

CS FOR HOUSE BILL NO. 514(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/3/04

Referred: Finance

Sponsor(s): REPRESENTATIVES KOTT, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to child support modification and enforcement, to the establishment of**
2 **paternity by the child support enforcement agency, and to the crimes of criminal**
3 **nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska**
4 **Rules of Civil Procedure; and providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 11.51.120(a) is amended to read:

7 (a) A person commits the crime of criminal nonsupport if, being a person
8 legally charged with the support of a child [UNDER 18 YEARS OF AGE,] the person
9 knowingly fails, without lawful excuse, to provide support for the child.

10 * **Sec. 2.** AS 11.51.120(c) is repealed and reenacted to read:

11 (c) Except as provided in (d) of this section, criminal nonsupport is a class A
12 misdemeanor.

13 * **Sec. 3.** AS 11.51.120 is amended by adding new subsections to read:

14 (d) Criminal nonsupport is a class C felony if the support the person failed to

1 provide is monetary support required by a court or administrative order from this or
 2 another jurisdiction and, at the time the person failed, without lawful excuse, to
 3 provide the support,

4 (1) the aggregate amount of accrued monetary child support arrearage
 5 is \$10,000 or more;

6 (2) no child support payment has been made for a period of 24 months
 7 or more; or

8 (3) the person had been previously convicted under this section or a
 9 similar provision in another jurisdiction and

10 (A) the aggregate amount of accrued monetary child support
 11 arrearage is \$5,000 or more; or

12 (B) no child support payment has been made for a period of six
 13 months or more.

14 (e) In addition to the provisions of (c) and (d) of this section, criminal
 15 nonsupport is punishable by loss or restriction of a recreational license as provided in
 16 AS 12.55.139.

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

20 (B) 18 years of age or older for whom a person is ordered to
 21 pay support under a valid court or administrative order;

22 (2) "child support" means support for a child;

23 (3) "without lawful excuse" means having the financial ability to
 24 provide support or having the capacity to acquire that ability through the exercise of
 25 reasonable efforts.

26 * **Sec. 4.** AS 11.51 is amended by adding a new section to read:

27 **Sec. 11.51.121. Aiding the nonpayment of child support in the first**
 28 **degree.** (a) A person commits the crime of aiding the nonpayment of child support in
 29 the first degree if the person violates AS 11.51.122 and the person knows the obligor

30 (1) has an aggregate amount of accrued monetary child support
 31 arrearage of \$10,000 or more;

1 (2) has not made a child support payment for a period of 24 months or
2 more; or

3 (3) had been previously convicted under AS 11.51.120 or a similar
4 provision in another jurisdiction and

5 (A) has an aggregate amount of accrued monetary child support
6 arrearage of \$5,000 or more; or

7 (B) has not made a child support payment for a period of 24
8 months or more.

9 (b) Aiding the nonpayment of child support in the first degree is a class C
10 felony.

11 (c) In addition to the penalties under (b) of this section, aiding the nonpayment
12 of child support in the first degree is punishable by loss or restriction of a recreational
13 license as provided in AS 12.55.139.

14 * **Sec. 5.** AS 11.51.122(a) is amended to read:

15 (a) A person commits the crime of aiding the nonpayment of child support **in**
16 **the second degree** if the person

17 (1) knows that an obligor has a duty under an administrative or judicial
18 order for periodic payment of child support or for the provision of health care
19 coverage for a child under a medical support order; and

20 (2) intentionally **and unreasonably**

21 (A) withholds information about the residence or employment
22 of the obligor when that information is requested by a child support
23 enforcement agency;

24 (B) being an employer of the obligor, withholds information
25 about the eligibility of the obligor's children for coverage under the employer's
26 health insurance plan or about the cost of the coverage of the children under
27 the plan when that information is requested by a child support enforcement
28 agency; or

29 (C) participates in a commercial, business, or employment
30 arrangement with the obligor, knowing at the time that the arrangement is
31 made that it will allow the obligor to avoid paying all or some of the support

1 when it is due or to avoid having a lien placed on assets for the payment of
 2 delinquent support; receipt of a substantial asset for less than fair market value
 3 from an obligor after the obligor's support order has been established
 4 constitutes a rebuttable presumption that the person receiving the asset knew
 5 that the transfer would allow the obligor to avoid paying all or some of the
 6 support or to avoid having a lien placed on the asset.

7 * **Sec. 6.** AS 11.51.122(d) is amended to read:

8 (d) Aiding the nonpayment of child support **in the second degree** is a class A
 9 misdemeanor.

10 * **Sec. 7.** AS 11.51.122 is amended by adding new subsections to read:

11 (e) In addition to the penalties under (d) of this section, aiding the nonpayment
 12 of child support in the second degree is punishable by loss or restriction of a
 13 recreational license as provided in AS 12.55.139.

14 (f) In this section, "child" and "child support" have the meaning given in
 15 AS 11.51.120.

16 * **Sec. 8.** AS 12.55.139 is amended to read:

17 **Sec. 12.55.139. Penalties for criminal nonsupport.** In addition to other
 18 penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the
 19 court may suspend, restrict, or revoke, **for the period during which the arrearage**
 20 **continues to exist** [FOR A PERIOD NOT TO EXCEED SIX MONTHS], a
 21 recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

22 * **Sec. 9.** AS 12.55.139 is amended by adding a new subsection to read:

23 (b) In addition to other penalties imposed for the offense of aiding the
 24 nonpayment of child support in the first degree under AS 11.51.121 and for the
 25 offense of aiding the nonpayment of child support in the second degree under
 26 AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed
 27 one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a
 28 natural person.

29 * **Sec. 10.** AS 22.10.020 is amended by adding a new subsection to read:

30 (j) The superior court, in an action for divorce, separation, or child support,
 31 may issue orders to aid in the enforcement of child support, including orders requiring

1 an individual who owes support under an order of support to

2 (1) make payments according to an approved payment plan;

3 (2) participate in appropriate work activities if the individual is not
4 incapacitated; or

5 (3) complete and submit an application for a permanent fund dividend
6 under AS 43.23.015 or provide proof to the agency or the court that the individual is
7 not eligible for a dividend in a given year.

8 * **Sec. 11.** AS 25.27.020(d) is amended to read:

9 (d) The agency may issue an administrative order or request a court order that
10 requires an individual in arrears under an order of support for a child who is receiving
11 assistance under AS 47.07, or under AS 47.25.310 - 47.25.420 or a successor program,
12 **or for a child whose parent, guardian, or designee of the parent or guardian has**
13 **applied for aid from the agency under AS 25.27.100,** to make payments according
14 to an approved payment plan or, if the individual is not incapacitated, to participate in
15 appropriate work activities.

16 * **Sec. 12.** AS 25.27.020 is amended by adding new subsections to read:

17 (f) The agency may employ investigators who may exercise the power of
18 peace officers when those powers are specifically granted by the agency to that
19 investigator. Peace officer powers granted by the agency under this subsection may be
20 exercised for protection in the line of duty. An investigator granted and who is
21 exercising peace officer powers under this subsection may carry a firearm only if the
22 investigator

23 (1) has completed a peace officer training academy program; and

24 (2) has met annual firearm certification requirements that are
25 equivalent to those required by the Department of Public Safety.

26 (g) The agency may forgive all or part of an arrearage owed to the state under
27 AS 25.27.120 as provided under this subsection and under (i) of this section. The
28 agency shall adopt regulations establishing procedures and standards for the
29 forgiveness of all or part of an arrearage providing, at a minimum, that the forgiveness
30 is based on satisfactory proof that the obligor

31 (1) has or obtains employment for which income withholding can be

1 initiated under AS 25.27.250 within 60 days after the date the agency approves the
2 obligor for forgiveness;

3 (2) has enrolled in an employment training program approved by the
4 agency, has completed the training program on a date set by the agency, and has or
5 obtains employment for which income withholding can be initiated under
6 AS 25.27.250 within 30 days after completion of the employment training program; or

7 (3) enters into an agreement with the agency providing for alternative
8 payment procedures if the agency determines that there are unusual circumstances
9 justifying a waiver of income withholding and the terms of the agreement with the
10 agency are met under (h) of this section.

11 (h) An agreement providing for alternative payment procedures under (g)(3)
12 of this section must require minimum monthly payments. If an obligor fails to pay the
13 minimum monthly payment required by the agency for more than two months in a
14 calendar year without approval of the agency for good cause shown, the obligor is no
15 longer eligible for forgiveness under (g) of this section and the agency shall take all
16 necessary steps to enforce the original obligation.

17 (i) During each year in which an obligor complies with the requirements for
18 forgiveness of an arrearage under (g) of this section and any regulations adopted by
19 the agency, the agency may forgive 20 percent of the total arrearage owed to the state
20 under AS 25.27.120, including any interest owed on that part of the debt. For
21 purposes of determining the amount of the forgiveness under this section, the
22 arrearage amount is calculated as of the date the obligor is approved for participation
23 in the forgiveness program.

24 * **Sec. 13.** AS 25.27.040(b) is amended to read:

25 (b) The agency may not attempt to establish paternity in any case

26 **(1) involving incest or forcible rape, unless the mother of the child,**
27 **or the mother's parent or legal guardian if the mother is a minor or incompetent,**
28 **requests the establishment of paternity; in this paragraph, "forcible rape" means**
29 **sexual assault in the first degree under AS 11.41.410 or a conviction under a law**
30 **or ordinance from another jurisdiction with similar elements; "forcible rape"**
31 **includes adjudications of delinquency for acts with elements similar to**

AS 11.41.410;

(2) when legal proceedings for adoption are pending; [,] or

(3) when it would not be in the best interests of the children or the state.

* **Sec. 14.** AS 25.27.080(b) is amended to read:

(b) The agency on behalf of the custodian or the state shall take all necessary action permitted by law to enforce child support orders [SO ENTERED], including petitioning the court for orders to aid in the enforcement of child support.

* **Sec. 15.** AS 25.27.190(e) is amended to read:

(e) Modification or termination of future periodic support payments may be ordered upon a showing of good cause and material change in circumstances. The adoption or enactment of guidelines or a significant amendment to guidelines for determining child support is a material change in circumstances, if the guidelines are relevant to the petition. **As necessary to comply with 42 U.S.C. 666, a periodic modification of child support may be made without a showing of a material change in circumstances if the child support order being modified on the periodic basis has not been modified or adjusted during the three years preceding the periodic modification.**

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. Section 15 of this Act has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying a support order.

* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised under art. IV, sec. 1, Constitution of the State of Alaska, sec. 15 of this Act takes effect for purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15, Constitution of the State of Alaska.

1 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted
4 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.
5 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this
6 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as
7 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person
8 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by
9 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

10 (b) The provisions of AS 11.51.120(d)(2) and (d)(3)(B), enacted by sec. 3 of this Act,
11 and the provisions of AS 11.51.121(a)(2) and (a)(3)(B), enacted by sec. 4 of this Act, apply to
12 nonpayment of child support in violation of AS 11.51.120, as amended by secs. 1, 2, and 3 of
13 this Act, on or after the effective date of this Act or to aiding the nonpayment of child support
14 in the first degree under AS 11.51.121, as enacted by sec. 4 of this Act, on or after the
15 effective date of this Act, as applicable.

16 * **Sec. 19.** This Act takes effect July 1, 2004.