

Original sponsor: Rules Committee by
request of the Governor

Offered: 4/23/77
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 148 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to domestic relations; changing Rule
7 26(b)(2)(iii), Rules of Criminal Procedure and Rule
8 67(b), Rules of Civil Procedure; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. PURPOSE. Common law and statutory procedures governing the
12 remedies for enforcement of support for financially dependent minor children
13 by responsible parents have not proven sufficiently effective or efficient to
14 cope with the increasing incidence of financial dependency. The increasing
15 workload of courts, district attorneys, and the attorney general has made
16 such remedies uncertain, slow and inadequate, thereby resulting in a growing
17 burden on the financial resources of the state, which is required to provide
18 public assistance grants for basic maintenance requirements when parents fail
19 to meet their primary obligations. The state, therefore, exercising its
20 police and sovereign power, declares that the common law and Alaska statutes
21 pertaining to the establishment and enforcement of child support obligations
22 shall be augmented by additional remedies in order to meet the needs of minor
23 children. It is declared to be the public policy of this state that this Act
24 be construed and administered to the end that children shall be maintained
25 from the resources of responsible parents, thereby relieving, at least in
26 part, the burden presently born by the general citizenry through welfare and
27 welfare-related programs.

28 * Sec. 2. AS 09.55 is amended by adding a new section to read:

29 Sec. 09.55.238. ACTION FOR FAILURE TO PERMIT VISITATION WITH MINOR

1 CHILD. (a) When a court order is specific as to when a custodian of a
2 minor child must permit another person to have visitation with that
3 child, and the custodian fails, wilfully and without just excuse, to
4 permit visitation with the child in substantial conformance with the
5 court order, the person entitled to visitation has a cause of action
6 against the custodian for damages.

7 (b) The amount of damages recoverable under this section is \$200
8 for each failure of the custodian, wilfully and without just excuse, to
9 permit visitation with the child for substantially the length of time
10 and substantially in the same manner as specified in the court order.
11 This amount may not be increased or decreased once liability has been
12 established. The custodian is not liable for more than one failure in
13 respect to what is, under the court order, a single continuous period of
14 violation. The prevailing party in an action commenced under this
15 section is entitled to recover a reasonable attorney fee.

16 (c) As used in this section,

17 (1) "court order" means a decree, judgment, or order issued
18 by a court of competent jurisdiction;

19 (2) "custodian" means a natural person who has been awarded
20 custody, either temporary or permanent, of a minor child;

21 (3) "just excuse" includes illness of the child which makes
22 it dangerous to the health of the child for visitation to take place in
23 conformance with the court order; "just excuse" does not include the
24 wish of the child not to have visitation with the person entitled to it.

25 * Sec. 3. AS 11 is amended by adding a new chapter to read:

26 CHAPTER 36. FAILURE TO PERMIT VISITATION WITH MINOR CHILD.

27 Sec. 11.36.010. FAILURE TO PERMIT VISITATION WITH MINOR CHILD.

28 (a) When a court order is specific as to when a custodian of a minor
29 child must permit another person to have visitation with that child, it

1 is a misdemeanor for the custodian, wilfully and without just excuse, to
2 fail to permit visitation with the child in substantial conformance with
3 the court order.

4 (b) The custodian may not be charged under this section with more
5 than one offense in respect to what is, under the court order, a single
6 continuous period of visitation.

7 (c) As used in this section,

8 (1) "court order" means a decree, judgment, or order issued
9 by a court of competent jurisdiction;

10 (2) "custodian" means a natural person who has been awarded
11 custody, either temporary or permanent, of a minor child;

12 (3) "just excuse" includes illness of the child which makes
13 it dangerous to the health of the child for visitation to take place in
14 conformance with the decree, judgment, or order; "just excuse" does not
15 include the wish of the child not to have visitation with the person
16 entitled to it.

17 Sec. 11.36.020. SPOUSE AS WITNESS. In all prosecutions under this
18 chapter, existing provisions of law prohibiting the disclosure of con-
19 fidential communications between husband and wife do not apply, and both
20 husband and wife are competent to testify for or against each other as
21 to all relevant matters.

22 * Sec. 4. AS 25.25.010(6) is amended to read:

23 (6) "duty of support" includes a duty of support imposed or
24 imposable by law, or by a court order, decree or judgment, whether
25 interlocutory or final, whether incidental to a proceeding for divorce,
26 legal separation, separate maintenance or otherwise, and includes the
27 duty to pay arrearages of support past due and unpaid;

28 * Sec. 5. AS 25.25.010 is amended by adding new paragraphs to read:

29 (9) "foreign support order" means any support order defined

1 in (10) of this section issued by a court of competent jurisdiction in
2 another state;

3 (10) "support order" means any judgment, decree, or order of
4 support in favor of an obligee, whether temporary or final or subject to
5 modification, revocation, or remission, regardless of the kind of action
6 or proceeding in which it is entered.

7 * Sec. 6. AS 25.25.050 is amended to read:

8 Sec. 25.25.050. RELIEF FROM EXTRADITION. Any obligor contemplated
9 by sec. 40 of this chapter, who submits to the jurisdiction of the court
10 of this or such other state and complies with the court's order of
11 support, is relieved of extradition for desertion or nonsupport entered
12 in the courts of this state during the period of such compliance.

13 * Sec. 7. AS 25.25.130 is repealed and re-enacted to read:

14 Sec. 25.25.130. COSTS AND FEES. The supreme court may provide by
15 rule that a court of this state, when the state is acting as an initiat-
16 ing state, may not require payment of either a filing fee or other costs
17 from the obligee but may request the court of the responding state to
18 collect fees and costs from the obligor. The supreme court may also
19 provide by rule that a court of this state, when the state is acting as
20 a responding state, may not require payment of a filing fee or other
21 costs from the obligee, but may direct that all fees and costs requested
22 by the court in the initiating state and those incurred in this state
23 when acting as a responding state (including fees for filing of pleadings,
24 service of process, seizure of property, stenographic or duplication
25 service, or other service supplied to the obligee) be paid in whole or
26 in part by the obligor. These costs or fees do not have priority over
27 amounts due to the obligee.

28 * Sec. 8. AS 25.25.140 is amended to read:

29 Sec. 25.25.140. JURISDICTION BY ARREST. When the court of this

1 state, acting either as an initiating or responding state, has reason to
2 believe that the defendant may flee the jurisdiction, it may (1) as an
3 initiating state, request in its certificate that the court of the
4 responding state obtain the body of the defendant by appropriate process
5 if that is permissible under the law of the responding state; or (2) as
6 a responding state, obtain the body of the defendant by appropriate
7 process. If the court of this state, acting as a responding state,
8 obtains the body of the defendant, it may then release him upon his own
9 recognizance or upon his giving a bond in an amount set by the court to
10 assure his appearance at the hearing.

11 * Sec. 9. AS 25.25.150 is amended to read:

12 Sec. 25.25.150. STATE INFORMATION AND LOCATOR AGENCY. The child
13 support enforcement agency [DEPARTMENT OF HEALTH AND SOCIAL SERVICES]
14 is designated as the state information and locator agency for all
15 matters concerning the enforcement of support obligations under AS
16 47.23 and under this chapter, and it is its duty to:

17 (1) compile a list of the courts and their addresses in
18 this state having jurisdiction under this chapter and the appropriate
19 agency offices and their addresses and transmit it to the state infor-
20 mation agency of every other state which has adopted this or a sub-
21 stantially similar statute;

22 (2) maintain a register of such lists received from other
23 states [AND TRANSMIT COPIES OF THEM AS SOON AS POSSIBLE AFTER RECEIPT
24 TO EVERY COURT IN THIS STATE HAVING JURISDICTION UNDER THIS CHAPTER];

25 (3) locate obligors by utilizing all sources of information
26 and records available in the state, and in other states as appropriate;
27 these sources include telephone directories, real property records,
28 personal property records, vital statistics records, police records,
29 records of appropriate federal agencies, records of employers who are

1 willing to cooperate, and official records of the state including
2 records of the state Departments of Public Safety, Health and Social
3 Services, Revenue, and Labor; if state agencies or departments have
4 information or records concerning the obligor which are made confi-
5 dential by state statute, and they are not prohibited from doing so by
6 federal statute or regulation, those agencies or departments shall
7 cooperate with the child support enforcement agency at its request by
8 supplying at least (A) the last known address of the obligor and (B)
9 the name and address of the last known employer of the obligor, if
10 that information is in their possession; this information shall be
11 kept confidential by the child support enforcement agency and may be
12 used by the agency only for purposes of child support enforcement.

13 * Sec. 10. AS 25.25.160 is amended to read:

14 Sec. 25.25.160. AGENCY [COURT] DUTY WHEN ALASKA RESPONDING
15 STATE. When the child support enforcement agency [COURT] of this
16 state, acting as a responding state, receives from the court or child
17 support enforcement agency of an initiating state the copies mentioned
18 in sec. 120 of this chapter, it shall (1) attempt to locate the obligor
19 [DOCKET THE CAUSE], (2) present the cause to the court to docket and to
20 set a time and place for hearing, if the obligor does not agree to entry
21 of a voluntary order, and [NOTIFY THE ATTORNEY GENERAL OF THE STATE,]
22 (3) [SET A TIME AND PLACE FOR A HEARING, AND (4)] take such action as is
23 necessary in accordance with the laws of this state to obtain jurisdic-
24 tion.

25 * Sec. 11. AS 25.25.170 is repealed and re-enacted to read:

26 Sec. 25.25.170. FURTHER DUTY OF RESPONDING STATE. If the
27 obligor or his property is not found in this state and the child support
28 enforcement agency discovers that the obligor or his property may be
29 found in another state, it shall forward the documents received from the

1 initiating state to the state information agency in the state in which
2 the obligor is believed to be located. The agency shall inform the
3 initiating state of its action immediately.

4 * Sec. 12. AS 25.25.200(2) is amended to read:

5 (2) require the defendant to make payments at specified
6 intervals to the child support enforcement agency [CLERK OF THE COURT OR
7 THE OBLIGEE] and to report personally to the agency [CLERK] at such
8 times as may be considered necessary;

9 (b) Payment may be made by personal check if such method of
10 payment had been previously made regularly to the clerk of the court
11 or obligee, or if certified check or postal money orders are not
12 readily available.

13 * Sec. 13. AS 25.25.210 is amended to read:

14 Sec. 25.25.210. ADDITIONAL AGENCY [COURT] DUTIES WHEN ALASKA
15 RESPONDING STATE. The child support enforcement agency [COURT] of
16 this state, when acting as a responding state, has the following duties
17 [WHICH MAY BE CARRIED OUT THROUGH THE CLERK OF THE COURT]:

18 (1) upon the receipt of a payment made by the defendant under
19 an order of the court or otherwise, to transmit the payment immediately
20 to the court or child support enforcement agency of the initiating
21 state, and

22 (2) upon request, to furnish to the court or child support
23 enforcement agency of the initiating state a certified statement of all
24 payments made by the defendant.

25 * Sec. 14. AS 25.25.220 is amended to read:

26 Sec. 25.25.220. ADDITIONAL AGENCY [COURT] DUTY WHEN ALASKA
27 INITIATING STATE. The child support enforcement agency [COURT] of
28 this state, when acting as an initiating state, has the duty [, WHICH
29 MAY BE CARRIED OUT THROUGH THE CLERK OF COURT,] to receive and disburse

1 in accordance with law or regulation [IMMEDIATELY] all payments made by
2 the defendant or transmitted by the court or child support enforcement
3 agency of the responding state.

4 * Sec. 15. AS 25.25 is amended by adding new sections to read:

5 Sec. 25.25.252. PROCEEDINGS NOT TO BE STAYED. Except as provided
6 in sec. 258(c) of this chapter, a court of this state, when the state is
7 a responding state, may not stay the proceeding or refuse a hearing
8 under this chapter because of any pending or prior action or proceeding
9 for divorce, separation, annulment, dissolution, habeas corpus, adoption,
10 or custody in this or any other state. The court shall hold a hearing
11 and may issue a support order pendente lite. In the interest of a
12 speedy resolution of the support issue, it may require the obligor to
13 post a bond for the prompt prosecution of the pending proceeding. If
14 the other action or proceeding is concluded before the hearing in the
15 instant proceeding and the judgment in the other proceeding provides
16 for the support demanded in the complaint being heard, the court must
17 conform its support order to the amount allowed in the other action or
18 proceeding. After the court has conformed its support order to the
19 amount in the other action, it may not stay enforcement of its support
20 order because of the retention of jurisdiction for enforcement purposes
21 by the court in the other action or proceeding.

22 Sec. 25.25.254. REGISTRATION OF FOREIGN SUPPORT ORDERS. (a) If
23 the duty of support is based on a support order of a court of competent
24 jurisdiction in another state, the obligee may register that foreign
25 support order in the superior court in the manner, with the effect,
26 and for the purposes provided in secs. 254 - 258 of this chapter.

27 (b) The clerk of the court shall maintain a registry of foreign
28 support orders in which he shall file the foreign support orders
29 registered with the court.

1 (c) An obligee seeking to register a foreign support order in
2 the superior court shall transmit to the clerk of the court (1) three
3 certified copies of the order with all modifications of it, (2) one
4 copy of the reciprocal enforcement of support act of the state in
5 which the order was made, and (3) a statement, verified and signed by
6 the obligee, showing the last known mailing address of the obligor,
7 the amount of support remaining unpaid, a description and the location
8 of any property of the obligor available upon execution, and a list of
9 the states in which the order is registered. Upon receipt of these
10 documents, the clerk of the court, shall file them in the registry of
11 foreign support orders. The filing constitutes registration under
12 this section. If permitted by a rule of the Alaska Supreme Court,
13 under sec. 130 of the chapter, no filing fee or payment of other costs
14 may be required of the obligee.

15 (d) Promptly upon registration, the clerk of the court shall
16 send by certified or registered mail to the obligor at the address
17 given a notice of the registration with a copy of the registered
18 support order and the mailing address of the obligee. He shall also
19 docket the case and notify the child support enforcement agency of his
20 action. The agency shall proceed to enforce the order.

21 Sec. 25.25.256. AGENCY TO REPRESENT OBLIGEE. Upon request of
22 the obligee, the child support enforcement agency shall represent the
23 obligee in proceedings to register a foreign support order in this
24 state.

25 Sec. 25.25.258. EFFECT OF REGISTRATION; ENFORCEMENT PROCEDURES.

26 (a) Upon registration, the foreign support order shall be treated in
27 the same manner as a support order issued by the superior court. It
28 has the same effect and is subject to the same procedures, defenses,
29 and proceedings for re-opening, vacating, or staying as a support

1 order of this state and may be enforced and satisfied in like manner.

2 (b) The obligor has 30 days after the mailing of notice of the
3 registration in which to petition the court to vacate the registration
4 or for other relief.

5 (c) At a hearing to enforce the registered support order, the
6 obligor may present only matters that would be available to him as
7 defenses in an action to enforce a foreign money judgment. If he
8 shows to the court that an appeal from the order is pending or will be
9 taken or that a stay of execution has been granted, the court shall
10 stay enforcement of the order until the appeal is concluded, the time
11 for appeal has expired, or the order is vacated or otherwise modified,
12 upon satisfactory proof that the obligor has furnished security for
13 payment of the support ordered as required by the state in which the
14 support order was issued. If he shows to the court any relevant
15 ground upon which enforcement of a support order of this state may be
16 stayed, the court shall stay enforcement of the order for an appropriate
17 period if the obligor furnishes the same security for payment of the
18 support ordered that is required for a support order of this state.

19 * Sec. 16. AS 47.23.010 is amended to read:

20 Sec. 47.23.010. CREATION OF CHILD SUPPORT ENFORCEMENT AGENCY.

21 There is created in the Department of Revenue [HEALTH AND SOCIAL SER-
22 VICES] the child support enforcement agency.

23 * Sec. 17. AS 47.23.020 is repealed and re-enacted to read:

24 Sec. 47.23.020. DUTIES OF THE AGENCY. The agency shall

25 (1) obtain, enforce, and administer child support orders of
26 the superior courts of the state;

27 (2) adopt regulations to carry out the purposes of this
28 chapter including regulations which establish

29 (A) schedules for determining the amount an obligor is

1 liable to contribute toward the support of an obligee under this
2 chapter and under Title IV-D, Social Security Act; and

3 (B) procedures for hearings conducted under sec. 170 of
4 this chapter;

5 (C) a uniform schedule of fees which may be charged the
6 obligor if the child support payments are 10 or more days overdue
7 or if payment is made by a check backed by insufficient funds.

8 (3) administer and enforce the Uniform Reciprocal Enforcement
9 of Support Act (AS 25.25);

10 (4) establish, enforce, and administer child support obliga-
11 tions administratively in accordance with this chapter; and

12 (5) administer the state plan required under Title IV-D of
13 the Social Security Act as amended.

14 * Sec. 18. AS 47.23.040 is repealed and re-enacted to read:

15 Sec. 47.23.040. DETERMINATION OF PATERNITY. (a) The agency shall
16 appear on behalf of minor children or their mother or legal custodian or
17 the state and initiate efforts to have the paternity of children born
18 out of wedlock determined by the court

19 (1) on voluntary application by the mother or other legal
20 custodian; or

21 (2) when the children are recipients of aid to families with
22 dependent children and the father refuses to execute an acknowledgement
23 of paternity.

24 (b) The agency may not attempt to establish paternity in any
25 case involving incest or forcible rape, when legal proceedings for
26 adoption are pending, or when it would not be in the best interests of
27 the children or the state.

28 * Sec. 19. AS 47.23 is amended by adding a new section to read:

29 Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency

1 may appear in an action seeking an award of support in behalf of a child
2 owed a duty of support, and may also appear in an action seeking
3 modification of a support order, decree or judgment already entered.
4 Action under this section may be undertaken upon application of an
5 obligee, or at the agency's own discretion if the obligor is liable to
6 the state under sec. 120(a) or (b) of this chapter.

7 * Sec. 20. AS 47.23.050 is amended to read:

8 Sec. 47.23.050. LEGAL ASSISTANCE. The agency [DEPARTMENT OF
9 HEALTH AND SOCIAL SERVICES] shall contract with the Department of Law to
10 provide needed legal services.

11 * Sec. 21. AS 47.23.060(b) is repealed.

12 * Sec. 22. AS 47.23.070(b) is amended to read:

13 (b) The order of assignment is binding upon an employer upon
14 service of a copy of the order upon the employer and until further order
15 of the court. The employer may, for each payment made under the order,
16 deduct \$1 from other wages or salary owed to the employee [FOR EACH PAY-
17 MENT MADE UNDER THE ORDER].

18 * Sec. 23. AS 47.23.080 is repealed and re-enacted to read:

19 Sec. 47.23.080. ENFORCEMENT OF SUPPORT ORDERS. (a) A court order
20 requiring payment of child support shall be modified to order payments
21 be made to the agency upon application.

22 (b) The agency on behalf of the custodian or the state shall take
23 all necessary action permitted by law to enforce child support orders so
24 entered, including petitioning the court for orders to aid in the en-
25 forcement of child support.

26 (c) The determination or enforcement of a duty of support is
27 unaffected by any interference by the custodian of the child with rights
28 of custody or visitation granted by a court.

29 (d) No order of arrest may be issued in the enforcement of child

1 support unless the court has reason to believe that the obligee may flee
2 the jurisdiction or unless the obligee has been ordered to appear in the
3 action and has failed to do so.

4 * Sec. 24. AS 47.23.090 is repealed.

5 * Sec. 25. AS 47.23 is amended by adding a new section to read:

6 Sec. 47.23.095. AGENCY EXEMPT FROM EXECUTION. No execution may
7 issue against money held in the fund established under sec. 30 of this
8 chapter.

9 * Sec. 26. AS 47.23.100 is amended to read:

10 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall
11 provide aid to any person due child support under the laws of this state
12 upon application. If the obligee is indigent or otherwise unable to pay
13 for these services, the agency shall act without charge to the obligee.
14 If the agency determines that the obligee is financially able to pay,
15 costs shall be assessed according to regulations adopted by the depart-
16 ment and be paid into the fund established in sec. 30 of this chapter
17 [AS 47.23.035].

18 * Sec. 27. AS 47.23.110(2) is amended to read:

19 (2) "department" means the Department of Revenue [HEALTH AND
20 SOCIAL SERVICES].

21 * Sec. 28. AS 47.23.110 is amended by adding new paragraphs to read:

22 (3) "duty of support" includes a duty of child support im-
23 posed or imposable by law, by a court order, decree or judgment, or by a
24 finding or decision rendered under this chapter whether interlocutory or
25 final, whether incidental to a proceeding for divorce, legal separation,
26 separate maintenance, or otherwise, and includes the duty to pay ar-
27 rearages of support past due and unpaid;

28 (4) "obligee" means a person to whom a duty of support is
29 owed;

1 (5) "obligor" means a person owing a duty of support;

2 (6) "support order" means any judgment, decree, or order of
3 child support in favor of an obligee whether temporary or final, or
4 subject to modification, revocation, or remission, regardless of the
5 kind of action or proceeding in which it is entered.

6 * Sec. 29. AS 47.23 is amended by adding new sections to read:

7 Sec. 47.23.120. OBLIGOR LIABLE FOR PUBLIC ASSISTANCE FURNISHED
8 OBLIGEE. (a) An obligor is liable to the state in the amount of assis-
9 tance granted under AS 47.25.310 - 47.25.420 to a child whom the obligor
10 owes a duty of support except that if a support order has been entered,
11 the liability of the obligor may not exceed the amount of support pro-
12 vided for in the support order.

13 (b) An obligor is liable to the state in the amount of the cost
14 incurred if the state is maintaining a child whom the obligor owes a
15 duty of support in a foster home or institution, except that if a
16 support order has been entered, or an agreement for payment of that cost
17 executed between the obligor and the state, the liability of the obligor
18 may not exceed the amount provided in the support order or agreement.

19 Sec. 47.23.130. SUBROGATION OF STATE. If the obligor is liable to
20 the state under sec. 120(a) or (b) of this chapter, the state is sub-
21 rogated to the rights of the obligee to either bring an action seeking a
22 support order or to proceed under secs. 160 - 270 of this chapter to
23 establish and enforce a duty of support and further to enforce by exe-
24 cution, in accordance with secs. 230 - 270 of this chapter or otherwise,
25 any support order already entered in favor of the obligee, up to the
26 amount for which the obligor is liable to the state under sec. 120(a)
27 and (b) of this chapter.

28 Sec. 47.23.140. POWER OF AGENCY TO ADMINISTRATIVELY ESTABLISH AND
29 ENFORCE SUPPORT OBLIGATION; PROCEDURES TO BE UTILIZED. (a) If no

1 support order has been entered, the agency may establish a duty of
2 support utilizing the procedures prescribed in secs. 160 - 220 of this
3 chapter, and may enforce a duty of support utilizing the procedure
4 prescribed in secs. 230 - 270 of this chapter. Action under this
5 subsection may be undertaken upon application of an obligee, or at the
6 agency's own discretion if the obligor is liable to the state under sec.
7 120(a) or (b) of this chapter.

8 (b) If a support order has been entered, the agency may enforce
9 the support order utilizing the procedures prescribed in secs. 150 and
10 230 - 270 of this chapter.

11 Sec. 47.23.150. REQUIRED NOTICE IN ADMINISTRATIVE ENFORCEMENT OF
12 SUPPORT ORDERS. (a) Action to enforce a support order administratively
13 under secs. 230 - 270 of this chapter is initiated by the agency serving
14 a notice on the obligor of his liability under the support order.
15 Notice under this subsection shall be served personally or by regis-
16 tered, certified, or insured mail, return receipt requested, for re-
17 stricted delivery only to the person to whom the notice is directed or
18 to the person authorized under federal regulation to receive that per-
19 son's restricted delivery mail.

20 (b) Notice served under (a) of this section shall state the amount
21 of the obligor's liability under the support order and that the property
22 of the obligor is subject to execution in that amount in accordance with
23 the procedures prescribed in secs. 230 - 270 of this chapter at the
24 expiration of 30 days from the date of service of the notice.

25 Sec. 47.23.160. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-
26 TIONS; NOTICE AND FINDING OF FINANCIAL RESPONSIBILITY. (a) An action
27 to establish a duty of support authorized under sec. 140(a) of this
28 chapter is initiated by the agency serving on the alleged obligor a
29 notice and finding of financial responsibility. The notice and finding

1 served under this subsection shall be served personally or by regis-
2 tered, certified, or insured mail, return receipt requested, for re-
3 stricted delivery only to the person to whom the notice and finding is
4 directed or to the person authorized under federal regulation to receive
5 his restricted delivery mail.

6 (b) The notice and finding of financial responsibility served
7 under (a) of this section shall state

8 (1) the sum or periodic payments for which the alleged
9 obligor is found to be responsible, calculated by taking into considera-
10 tion the need of the alleged obligee, the alleged obligor's liability to
11 the state under sec. 130 of this chapter if any, and his duty of support
12 under the law;

13 (2) the name of the alleged obligee and his custodian;

14 (3) that the alleged obligor may appear and show cause in a
15 hearing held by the agency why the finding is incorrect, should not be
16 finally ordered, and should be modified or rescinded, because (A) no
17 duty of support is owed, or (B) the amount of support found to be owed
18 is incorrect;

19 (4) that if the person served with the notice and finding of
20 financial responsibility does not request a hearing within 30 days, the
21 property of the person will be subject to execution in accordance with
22 secs. 230 - 270 of this chapter in the amounts stated in the finding
23 without further notice or hearing.

24 Sec. 47.23.170. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-
25 TIONS; HEARING. (a) A person served with a notice and finding of
26 financial responsibility is entitled to a hearing if a request in
27 writing for a hearing is served on the agency by registered mail, return
28 receipt requested, within 30 days of the date of service of the notice
29 of financial responsibility.

1 (b) If a request under (a) is made, the execution under secs.
2 230 - 270 of this chapter shall be stayed pending the decision on the
3 hearing, or the decision of a court, if appealed. If no request for a
4 hearing is made, the finding of responsibility is final at the expira-
5 tion of the 30-day period.

6 (c) If a hearing is requested, it shall be held within 30 days of
7 the date of service of the request for hearing on the agency.

8 (d) The hearing officer shall determine the amount of periodic
9 payments necessary to satisfy the past, present, and future liability of
10 the alleged obligor under sec. 130 of this chapter, if any, and under
11 any duty of support imposable under the law. The amount of periodic
12 payments determined under this subsection is not limited by the amount
13 of any public assistance payment made to or for the benefit of the
14 child.

15 (e) The hearing officer shall consider the following in making his
16 determination under (d) of this section:

17 (1) the needs of the alleged obligee, disregarding the income
18 or assets of the custodian of the alleged obligee;

19 (2) the amount of the alleged obligor's liability to the
20 state under sec. 125 of this chapter if any;

21 (3) the intent of the legislature that children be supported
22 as much as possible by their natural parents;

23 (4) the ability of the alleged obligor to pay.

24 (f) If the alleged obligor requesting the hearing fails to appear
25 at the hearing, the hearing officer shall enter a decision declaring the
26 property of the alleged obligor subject to execution in accordance with
27 secs. 230 - 270 of this chapter in the amounts stated in the notice and
28 filing of financial responsibility.

29 Sec. 47.23.180. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-

1 TIONS; DECISION. (a) Within 20 days of the date of the hearing, the
2 hearing officer shall promulgate findings and a decision determining
3 whether a duty of support exists and, if a duty of support is found, the
4 amount of periodic payments or sum for which the alleged obligor is
5 found to be responsible.

6 (b) Liability to the state under sec. 130 of this chapter is
7 limited to the amount for which the obligor is found to be responsible
8 under (a) of this section.

9 (c) A decision rendered under (a) of this section is modified to
10 the extent that a subsequent order, judgment, or decree of a superior
11 court is inconsistent with the decision rendered under (a) of this
12 section.

13 Sec. 47.23.190. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-
14 TIONS; MODIFICATION OF A FINDING OR DECISION OF RESPONSIBILITY. (a)
15 Unless a support order has been entered, the obligor, or the obligee or
16 his custodian, may petition the agency or its designee for a modifi-
17 cation of the finding or decision of responsibility previously entered
18 with regard to future periodic support payments.

19 (b) The agency shall grant a hearing upon a petition made under
20 (a) of this section if affidavits submitted with the petition make a
21 showing of good cause and material change in circumstances sufficient to
22 justify action under (e) of this section.

23 (c) If a hearing is granted, the agency shall serve a notice of
24 hearing together with a copy of the petition and affidavits submitted on
25 the obligee or his custodian and the obligor personally or by regis-
26 tered, certified, or insured mail, return receipt requested, for re-
27 stricted delivery only to the person to whom the notice is directed or
28 to the person authorized under federal regulation to receive his re-
29 stricted delivery mail.

1 (d) A hearing shall be set not less than 15 nor more than 30 days
2 from the date of mailing of notice of hearing, unless extended for good
3 cause.

4 (e) Modification of future periodic support payments may be
5 ordered upon a showing of good cause and material change in circum-
6 stances.

7 Sec. 47.23.200. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-
8 TIONS; USE OF STANDARDS IN DETERMINATION OF SUPPORT PAYMENTS. (a) In
9 making its findings under sec. 160 of this chapter, and in establishing
10 and modifying amounts of periodic support payments under secs. 180 and
11 190 of this chapter, the agency shall consider the standards adopted by
12 regulation under sec. 20 of this chapter and any standards for deter-
13 mination of support payments used by the superior court of the district
14 of residence of the obligor.

15 Sec. 47.23.210. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-
16 TIONS; JUDICIAL REVIEW. (a) Judicial review by the superior court of
17 an agency decision establishing or modifying a duty of support or
18 amounts of support due may be obtained by filing a notice of appeal in
19 accordance with the applicable rules of court governing appeals in civil
20 matters. A notice of appeal shall be filed within 30 days of the
21 decision.

22 (b) The complete record of the proceedings, or the parts of it
23 which the appellant designates, shall be prepared by the agency. A copy
24 shall be delivered to all parties participating in the appeal. The
25 original shall be filed in the superior court within 30 days after the
26 appellant pays the estimated cost of preparing the complete or desig-
27 nated record or files a corporate surety bond equal to the estimated
28 cost.

29 (c) The complete record includes

- 1 (1) the notice and finding of financial responsibility;
- 2 (2) the request for a hearing;
- 3 (3) the decision of the hearing officer;
- 4 (4) the exhibits admitted or rejected;
- 5 (5) the written evidence;
- 6 (6) all other documents in the case.

7 (d) Upon order of the superior court, appeals may be taken on the
8 original record or parts of it. The record may be typewritten or
9 duplicated by any standard process. Analogous rules of court governing
10 appeals in civil matters shall be followed when this chapter is silent,
11 and when not in conflict with this chapter.

12 (e) The superior court may enjoin agency action in excess of con-
13 stitutional or statutory authority at any stage of an agency proceeding.
14 If agency action is unlawfully or unreasonably withheld, the superior
15 court may compel the agency to initiate action.

16 Sec. 47.23.220. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGA-
17 TIONS; JUDICIAL REVIEW. (a) An appeal shall be heard by the superior
18 court sitting without a jury.

19 (b) Inquiry in an appeal extends to the following questions: (1)
20 whether the agency has proceeded without or in excess of jurisdiction;
21 (2) whether there was a fair hearing; and (3) whether there was a pre-
22 judicial abuse of discretion. Abuse of discretion is established if the
23 agency has not proceeded in the manner required by law, the order or
24 decision is not supported by the findings, or the findings are not
25 supported by the evidence.

26 (c) The court may exercise its independent judgment on the evi-
27 dence. If it is claimed that the findings are not supported by the
28 evidence, abuse of discretion is established if the court determines
29 that the findings are not supported by (1) the weight of the evidence,

1 or (2) substantial evidence in the light of the whole record.

2 (d) The court may augment the agency record in whole or in part,
3 or hold a hearing de novo. If the court finds that there is relevant
4 evidence which, in the exercise of reasonable diligence, could not have
5 been produced or which was improperly excluded at the hearing, the court
6 may

7 (1) enter judgment as provided in (e) of this section and
8 remand the case to be reconsidered in the light of that evidence; or

9 (2) admit the evidence at the appellate hearing without
10 remanding the case.

11 (e) The court shall enter judgment setting aside, modifying,
12 remanding, or affirming the decision, without limiting or controlling in
13 any way the discretion legally vested in the agency.

14 (f) The court in which proceedings under this section are started
15 may stay the operation of the decision until

16 (1) the court enters judgment;

17 (2) a notice of further appeal from the judgment is filed; or

18 (3) the time for filing the notice of appeal expires.

19 (g) No stay may be imposed or continued if the court is satisfied
20 that it is against the public interest.

21 (h) If further appeal is taken, the supreme court may, in its
22 discretion, stay the superior court judgment or agency order.

23 Sec. 47.23.230. ASSERTION OF LIEN. (a) At the expiration of 30
24 days from either (1) the date of service of notice under sec. 150 of
25 this chapter, or (2) the date of service of a notice and finding of
26 financial responsibility under sec. 160 of this chapter, the agency may
27 assert a lien upon the real or personal property of the obligor, in the
28 amount of the obligor's liability.

29 (b) No lien filed under this section has any effect against

1 earnings, or bank deposits or balances, unless it states the amount of
2 the obligor's liability under this chapter and unless the lien is served
3 in accordance with sec. 240 of this chapter.

4 (c) The lien shall attach to all real and personal property of the
5 obligor and be effective on the date of filing of the lien with the
6 recorder of the recording district in which the property attached is
7 located. A lien against earnings shall attach and be effective upon
8 filing with the recorder of the recording district in which the employer
9 does business or maintains an office or agent for the purpose of doing
10 business.

11 (d) Whenever a lien has been filed under this section and there is
12 in the possession of any person, political subdivision, or department of
13 the state having actual notice of the lien any property which may be
14 subject to the lien, that property may not be paid over, released, sold,
15 transferred, encumbered or conveyed unless

16 (1) a written release or waiver signed by a representative of
17 the agency has been delivered to the person, political subdivision, or
18 department of the state; or

19 (2) a decision has been made in a hearing held under sec. 170
20 of this chapter or by a superior court ordering release of the lien on
21 the grounds that no debt exists or that the debt has been satisfied.

22 Sec. 47.23.240. SERVICE OF LIEN. (a) The agency may at any time
23 after filing of a lien filed under sec. 230 of this chapter serve a copy
24 of the lien upon any person, political subdivision, or department of the
25 state possessing earnings, or deposits or balances held in any bank
26 account of any nature which are due, owing, or belonging to the obligor.

27 (b) A lien filed under sec. 230 of this chapter shall be served
28 upon a person, political subdivision, or department of the state per-
29 sonally or by registered, certified, or insured mail, return receipt

1 requested.

2 Sec. 47.23.250. ORDER TO WITHHOLD AND DELIVER. (a) At the
3 expiration of 30 days from the date of service of notice under sec. 150
4 of this chapter, or from the date of service of a notice and finding of
5 financial responsibility under sec. 160 of this chapter, the agency may
6 issue to any person, political subdivision, or department of the state
7 an order to withhold and deliver property.

8 (b) All real or personal property belonging to the obligor is
9 subject to an order to withhold and deliver, including, but not limited
10 to, earnings which are due, owing, or belonging to the debtor.

11 (c) The agency may issue an order to withhold and deliver when it
12 has reason to believe that there is in the possession of a person,
13 political subdivision, or department of the state property which is due,
14 owing, or belonging to the obligor.

15 (d) The order to withhold and deliver shall be served upon the
16 person, political subdivision, or department of the state possessing the
17 property in the manner provided for service of liens under sec. 240 of
18 this chapter. The order shall state the amount of the obligor's lia-
19 bility and shall state in summary the terms of secs. 260 and 270 of this
20 chapter.

21 (e) Any person, political subdivision, or department of the state
22 served with an order to withhold and deliver is required to make true
23 answers to inquiries contained in the order under oath and in writing
24 within 30 days of service of the order and is further required to answer
25 all inquiries subsequently put.

26 (f) If any person, political subdivision, or department of the
27 state upon whom service of an order to withhold and deliver has been
28 made possesses property due, owing, or belonging to the obligor, that
29 person, subdivision, or department shall withhold the property imme-

1 diately upon receipt of the order and shall deliver the property to the
2 agency upon demand after the expiration of the 30-day period from the
3 date of service of the order. The agency shall hold property delivered
4 under this subsection in trust for application against the liability of
5 the obligor under sec. 130 of this chapter or for return, without
6 interest, depending on final determination of liability or nonliability
7 under this chapter. The agency may accept a good and sufficient bond
8 conditioned upon final determination of liability in lieu of requiring
9 delivering of property under this subsection.

10 (g) Delivery to the agency of the money or other property due,
11 owing, or belonging to the obligor shall satisfy the requirement of the
12 order to withhold and deliver. Delivery of money due and owing to the
13 obligor under any contract of employment, express or implied, or held by
14 any person, political subdivision, or department of the state, and
15 subject to withdrawal by the obligor, shall be delivered by remittance
16 payable to the order of the agency.

17 (h) The agency shall defend and hold harmless for such actions
18 people withholding or delivering money or property to the agency in
19 accordance with this section.

20 (i) The exemptions from execution by judgment debtors under AS
21 09.35.080(a) and the restrictions from execution by judgment debtors
22 under AS 09.35.080(b)(1) do not apply to proceedings to enforce the
23 payment of child support under secs. 230 - 270 of this chapter.

24 Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN
25 ORDER OR LIEN. If any person, political subdivision, or department of
26 the state (1) fails to make answer to an order to withhold and deliver
27 within the time prescribed in sec. 250 of this chapter; (2) fails or
28 refuses to deliver property in accordance with an order issued under
29 sec. 250 of this chapter; (3) pays over, releases, sells, transfers, or

1 conveys real property subject to a lien filed under sec. 230 of this
2 chapter to or for the benefit of the obligor or any other person; (4)
3 fails or refuses to surrender upon demand property attached; (5) fails
4 or refuses to honor an assignment of wages presented by the agency, the
5 person, political subdivision, or department of the state is liable to
6 the agency in an amount equal to 100 per cent of the amount constituting
7 the basis of the lien, order to withhold and deliver, attachment, or
8 assignment of wages, together with costs, interest, and reasonable
9 attorney fees.

10 Sec. 47.23.270. JUDICIAL RELIEF FROM ADMINISTRATIVE EXECUTION.

11 Any person against whose property a lien has been filed under sec. 230
12 of this chapter or an order to withhold and deliver served in accordance
13 with sec. 250 of this chapter may apply for relief to the superior
14 court.

15 Sec. 47.23.280. SEVERABILITY: ALTERNATIVE WHEN METHOD OF NOTIFI-
16 CATION HELD INVALID. If any provision of this chapter or the applica-
17 tion of it to any person or circumstance is held invalid, the invalidity
18 shall not affect other provisions or applications of this chapter which
19 can be given effect without the invalid provision or application, and to
20 this end the provisions of this chapter are severable. If any method of
21 notification provided for in this chapter is held invalid, service as
22 provided for by the laws of the state for service of process in a civil
23 action shall be substituted for the method held invalid.

24 * Sec. 30. AS 12.62.020(b) is repealed and re-enacted to read:

25 (b) No information collected under the provisions of any of the
26 following titles of the Alaska Statutes, except for information related
27 to criminal offenses under those titles, may be collected or stored in
28 criminal justice information systems:

29 (1) AS 02, except chs. 20,30, and 35;

- 1 (2) AS 03 - 04;
2 (3) AS 05, except chs. 20,25,30, and 35;
3 (4) AS 06 - 10;
4 (5) AS 13 - 15;
5 (6) AS 17;
6 (7) AS 18, except AS 18.60.120 - 18.60.175 and ch. 65;
7 (8) AS 19 - 24;
8 (9) AS 25, except ch. 25;
9 (10) AS 26 - 27;
10 (11) AS 29 - 32;
11 (12) AS 34 - 46; and
12 (13) AS 47, except chs. 10 and 23.

13 * Sec. 31. AS 12.62.070(6) is amended to read:

14 (6) "law enforcement agency" means a public agency which
15 performs as one of its principal functions activities pertaining to law
16 enforcement and includes the child support enforcement agency created by
17 AS 47.23.

18 * Sec. 32. AS 43.05.230(a) is amended to read:

19 (a) Except in connection with official investigations or pro-
20 ceedings of the department, whether judicial or administrative, invol-
21 ving taxes due under this title, except in connection with official
22 investigations or proceedings of the child support enforcement agency,
23 whether judicial or administrative, involving child support obligations
24 imposed or imposable under AS 25 or AS 47, and except as otherwise pro-
25 vided in this section, it is unlawful for an officer, employee or agent
26 of the state to divulge the amount of income or the particulars set out
27 or disclosed in a report or return made under this title.

28 * Sec. 33. Alaska State Supreme Court Rule of Criminal Procedure 26(b)(2)
29 (iii) is amended to read:

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(iii) These privileges do not apply to a criminal action or proceeding for a crime committed against the person or property of the other spouse or a child of either, including an action for failure to permit visitation with a minor child.

* Sec. 34. Section 23 of this Act has the effect of changing Rule 67(b) of the Rules of Civil Procedure of the Alaska Supreme Court. It removes the requirement that the court accept reasonable agreements as to method of payment of child support. It requires that the court order payments to be made to the child support enforcement agency only upon application, and not in every child support matter coming before the court.

* Sec. 35. This Act takes effect July 1, 1977.