, 73 P.3d 29 \(2003\)](#); [Fischer v. Fischer, - Haw. -, - P.3d -, 2003 Haw. LEXIS 351 \(July 28, 2003\)](#); [Child Support Enforcement Agency v. Doe, 2003 Haw. LEXIS 504 \(Oct. 20, 2003\)](#); [Powell v. Powell, 2003 Haw. LEXIS 503 \(Oct. 20, 2003\)](#); [Child Support Enforcement Agency v. Doe, 104 Haw. 449, 91 P.3d 1092, 2004 Haw. App. LEXIS 124 \(Haw. Ct. App. 2004\)](#); In the [Interest of Doe Children, 105 Haw. 38, 93 P.3d 1145, 2004 Haw. LEXIS 405 \(2004\)](#).

### **§ 571-54 Appeal. [Effective July 1, 2006].**

An interested party, aggrieved by any order or decree of the court, may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court, and review shall be governed by chapter 602, except as hereinafter provided. Where the decree or order affects the custody of a child or minor, the appeal shall be heard at the earliest practicable time. In cases under [section 571-11](#), the record on appeal shall be given a fictitious title, to safeguard against publication of the names of the children or minors involved.

The stay of enforcement of an order or decree, or the pendency of an appeal, shall not suspend the order or decree of the court regarding a child or minor, or discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care the child or minor has been committed, unless otherwise ordered by the family court or by the appellate court after an appeal is taken. Pending final disposition of the case, the family court or the appellate court, after the appeal is taken, may make such order for temporary custody as is appropriate in the circumstances. If the appellate court does not dismiss the proceedings and discharge the child or minor, it shall affirm or modify the order of the family court and remand the child or minor to the jurisdiction of the court for disposition not inconsistent with the appellate court's finding on the appeal.

An order or decree entered in a proceeding based upon [section 571-11\(1\), \(2\), \(6\), or \(9\)](#) shall be subject to appeal only as follows:

Within twenty days from the date of the entry of any such order or decree, any party directly affected

thereby may file a motion for a reconsideration of the facts involved. The motion and any supporting affidavit shall set forth the grounds on which a reconsideration is requested and shall be sworn to by the movant or the movant's representative. The judge shall hold a hearing on the motion, affording to all parties concerned the full right of representation by counsel and presentation of relevant evidence. The findings of the judge upon the hearing of the motion and the judge's determination and disposition of the case thereafter, and any decision, judgment, order, or decree affecting the child and entered as a result of the hearing on the motion, shall be set forth in writing and signed by the judge. Any party aggrieved by any such findings, judgment, order, or decree shall have the right to appeal therefrom to the intermediate appellate court, upon the same terms and conditions as in other cases in the circuit court, and review shall be governed by chapter 602; provided that no such motion for reconsideration shall operate as a stay of any such findings, judgment, order, or decree unless the judge of the family court so orders; provided further that no informality or technical irregularity in the proceedings prior to the hearing on the motion for reconsideration shall constitute grounds for the reversal of any such findings, judgment, order, or decree by the appellate court.

[L 1965, c 232, pt of § 1; Supp, § 333-28; HRS § 571-54; am L 1973, c 211, § 1[g]; am L 1979, c 111, § 21; am L 1983, c 27, § 1 and c 171, § 3; am imp L 1984, c 90, § 1; L 2004, c 202, § 54]

#### NOTES, REFERENCES, AND ANNOTATIONS

Editor's note. --

As to authority of governor to modify provisions, see 1983 Haw. Sess. Laws, Act 171, § 6.

2004 Haw. Sess. Laws, Act 202, § 82, provides that appeals pending in the supreme court as of the effective date of the act may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs.

The 2004 amendment, effective July 1, 2006, substituted "intermediate appellate" for "supreme" court in the first paragraph, deleted "supreme or intermediate" preceding "appellate court" throughout in the second paragraph, deleted the reference to the supreme court in the third paragraph and substituted "intermediate appellate" for "supreme" court in the last paragraph and made stylistic changes.

#### CASE NOTES

The purpose of this section is to allow the court and the parties to make a complete record of the proceedings and to set forth in writing the findings and disposition of the family court for appeal purposes; it requires them to focus their attention and, eventually, the appellate court's attention, on the errors to be relied upon on appeal. [In re Doe, 3 Haw. App. 391, 651 P.2d 492 \(1982\).](#)

Absent compliance with the statutory requirements of this section, a matter is not appealable, and the appellate court lacks jurisdiction and has no alternative but to dismiss the matter. There can be no doubt of the existence of legislative power to limit or curtail the right of appeal, and the argument that the general appeal statute applies cannot prevail as against special proceedings which prescribe the manner and limits of review. [In re Doe, 3 Haw. App. 391, 651 P.2d 492 \(1982\).](#)

Court would consider suppression order in juvenile defendant's drug case even though no motion for reconsideration filed. --

In a juvenile defendant's drug case, although no motion for reconsideration was filed, the court of appeals addressed the merits of the appeal where the motion, the opposing memorandum, the transcript from the suppression hearing, and the family court's order appeared to amount to the parties' and the family court's complete record of the suppression matter, and neither defendant nor the prosecution asserted on appeal that the purpose of the HRS § 571-54 motion for reconsideration provision had been violated. [In re Doe, 104 Haw. 403, 91 P.3d 485, 2004 Haw. LEXIS 372 \(2004\)](#).

Divorce decree is final and appealable. --

A decree of a family court in a matrimonial action terminating the marriage and dividing the real property is final and appealable, although questions of custody and support of minor children are left for future determination. [Cleveland v. Cleveland, 57 Haw. 519, 559 P.2d 744 \(1977\)](#).

Requirements for appeal from family court. --

This section is clear and unambiguous; it conditions the right of an aggrieved party to appeal by requiring him to petition the family court for a rehearing and reconsideration. Although the statute says the party "may" file such petition, this fact does not in any way mitigate the requirement; a party may or may not file such petition, but if he intends to appeal the decision, he must. [In re Doe, 3 Haw. App. 391, 651 P.2d 492 \(1982\)](#).

Family court's order correcting a mistake in its calculation of the net equity in the ex-wife's house was a final, appealable order. [Whitman v. Whitman, 91 Haw. 468, 985 P.2d 659 \(1999\)](#).

Stay pending appeal of waiver of jurisdiction. --

A juvenile has no constitutional right to an automatic stay on appeal of waiver of jurisdiction and trial as an adult. [In re Doe, 57 Haw. 413, 558 P.2d 483 \(1976\)](#).

State not a "party aggrieved" by denial of waiver of jurisdiction. --

The state was not a "party aggrieved," within the meaning of this section, for the purpose of appealing from the denial of a petition for an automatic waiver of jurisdiction. [In re Doe, 67 Haw. 466, 691 P.2d 1163 \(1984\)](#).

While the state is an interested party in a transfer proceeding, it is not one aggrieved by a judicial decision to promote the rehabilitation of a juvenile offender under family court auspices rather than subject him to adult procedures. [State ex rel. Marsland v. Town, 66 Haw. 516, 668 P.2d 25 \(1983\)](#), overruled on other grounds, [102 Haw. 326, 76 P.3d 569 \(2003\)](#).

Summary denial of motion for reconsideration. --

Parents were not entitled to a hearing prior to the family court's denial of their motions for reconsideration of a judgment in a proceeding based upon this section. [In re Male Child, 8 Haw. App. 66, 793 P.2d 669](#), cert. denied, [71 Haw. 668, 833 P.2d 900 \(1990\)](#).

[Hawaii Rules of Appellate Procedure Rule 4\(a\)\(3\)](#) is inapplicable to family court cases governed by § 571-54. In such cases, a notice of appeal is timely when it is filed within 30 days after the entry of the order resolving a motion for reconsideration. [In re Doe, 94 Haw. 485, 17 P.3d 217, 2001 Haw. LEXIS 30 \(2001\)](#).

No final judgment or decree. --

A Juvenile's appeal was dismissed, where he did not move for reconsideration of the disposition, no hearing to reconsider the disposition was held, and no final written judgment, order, or decree containing the findings and conclusions was entered. [In re Doe, 102 Haw. 246, 74 P.3d 998 \(2003\)](#). Cited in [Cleveland v. Cleveland, 57 Haw. 519, 559 P.2d 744 \(1977\)](#); [Lowther v. Lowther, 99 Haw. 569, 57 P.3d 494, 2002 Haw. App. LEXIS 215 \(Ct. App. 2002\)](#); [In re Doe, 102 Haw. 75, 73 P.3d 29 \(2003\)](#); [Fischer v. Fischer, - Haw. -, - P.3d -, 2003 Haw. LEXIS 351 \(July 28, 2003\)](#); [Child Support Enforcement Agency v. Doe, 2003 Haw. LEXIS 504 \(Oct. 20, 2003\)](#); [Powell v. Powell, 2003 Haw. LEXIS 503 \(Oct. 20, 2003\)](#); [Child Support Enforcement Agency v. Doe, 104 Haw. 449, 91 P.3d 1092, 2004 Haw. App. LEXIS 124 \(Haw. Ct. App. 2004\)](#); In the [Interest of Doe Children, 105 Haw. 38, 93 P.3d 1145, 2004 Haw. LEXIS 405 \(2004\)](#).

#### **§ 571-55 Certification in lieu of oath.**

Whenever any testimony, declaration, deposition, certification or pleading in the family court is required or authorized to be on oath or affirmation, the person so required or authorized may testify, declare, depose, certify, or plead under "penalty of perjury" in such form as may be prescribed by the court.

[L 1970, c 17, pt of § 1]

#### **§ 571-56 Offense.**

A person who makes a false statement which the person does not believe to be true commits an offense whether the false statement is made under an oath required or authorized by law or under "penalty of perjury" as authorized by [section 571-55](#).

[L 1970, c 17, pt of § 1; am imp L 1984, c 90, § 1]

#### **§ 571-57 Penalty.**

The penalty for the offense of making a false statement under "penalty of perjury" shall be the same as would apply if the false statement had been made under oath or affirmation required or authorized by law.

[L 1970, c 17, pt of § 1]

## NOTES, REFERENCES, AND ANNOTATIONS

### Cross references

As to perjury and related offenses, see [§ 710-1060](#) et seq.

### **§ 571-61 Termination of parental rights; petition.**

(a) Relinquishment. The parents or either parent or the surviving parent who desire to relinquish parental rights to any natural or adopted child and thus make the child available for adoption or readoption, may petition the family court of the circuit in which they or he or she resides, or of the circuit in which the child resides, or was born, for the entry of a judgment of termination of parental rights. The petition shall be verified and shall be substantially in such form as may be prescribed by the judge or senior judge of the family court. The petition may be filed at any time following the mother's sixth month of pregnancy; provided that no judgment may be entered upon a petition concerning an unborn child until after the birth of the child and in respect to a legal parent or parents until the petitioner or petitioners have filed in the termination proceeding a written reaffirmation of their desires as expressed in the petition or in respect to a legal parent or parents until the petitioner or petitioners have been given not less than ten days' notice of a proposal for the entry of judgment and an opportunity to be heard in connection with such proposal.

(b) Involuntary termination.

(1) The family courts may terminate the parental rights in respect to any child as to any legal parent:

(A) Who has deserted the child without affording means of identification for a period of at least ninety days;

(B) Who has voluntarily surrendered the care and custody of the child to another for a period of at least two years;

(C) Who, when the child is in the custody of another, has failed to communicate with the child when able to do so for a period of at least one year;

(D) Who, when the child is in the custody of another, has failed to provide for care and support of the child when able to do so for a period of at least one year;

(E) Whose child has been removed from the parent's physical custody pursuant to legally authorized judicial action under [section 571-11\(9\)](#), and who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child;

(F) Who is found by the court to be mentally ill or mentally retarded and incapacitated from giving consent to the adoption of or from providing now and in the foreseeable future the care necessary for the well-being of the child;

(G) Who is found not to be the child's natural or adoptive father.

(2) The family courts may terminate the parental rights in respect to any minor of any natural but not legal father who is an adjudicated, presumed or concerned father under chapter 578, or who is named as the father on the child's birth certificate:

(A) Who falls within subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1);

(B) Whose child is sought to be adopted by the child's stepfather and the stepfather has lived with the child and the child's legal mother for a period of at least one year;

(C) Who is only a concerned father who has failed to file a petition for the adoption of the child or whose petition for the adoption of the child has been denied; or

(D) Who is found to be an unfit or improper parent or to be financially or otherwise unable to give the child a proper home and education.

(3) In respect to any proceedings under paragraphs (1) and (2), the authority to terminate parental rights may be exercised by the court only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born and the court has conducted a hearing of the petition. A copy of the petition, together with notice of the time and place of the hearing thereof, shall be personally served at least twenty days prior to the hearing upon the parent whose rights are sought to be terminated. If personal service cannot be effected within the State, service of the notice may be made as provided in [section 634-23](#) or [634-24](#).

(4) The family courts may terminate the parental rights in respect to any child as to any natural father who is not the child's legal, adjudicated, presumed or concerned father under chapter 578.

Such authority may be exercised under this chapter only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born, and the court has conducted a hearing of the petition.

If the mother of the child files with the petition an affidavit representing that the identity or whereabouts of the child's father is unknown to her or not ascertainable by her or that other good cause exists why notice cannot or should not be given to the father, the court shall conduct a hearing to determine whether notice is required.

If the court finds that good cause exists why notice cannot or should not be given to the child's father, and that the father is neither the legal nor adjudicated nor presumed father of the child, nor has he demonstrated a reasonable degree of interest, concern, or responsibility as to the existence or welfare of

the child, the court may enter an order authorizing the termination of the father's parental rights and the subsequent adoption of the child without notice to the father.

[L 1965, c 232, pt of § 1; Supp, § 333-29; HRS § 571-61; am L 1970, c 205, § 2; am L 1971, c 46, § 1; am L 1973, c 211, § 1[h]; am L 1974, c 74, § 1; am L 1976, c 85, § 14; am L 1980, c 55, § 1; am L 1982, c 49, § 1; am L 1983, c 171, § 4; am L 1993, c 160, § 2]

## NOTES, REFERENCES, AND ANNOTATIONS

Editor's note. --

As to authority of governor to modify provisions, see 1983 Haw. Sess. Laws, Act 171, § 6.

Cross references

As to the family court's jurisdiction over children, see [§ 571-11](#).

### CASE NOTES

Constitutionality. --

Subparagraph (b)(1)(E) of this section is not unconstitutionally vague on its face. [In re Male Child, 8 Haw. App. 66, 793 P.2d 669](#), cert. denied, [71 Haw. 668, 833 P.2d 900 \(1990\)](#).

Settled purpose to relinquish parental rights prerequisite to termination. --

In addition to finding conduct described in subparagraphs (b)(1)(C) and (b)(1)(D), a court must also find from such behavior a settled purpose to relinquish all parental rights in the child before it may consider terminating parental rights. [Woodruff ex rel. Doe v. Keale, 64 Haw. 85, 637 P.2d 760](#), reconsideration denied, 64 Haw. 688 (1981).

Focus of court is best interests of child. --

Where the father has made a timely appearance and manifested a concern for the child, the focus of the court should be on the best interests of the child, and such concern should be given careful consideration, for it may disclose a probability of the development of a meaningful relationship conducive to the child's future welfare. [In re Doe II, 52 Haw. 448, 478 P.2d 844 \(1970\)](#).

In case involving child born out of wedlock, the lodestar followed should always be the child's best interests. [In re Doe II, 52 Haw. 448, 478 P.2d 844 \(1970\)](#).

An award of permanent custody under Chapter 587 involves essentially the same criteria and material elements as a termination of parental rights under subparagraph (b)(1)(E) of this section; that is why subparagraph (b)(1)(E) of this section authorizes the termination of parental rights in most cases where the [§ 587-73](#) criteria for the award of permanent custody have been satisfied. [In re Male Child, 8 Haw.](#)

[App. 66, 793 P.2d 669](#), cert. denied, [71 Haw. 668, 833 P.2d 900 \(1990\)](#).

Termination of parental rights under Chapter 587. --

Settlement of termination controversy under HRS chapter 587 did not need to conform to procedures set forth in this section. [In re Doe, 90 Haw. 200, 978 P.2d 166 \(Ct. App. 1999\)](#).

The only difference between the criteria for the award of permanent custody and the criteria for the termination of parental rights is that [§ 587-73\(a\)](#) authorizes the award of permanent custody when the child's family is either unwilling or unable to provide the child with a safe family home, whereas subparagraph (b)(1)(E) of this section authorizes the termination of parental rights when the parent is unable to provide the care necessary for the well-being of the child. [In re Male Child, 8 Haw. App. 66, 793 P.2d 669](#), cert. denied, [71 Haw. 668, 833 P.2d 900 \(1990\)](#).

Father not given preference to custody of child born out of wedlock. --

If the paramount consideration in any case involving a child born out of wedlock is the best interests of the child, there is no reason for a rule which gives preference to the father. [In re Doe II, 52 Haw. 448, 478 P.2d 844 \(1970\)](#).

Return of child to mother. --

Upon habeas corpus, the custody of an illegitimate child would be restored to its mother when it appeared that the mother left the child for temporary purposes with others and with no intention of abandoning it and that she was not morally unfit to have its care and custody. [In re Alexander ex rel. Thompson, 27 Haw. 158 \(1923\)](#) (decided under prior law).

"Care and support" defined. --

The words "care and support" in subparagraph (b)(1)(D) clearly inform parents that, at the very least, they must provide financially for their child to avoid a risk of involuntary termination. The statutory language is sufficiently clear so that a person of ordinary intelligence is given a reasonable opportunity to know what is prohibited, so that he may act accordingly, and does not otherwise offend the due process clause. [Woodruff ex rel. Doe v. Keale, 64 Haw. 85, 637 P.2d 760](#), reconsideration denied, 64 Haw. 688 (1981).

"At least one year" defined. --

The phrase "at least one year" in subparagraph (b)(1)(D) unambiguously refers to a one year period for which parents must fail to provide for their child before their rights may be terminated without their consent, without requiring that the one year period immediately precede the filing of the petition for termination of parental rights. [Woodruff ex rel. Doe v. Keale, 64 Haw. 85, 637 P.2d 760](#), reconsideration denied, 64 Haw. 688 (1981).

Foreseeable future. --

As a matter of statutory interpretation, the phrase "foreseeable future" in subparagraph (b)(1)(E) of this section has a meaning consistent with [§ 587- 73\(a\)\(2\) and \(e\)](#); "foreseeable future" in subparagraph (b)(1)(E) of this section means three years from the filing date of the petition for termination of parental rights. [In re Male Child, 8 Haw. App. 66, 793 P.2d 669](#), cert. denied, [71 Haw. 668, 833 P.2d 900 \(1990\)](#).

Minor mother's rights held not violated when represented by guardian ad litem during hearing. --

No constitutional right of a minor mother of a child was violated, where during a part of the hearing on termination of her parental rights she was not present in court, but she was represented by a guardian ad litem who was a licensed attorney, and at all other times she was present in court and was accorded ample opportunity to testify. [In re Female Minor Child, 52 Haw. 395, 477 P.2d 780 \(1970\)](#).

Burden of proof. --

The burden of proving that termination of parental rights would be in the best interests of the child rests with the proponents of the termination petition, who must establish the same with clear and convincing evidence. [Woodruff ex rel. Doe v. Keale, 64 Haw. 85, 637 P.2d 760](#), reconsideration denied, 64 Haw. 688 (1981).

Privileged communications. --

In a termination of parental rights case under this section, the child's mother may not invoke a psychologist-client privilege to prevent a psychologist from testifying about any communications made during the counseling sessions held pursuant to a family court order, entered in a prior child protective services case, requiring her to participate in weekly counseling sessions with him and specifying that the communications made during those sessions shall be shared between the psychologist and Department of Human Services. [In re Doe, 8 Haw. App. 161, 795 P.2d 294 \(1990\)](#).

In a termination of parental rights case the child's mother could not invoke a physician-patient privilege to prevent a registered nurse from testifying about any communications made between them during the nurse's performance of outreach services to her in a prior child protective services case. [In re Doe, 8 Haw. App. 161, 795 P.2d 294 \(1990\)](#).

Availability of record from previous child protective services cases. --

A termination of parental rights (TPR) case brought under subparagraph (b)(1)(E) of this section must be preceded by judicial action in a child protective services (CPS) case under Chapter 587. A TPR case brought pursuant to subparagraph (b)(1)(E) of this section is, in essence, a continuance of the CPS case. Consequently, everything properly in the record of the CPS case can be considered in the TPR case brought under subparagraph (b)(1)(E) of this section. [In re Doe, 8 Haw. App. 161, 795 P.2d 294 \(1990\)](#).

There is not any relevant information that is properly in the record of a child's child protective services case that cannot be considered by the family court in a termination of parental rights case under subparagraph (b)(1)(E) of this section, where that case involves the same child. [In re Doe, 8 Haw. App. 161, 795 P.2d 294 \(1990\)](#).

Mother's past inability to provide care and support for children coupled with uncertain future of employment and living situation did not establish, as matter of law, that mother was unable to provide, now and in foreseeable future, care necessary for well-being of children so as to justify termination of mother's parental rights. [In re Doe, 8 Haw. App. 377, 805 P.2d 1215 \(1991\).](#)

Care necessary for child's well-being. --

The fact that the best interests of the children would be served by their adoption or that they would receive better care in the custody of foster parents does not satisfy subsection (b)(1)'s requirement that the parent be found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the children. [In re Doe, 8 Haw. App. 377, 805 P.2d 1215 \(1991\).](#)

Physical custody. --

Where the father had the legal right to the physical custody of his children when the family court took away his right and awarded it to foster parents satisfied subsection (b)(1)'s requirement that the children were removed from the father's physical custody. The fact that the children were not living with the father when the family court acted had no impact on his legal right. [In re Doe, 8 Haw. App. 377, 805 P.2d 1215 \(1991\).](#) Cited in [In re Doe, 89 Haw. 477, 974 P.2d 1067 \(Ct. App. 1999\).](#)

## RESEARCH REFERENCES

### ALR.

[Parent's mental deficiency as factor in termination of parental rights - modern status. 1 A.L.R.5th 469.](#)

[Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights. 92 A.L.R.5th 379.](#)

[Parents' mental illness or mental deficiency as ground for termination of parental rights - Constitutional issues. 110 A.L.R.5th 579.](#)

Parents' mental illness or mental deficiency as ground for termination of parental rights - General considerations. 113 A.L.R.5th 349.

[Parents' mental illness or mental deficiency as ground for termination of parental rights - Effect on parenting ability and parental rights. 116 A.L.R.5th 559.](#)

[Parents' mental illness or mental deficiency as ground for termination of parental rights - Best interests analysis. 117 A.L.R.5th 349.](#)

## LEGAL PERIODICALS

### University of Hawaii Law Review.

Comment, Who's Minding the Nursery: An Analysis of Surrogate Parenting Contracts in Hawaii 9 U.

Haw. L. Rev. 567 (1987).

**§ 571-62 Hearing; investigation and report.**

Every petition under [section 571-61](#) shall be filed in duplicate and the clerk of the court in which the same is filed shall immediately forward a copy of the petition, and of the notice of the time and place of the hearing thereof, to the director of the department of human services. The director shall be permitted to appear and be heard at any such hearing on behalf of the petitioner or the child or minor or the State and shall have the same right of appeal as any party to the proceeding. The attorney general shall, at the request of the director, represent and defend the interests of the department in any such proceeding. Upon the request of any petitioning parent or parents or upon the request of the department of human services, any child-placing organization, approved by the department under [section 346-17](#), shall be permitted to appear together with or in place of the department.

If any petitioner or the department or any such child-placing organization approved by the department or any parent whose rights are sought to be terminated requests of the court a continuance of the hearing for the purpose of permitting an objective investigation of the circumstances of the minor and the parent or parents concerned, no judgment of termination shall be entered prior to the expiration of thirty days from the date of the request or until the earlier date of the filing of a report of the investigation. If the petition has been filed by or at the request of the department of human services or any such child-placing organization, or, in the event that a continuance has been requested as above provided, the department of human services shall prepare or procure and file in the termination proceeding a report of the facts disclosed as a result of investigation of the circumstances of the minor and the parent or parents whose rights are sought to be terminated. The court may, for good cause, grant extensions of the time within which such report must be filed. Any such report shall be incorporated in the record of the proceeding and shall be considered by the court in determining the issues presented by the petition. The court may, if it deems such action necessary, appoint a guardian ad litem to represent and defend the interests of the child or minor or of any minor parent.

[L 1965, c 232, pt of § 1; Supp, § 333-30; HRS § 571-62; am L 1970, c 105, § 5; am L 1987, c 339, § 4; am L 1990, c 34, § 34]

NOTES, REFERENCES, AND ANNOTATIONS

Nature of report. --

The report required by this section is an outline of the factual basis of the case for termination of the parental rights of parents. [In re Male Child, 8 Haw. App. 66, 793 P.2d 669](#), cert. denied, [71 Haw. 668, 833 P.2d 900 \(1990\)](#). Cited in [In re Doe II, 52 Haw. 448, 478 P.2d 844 \(1970\)](#).

**§ 571-63 Findings and judgment.**

No judgment of termination of parental rights entered under [sections 571-61](#) to 571-63 shall be valid or

binding unless it contains a finding that the facts upon which the petition is based bring the child within such sections and have been proved by the evidence and that the adjudication of termination of parental rights is necessary for the protection and preservation of the best interests of the child concerned and will facilitate the legal adoption of the child.

In any judgment entered pursuant to [sections 571-61](#) to 571-63 the court may terminate the parental rights of one or both of the parents of the child concerned, may transfer the care, custody and control of the child to any proper person not forbidden by law to place a child for adoption or to the department of human services or to any child-placing organization approved by the department, may appoint a guardian of the child, and may authorize the person or the department or the agency or the guardian to consent to the legal adoption of the child.

No judgment of termination of parental rights entered under [sections 571-61](#) to 571-63 shall operate to terminate the mutual rights of inheritance of the child and the parent or parents involved, or to terminate the legal duties and liabilities of the parent or parents, unless and until the child has been legally adopted.

Every such judgment of termination of parental rights when the procedural provisions of [sections 571-61](#) to 571-63 have been followed shall become final and binding upon all of the parties concerned as of the date of its entry and filing, subject to the right of appeal. No such judgment shall be set aside for reasons other than the best interests and welfare of the child concerned, after the entry of a decree of adoption of the child concerned or during any period when the child is in an adoptive home in which the child has been placed by the department of human services or by a child-placing organization approved by the department or by any person not forbidden by law to place a child for adoption. When any such child is placed for adoption, a sworn certificate evidencing the placement shall be filed in the termination proceeding by the agency or person making the placement. Upon the entry of a final decree of adoption of any such child, a certified copy of the decree shall be filed in the termination proceeding and notification of the entry of the decree, without disclosing the identity of the adopting parents, shall, unless waived by the court, be given to each person whose parental rights have been terminated by registered or certified mail addressed to the last known address of each such person; provided that at any time following the expiration of one year from the date of the entry of any such judgment of termination of parental rights, upon the motion of the parent or parents of the child or the department of human services or any child-placing organization approved by the department or any other proper person, based upon the fact that the child has not been adopted or placed in a prospective adoptive home, the court in which the judgment was entered shall review the same and shall consider the currently reported circumstances of the child and of the parent or parents and shall enter its findings as to whether the circumstances, and the present best interests of the child, justify the continuance of the judgment. Upon such reconsideration, the court may either set aside the judgment or continue it in effect, as the circumstances may warrant. Upon the entry in the termination proceeding of a certified copy of the final decree of adoption of any such child and notification thereof to the person whose parental rights have been terminated, unless waived as herein provided, or upon the dismissal or discontinuance or other final disposition of the petition in the termination proceeding the clerk of the court shall seal all records in the termination proceeding and the seal shall not be broken and the records shall not be inspected by any person, including the parties to the termination proceeding, except upon order of the court.

[L 1965, c 232, pt of § 1; Supp, § 333-31; HRS § 571-63; am L 1970, c 105, § 5; am L 1973, c 211, §

1[i]; am L 1976, c 85, § 15; am L 1987, c 339, § 4; am L 2004, c 161, § 36]

## NOTES, REFERENCES, AND ANNOTATIONS

Editor's note. --

2004 Haw. Sess. Laws, Act 161, § 38, provides: "This Act shall not affect any action commenced, proceeding brought, or right accrued prior to its effective date."

2004 Haw. Sess. Laws, Act 161, § 39, provides: "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable." The 2004 amendment, effective January 1, 2005, substituted "guardian" for "guardian of the person" in the second paragraph.

### CASE NOTES

Best interests of child standard. --

The "best interests of the child" standard in this section does not require a specific finding of parental unfitness per se, but rather, requires the family court to use its discretion in considering numerous factors in determining whether termination would be in the child's best interests. [Woodruff ex rel. Doe v. Keale, 64 Haw. 85, 637 P.2d 760](#), reconsideration denied, 64 Haw. 688 (1981).

Termination of one parent's parental rights. --

Although the mother's parental rights have not been terminated, the termination of the father's parental rights facilitates the legal adoption of the child because it is easier to obtain one parent's consent or to terminate one parent's parental rights than it is to do so for two parents. [In re Doe, 8 Haw. App. 377, 805 P.2d 1215 \(1991\)](#).

"Facilitate," within the meaning of the statute, does not mean guaranteed to happen; "facilitate" means to make easier, to aid, to assist. [In re Doe, 8 Haw. App. 377, 805 P.2d 1215 \(1991\)](#). Cited in [In re Doe II, 52 Haw. 448, 478 P.2d 844 \(1970\)](#); [Delahunty v. Hawaii, 677 F. Supp. 1052 \(D. Haw. 1987\)](#).

### RESEARCH REFERENCES

#### ALR.

[Legal malpractice in defense of parents at proceedings to terminate parental rights over dependent or neglected children. 18 A.L.R.5th 902.](#)

[Parent's use of drugs as factor in award of custody of children, visitation rights, or termination of parental rights. 20 A.L.R.5th 534.](#)

Sufficiency of evidence to establish parent's knowledge or allowance of child's sexual abuse by another under statute permitting termination of parental rights for "allowing" or "knowingly allowing" such abuse to occur. [53 A.L.R.5th 499](#).

### § 571-81 Contempt of court.

Any adult who wilfully violates, neglects, or refuses to obey or perform any lawful order of the court may be proceeded against for contempt of court. Any adult found in contempt of court may be punished as provided by law.

[L 1965, c 232, pt of § 1; Supp, § 333-36; HRS § 571-81]

## NOTES, REFERENCES, AND ANNOTATIONS

Cross references

As to criminal contempt of court, see [§ 710-1077](#).

### CASE NOTES

Proof required to show violation of ex parte restraining order. --

A restraining order issued in a divorce proceeding restrained the respondent from in any way disposing of, sending away, spending, paying out or dealing with "one-half of the sum of \$19,243.24 which you drew out of the joint account in the Bank of Hawaii of yourself and your wife," and also with the petitioner's war savings bonds, automobile, and certain items of jewelry, clothing and personal effects. The order was issued, ex parte, without notice to the respondent, on the basis of the allegations in the petition and not on the basis of any finding that the respondent was in possession of the property mentioned therein at the time of its entry. Thus, for a finding of a violation of the order, proof was required of the respondent's possession of such property, or any part thereof, at the time of the service of the restraining order and his subsequent disposition of such property. [Tugaeff ex rel. Kanaha v. Tugaeff, 42 Haw. 455 \(1958\)](#) (decided under prior law).

A circuit judge is without jurisdiction to try a proceeding for civil contempt which is not founded on affidavit, complaint or information setting forth facts which, unexplained, would show a wilful disobedience or neglect on the part of the accused. [Tugaeff ex rel. Kanaha v. Tugaeff, 42 Haw. 455 \(1958\)](#) (decided under prior law).

Full statement of particular circumstances required for finding of contempt. --

In adjudging the respondent guilty of contempt, the trial judge merely stated: "That the respondent failed to abide by the terms of the restraining order." That was not a full statement of the particular circumstances of the offense required by former § 729-5. [Tugaeff ex rel. Kanaha v. Tugaeff, 42 Haw. 455 \(1958\)](#) (decided under prior law).

### **§ 571-82 Court sessions; quarters.**

Sessions of the court shall be held at such places as the court shall determine, subject to [section 603-14](#).

[L 1965, c 232, pt of § 1; Supp, § 333-37; HRS § 571-82; am L 1973, c 211, § 1[j]]

### **§ 571-83 Court and witness fees.**

In proceedings under [section 571-11\(1\) and \(2\)](#), no court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition. No officer of the State or of any political subdivision thereof shall be entitled to receive any fee for the service of process or for attendance in court in any such proceedings except as otherwise provided in this chapter. All other persons acting under orders of the court may be paid for service of process and attendance or service as witnesses, the fees provided by law to be paid from the proper appropriation when the allowances are certified to by the judge.

[L 1965, c 232, pt of § 1; Supp, § 333-38; HRS § 571-83]

### **§ 571-84 Records.**

(a) The court shall maintain records of all cases brought before it. Except as provided in [section 571-84.6](#), in proceedings under [section 571-11](#) and in paternity proceedings under chapter 584, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection: by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, and by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, treatment, or disposition of the minor.

(b) Reports of social and clinical studies or examinations made pursuant to this chapter shall be withheld from public inspection, except that information from these reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare, treatment, or disposition of the minor.

(c) No information obtained or social records prepared in the discharge of official duty by an employee of the court shall be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive the information, unless and until otherwise ordered by the judge.

(d) Any photograph or fingerprint taken of any minor may be used or circulated only as permitted by

[section 571-74.](#)

(e) The records of any police department and of any juvenile crime prevention division or section thereof, relating to any proceedings authorized under [section 571-11](#) shall be confidential and shall be open to inspection and use only by persons whose official duties are concerned with this chapter, except as provided in subsections (d) and (f), [sections 571-88](#) and [571-72\(b\)](#), or as otherwise ordered by the court.

(f) Any police records concerning traffic accidents in which a minor coming within [section 571-11\(1\)](#) is involved, after the termination of any proceeding under [section 571-11\(1\)](#) arising out of any accident, or in any event after six months from the date of the accident, shall be available for inspection by the parties directly concerned in the accident or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any traffic accident shall be deemed a party concerned.

(g) In all proceedings concerning violations other than traffic violations, in which a minor coming within [section 571-11\(1\)](#) is involved and after the termination of any proceeding under [section 571-11\(1\)](#) arising out of the violation, the court may disclose to a party directly concerned the disposition of a case involving an offense against a person or property. This disclosure shall be made only upon written request of the party directly concerned. If the minor has been adjudicated a law violator, the name and address of the minor, and, when practicable, the name of the parent or guardian shall be disclosed, pursuant to the order of the court or the Hawaii family court rules, to the parties directly concerned with the alleged violation or their duly licensed attorneys acting under written authority signed by either party. For the purpose of this section, "parties directly concerned" means any person who may sue because of death, injury, or damage resulting from any violation, other than a traffic violation, in which a minor coming within [section 571-11\(1\)](#) is involved.

The minor, and, when practicable, the minor's parents or custodian, and the attorney of the minor shall be notified when the minor's name and address have been released.

(h) Evidence given in proceedings under [section 571-11\(1\) or \(2\)](#) shall not in any civil, criminal, or other cause be lawful or proper evidence against the minor therein involved for any purpose whatever, except in subsequent proceedings involving the same minor under [section 571-11\(1\) or \(2\)](#).

(i) All information in the records except reports of social studies and clinical studies or examinations shall be recorded in the juvenile justice information system. Information about the dates, length, preparer, and subject of social studies may be included in the juvenile justice information system.

[L 1965, c 232, pt of § 1; Supp, § 333-39; HRS § 571-84; am L 1973, c 211, § 1[k]; am L 1977, c 172, § 2; am L 1980, c 232, § 30; am L 1983, c 168, § 1; am L 1987, c 47, § 1; am L 1990, c 189, § § 3, 4; am L 1991, c 311, § 5; am L 1995, c 100, § 2; am L 1997, c 317, § 4; am L 1997, c 318, § 3; am L 1999, c 18, § 16; am L 1999, c 139, § 2; am L 2001, c 233, § 3'

#### NOTES, REFERENCES, AND ANNOTATIONS

The 1999 amendments. -- 1999 Haw. Sess. Laws, Act 18, § 16, effective April 15, 1999, and 1999 Haw. Sess. Laws, Act 139, § 2, effective June 25, 1999, both deleted a reference to subsection (j) from the subsection reference near the end of subsection (e). The 2001 amendment, effective August 1, 2001, in subsection (d) changed "crime prevention bureau" to "crime prevention division or section," added the reference to [§ § 571-88](#) and [571-72\(b\)](#), and made related changes.

#### Cross references

As to use by law enforcement officials of records relating to family court adjudications to enforce firearms laws, see § 134-7. As to the juvenile justice information system, see Chapter 846D.

#### CASE NOTES

Family court record considered in adult presentence report. --

In making its determination of an appropriate sentence, the court did not err by considering adult defendant's family court record, which comprised a portion of the presentence report. [State v. Nobriga, 56 Haw. 75, 527 P.2d 1269 \(1974\)](#).

The phrase "history of delinquency" in [§ 706-602](#) should be construed so as to authorize the use of defendant's juvenile court record for purposes of the presentence investigation and report. Such a construction of "history of delinquency" in [§ 706-602](#) is not inconsistent with the purpose and language of former § 571-49 and this section. Rather, the purpose of former § 571-49 and this section is one of prohibiting the use of evidence against the child or minor involved in an adversary proceeding in any court other than family court, and not one of a blanket prohibition banning the use of juvenile records in a nonadversary proceeding, that is, at the sentencing stage. [State v. Nobriga, 56 Haw. 75, 527 P.2d 1269 \(1974\)](#). Cited in [Doe v. Roe, 3 Haw. App. 233, 647 P.2d 305 \(1982\)](#); [Doe v. Roe, 6 Haw. App. 629, 736 P.2d 448 \(1987\)](#).

**OPINIONS OF THE OFFICE OF INFORMATION PRACTICES** SFBF Disclosure of police blotter data concerning juveniles The disclosure of police blotter data concerning identifiable juvenile offenders is prohibited by subsection (e) of this section, and under [§ 92F-13\(4\)](#) should not be disclosed by the county police departments. See Opinion of the Office of Information Practices Op. Ltr. No. 91-4 (1991).

#### LEGAL PERIODICALS

##### **Hawaii Bar Journal.**

Article, Hawaii's Noncommitment to Civil Commitment: Out of Sight, Out of Mind, Out of Theory, 13 Haw. B.J. 21 (1978).

**§ 571-84.5 Support order, decree, judgment, or acknowledgment; social security number.**

The social security number of any individual who is a party to a divorce decree, or subject to a support order or paternity determination, or has made an acknowledgment of paternity issued under this chapter or chapter 576B, 580, or 584 shall be placed in the records relating to the matter.

[L 1997, c 293, § 5; am L 1998, c 11, § 28]

**§ 571-84.6 Minor law violators; proceedings and records not confidential.**

(a) As used in this section:

"Legal record" means petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers and adjudication data, other than social records, filed in proceedings before the court.

"Social record" means those social and clinical studies, reports, or examinations prepared in any case pursuant to this chapter.

(b) Notwithstanding any other law to the contrary, in any proceeding in which a minor age fourteen years of age or older has been adjudicated by the court under [section 571-11\(1\)](#) for an act that if committed by an adult would:

(1) Be murder in the first degree or second degree or attempted murder in the first degree;

(2) Result in serious bodily injury to or death of a victim;

(3) Be a class A felony; or

(4) Be a felony and the minor has more than one prior adjudication for acts that would constitute felonies if committed by an adult, all legal records related to the above stated proceeding shall be open for public inspection, unless the administrative judge of the family court or the judge's designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that public inspection would be inconsistent with or defeat the express purpose of this section. All social records shall be kept confidential except as provided in [section 571-84](#).

(c) Notwithstanding any other law to the contrary, in any case in which a minor age sixteen years of age or older comes within [section 571-11\(1\)](#) is taken into custody for an act that if committed by an adult would:

(1) Be murder in the first degree or second degree or attempted murder in the first degree;

(2) Result in serious bodily injury to or death of a victim;

(3) Be a class A felony and the minor has one or more prior adjudications for an act that would

constitute a felony if committed by an adult; or

(4) Be a class B or C felony and the minor has more than one prior adjudication for acts that would constitute felonies if committed by an adult, all legal proceedings related to the above stated case shall be open to the public unless the administrative judge of the family court or the judge's designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that an open proceeding would be inconsistent with or defeat the express purpose of this section.

[L 1997, c 317, § 2; am L 1999, c 139, § 3]

**§ 571-85 Authority of probation officers; additional probation officers.**

Within the scope of their duties, probation officers appointed under this chapter shall have the powers and privileges of a police officer. In addition to the probation officers appointed under [section 571-6](#), the judges of the family courts may appoint special probation officers who shall serve without pay but who shall be entitled to be reimbursed for any cost or expense incurred by them in connection with the performance of their duties as defined by the judge.

[L 1965, c 232, pt of § 1; Supp, § 333-40; HRS § 571-85]

**§ 571-86 Cooperation.**

Every public official or department shall render all assistance and cooperation within the official's or its jurisdictional power which may further the objects of this chapter. The court may seek the cooperation of organizations whose object is to protect or aid children and family life.

[L 1965, c 232, pt of § 1; Supp, § 333-41; HRS § 571-86; am imp L 1984, c 90, § 1]

**§ 571-87 Appointment of counsel and guardian ad litem; compensation.**

(a) When it appears to a judge that a person requesting the appointment of counsel satisfies the requirements of chapter 802 for determination of indigency, or the court in its discretion appoints counsel under chapters 587 and 346, part X, or that a person requires appointment of a guardian ad litem, the judge shall appoint counsel or a guardian ad litem to represent the person at all stages of the proceedings, including appeal, if any. Appointed counsel and the guardian ad litem shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and fees pursuant to subsection (b). All of these expenses shall be certified by the court and paid upon vouchers approved by the judiciary and warrants drawn by the comptroller.

(b) The court shall determine the amount of reasonable compensation to appointed counsel and guardian ad litem, based on the rate of \$40 an hour for out-of-court services, and \$60 an hour for in-court services with a maximum fee in accordance with the following schedule:

(1) Cases arising under chapters 587 and 346, part X:

(A) Predisposition \$1,500;

(B) Postdisposition review hearing \$ 500;

(2) Cases arising under chapters 560, 571, 580, and 584 \$1,500.

Payments in excess of any maximum provided for under paragraphs (1) and (2) may be made whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the administrative judge of such court.

[L 1987, c 376, § 1; am L 1989, c 381, § 4; am L 1990, c. 144, § 1; am L 1990, c 234, § § 8, 9]

**§ 571-88 Orders expunging juvenile arrest records.**

(a) The court may issue an order expunging a juvenile arrest record of a person upon written application by the person or, if the person is a minor, the minor's parent or guardian; provided the arrest was made pursuant to [section 571-11\(1\) or \(2\)](#) and the arrest record meets the following criteria:

(1) The matter was not referred to the prosecuting attorney or the family court and:

(A) The person was not counseled and released by the police; or

(B) The person was counseled and released by the police and the person has become an adult;

or

(2) The matter was referred to the prosecuting attorney or family court and:

(A) The person was not adjudicated responsible by the court; or

(B) The matter was dismissed with prejudice.

(b) Before issuing an order to expunge an arrest record of a matter that was never referred to the court, the court shall consult with the prosecuting attorney in the appropriate circuit.

(c) Upon issuance of an expungement order under this section, the court shall:

(1) Forward copies of the expungement order to the police department and the department of the attorney general for expungement of the arrest record; and

(2) Issue to the person for whom the expungement order was issued, a certificate stating that an expungement order was issued and that its effect is to annul the record of one or more specific arrests.

The certificate shall:

(A) Authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest; and

(B) State that the person shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for making any statement authorized by the certificate.

(d) A person whose arrest record has been expunged under this section shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for responding to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest expunged.

(e) As used in this section:

"Arrest record" means any record maintained by a county police department or the department of the attorney general under chapters 846 and 846D, relating to the arrest of the minor for a specific offense, including fingerprints taken during the arrest and maintained under [section 846-2.5\(b\)](#).

"Expunge" means a process defined by agency policy in which records are segregated and kept confidential, or destroyed.

[L 2001, c 233, § 1; am L 2002, c 26, § 1; am L 2003, c 6, § 1]

#### NOTES, REFERENCES, AND ANNOTATIONS

Effective date. -- This section became effective August 1, 2001. The 2002 amendment, effective April 23, 2002, changed the section heading from "Expungement orders"; in the introductory language of subsection (a), substituted "person" for "minor" throughout, substituted "a juvenile arrest" for "an arrest," and inserted "if the person is a minor"; deleted "arrested" following "person" in subsections (a)(1) and (a)(2)(A); inserted "by the court" in subsection (a)(2)(A); rewrote subsection (b); deleted former subsection (c) providing for the expungement of the arrest record of an adult incurred while the adult was a minor, and redesignated the remaining subsections accordingly; updated an internal reference; and made stylistic and related changes. The 2003 amendment, effective April 3, 2003, redesignated former subsection (a)(1) as present subsections (a)(1) and (a)(1)(A); added (a)(1)(B); and made related changes.