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National Conference of State Legislatures


**National Conference of State Legislatures**

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Earl S. Mackey,
Executive Director

NATIONAL CONFERENCE OF STATE LEGISLATURES
CHILD SUPPORT ENFORCEMENT SEMINAR

Denver, Colorado
October 11-12, 1979

AGENDA

THURSDAY, OCTOBER 11

| | |
|---|---|
| 8:00-9:00 a.m.<br>(Old Supreme Court Chamber<br>Second Floor, State Capitol-<br>OSCC) | REGISTRATION |
| 9:00-9:15 a.m.<br>(OSCC) | WELCOME<br>Program Moderator: Representative Ronald H. Strahle, Colorado<br>Fred E. Anderson, Senate President, Colorado |
| 9:15-10:00 a.m.<br>(OSCC) | KEYNOTE ADDRESS<br>"Overview of Child Support Enforcement"<br><br>Louis B. Hays, Deputy Director, Office of Child Support Enforcement, U.S. Department of Health, Education and Welfare |
| 10:00-10:45 a.m.<br>(OSCC) | "Putting Faces to Names and Numbers — Scope of the Problem"<br><br>Judith B. Cassetty, Ph. D., Assistant Professor, School of Social Work, University of Texas at Austin |
| 10:45-11:00 a.m.<br>(Ground Floor, State Capitol) | COFFEE BREAK |
| 11:00 a.m.-12:15 p.m. | "The Benefits of Effective State Child Support Enforcement Programs"<br><br>Representative John Clawson, Minnesota<br>Representative Ellen Crowley, Wyoming |
| 12:30-2:00 p.m.<br>(Radisson Hotel<br>Colorado Room 4,<br>Second Floor) | LUNCHEON<br>"An Executive Branch Perspective on Child Support Enforcement"<br><br>Anthony W. Mitchell, Ph. D., Executive Director, Department of Social Services, Utah |
| 2:00-2:30 p.m.<br>(Radisson Hotel,<br>Colorado Room 4) | "Program Basics and Major Variations Among the States"<br><br>Lavon Loynd, Technical Assistance Coordinator, National Institute for Child Support Enforcement |

2:30-3:00 p.m.
(Radisson Hotel, Colorado Room 4)

"What a State CSE Program Might Need from a State Legislature: Introduction to Concurrent Session Discussions?

Panel Moderator:
Dennis C. Cooper, Institute Manager, National Institute for Child Support Enforcement

Panel:
Topic A: Sherwood Zink, Legal Counsel, Wisconsin Bureau of Child Support Enforcement
Topic B: Robert E. Keith, Assistant Attorney General, Iowa
Topic C: R. James Lore, Former Associate Attorney General, North Carolina

3:15-5:00 p.m.
(State Capitol)

CONCURRENT SESSIONS
(Attendees will break into two groups (I & II) to discuss Topic A simultaneously)
Topic A: Establishment Legislation
Enabling Legislation
Legislative Advisory Committees
Court Representation
Disclosure
Interest Charges on Arrearages
Debt Set Off Collections

(House Committee Room F, Ground Floor)

Group I
Moderator:
Representative Irving Newhouse, Washington
*Resource People:
Robert E. Keith
Lawrence R. Young
Lavon Loynd
Kenneth Muroya

(House Committee Room C, Ground Floor)

Group II
Moderator:
Representative Wint Winter, Kansas
*Resource People:
Sherwood Zink
R. James Lore
Dennis C. Cooper

6:00-7:30 p.m.
(Brown Palace Hotel, Central City Room, Mezzanine Level)

CASH BAR RECEPTION

FRIDAY, OCTOBER 12

8:30-10:15 a.m.
(State Capitol)

CONCURRENT SESSIONS

*Affiliations of Resource People Listed at end of Agenda.

(House Committee Room F, Ground Floor)

Group I
Topic B: Enhancement Legislation I
- Public Support of Children
- Post Judgment Remedies
  - Attachment
  - Judgment Lien
  - Garnishment
  - Wage Assignment
  - Order to Withhold and Deliver
- Budgeting
- Paternity

Moderator:
- Representative Gretchen Kafoury, Oregon

*Resource People:
- Sherwood Zink
- Robert E. Keith
- Lawrence R. Young
- Dennis C. Cooper

(House Committee Room C, Ground Floor)

Group II
Topic C: Enhancement Legislation II
- Consent Orders
- Alternative Court Systems
- Criminal Enforcement
- URESA
- Extradition
- Uniform Registration of Foreign Judgments

Moderator:
- Representative Charles Parr, Alaska

*Resource People:
- R. James Lore
- Daniels McLean
- Lavon Loynd

10:15-10:30 a.m. (Ground Floor, State Capitol)

COFFEE BREAK

10:30 a.m.-12:15 p.m.

CONCURRENT SESSIONS
Topic B and C will be repeated. Groups stay in same rooms. Resource people switch rooms.

(House Committee Room F, Ground Floor)

Group I
Topic C: Enhancement Legislation II

Moderator:
- Representative Ann Mary Dussault, Montana

*Resource People:
- R. James Lore
- Daniels McLean
- Lavon Loynd

(House Committee Room C, Ground Floor)

Group II
Topic B: Enhancement Legislation I

*Affiliations of Resource People listed at end of Agenda.

Moderator:
Dorothy K. Witherspoon, Colorado
*Resource People:
Sherwood Zink
R. James Lore
Dennis C. Cooper

12:30-2:00 p.m.
(Brown Palace, Onyx Room, Mezzanine Level)

LUNCHEON

LUNCHEON ADDRESS
"Observations on the Seminar — What are the Benefits of the Child Support Enforcement Program"

Representative Ronald H. Strahle, Colorado

"Where Can You Get Help — Description of the NCSL Child Support Enforcement Project"
Deborah Bennington, NCSL Project Director

WORKSHOP RESOURCE PEOPLE

Dennis C. Cooper, Institute Manager,
National Institute for Child Support Enforcement

Sherwood Zink, Legal Counsel,
Wisconsin Bureau of Child Support

Robert E. Keith, Assistant Attorney General, Iowa

R. James Lore, Former Associate Attorney General,
North Carolina

Lawrence R. Young, Assistant Attorney General, Oregon

Daniels W. McLean, Family Court Referee,
Hennepin County District Court, Minnesota

Lavon Loynd, Technical Assistance Coordinator,
National Institute for Child Support Enforcement

Kenneth Muroya, State IV-D Director, Colorado

NATIONAL CHILD SUPPORT ENFORCEMENT
REFERENCE CENTER

# Child Support Report

Vol. I No. 8 August 1979

OCSE PUB. NO. 003

## INNOVATIVE FINANCIAL INVESTIGATIONS IN SUFFOLK COUNTY

A vice president of a security guard firm. . .an unemployed man with a $29,000 stock portfolio. . .an owner of three lucrative corporations, with a $100,000 beachside home. These are a few of the absent parents encountered by the Child Support Enforcement Bureau in Suffolk County, New York. "These are the extreme cases," admits County Child Support Director Bill Morrissey, but there are so many absent parents with hidden assets that Morrissey has designated one enforcement team to work solely on financial investigations.

*Bill Morrissey IV-D Director, Suffolk County*

The financial investigation starts with one employee who is permanently stationed in the County Clerk's office. He checks all county records beginning with real estate records. Judgment rolls, Uniform Commercial Code records, and business records (such as

*continued on page 2*

## State Spotlight
### WISCONSIN

*Duane Campbell Wisconsin IV-D Director*

Enthusiastic cooperation by dedicated personnel--that's the key to Wisconsin's success in the Child Support Enforcement program, according to Duane Campbell, Director of Wisconsin's Bureau of Child Support.

Wisconsin's program is State administered through contracts with the counties. Smooth functioning of the system is the result of the competence and close working relationships among county and State level personnel.

This cooperation has marked the program since its beginning, says Campbell. In his experience, the IV-D program "has just about the best relationship between State and county governments in Wisconsin."

This relationship is exemplified by the Wisconsin Child Support Enforcement Association. The Association is an independent body drawing on county personnel which provides a liaison committee and ad hoc committees as needed. These committees express grass roots concerns and coordinate program development with the State office.

*continued on page 2*

**U.S. Department of Health, Education, and Welfare**
OFFICE OF CHILD SUPPORT ENFORCEMENT

STATE SPOTLIGHT *continued*

Another strength of the program is a mandatory wage assignment law covering both temporary and permanent orders of support and affecting current and future employers. If the parent defaults on his support payments, the assignment can be dated and addressed to the employer immediately. A hearing is held only if the parent requests one. Eliminating mandatory hearings for wage assignments saves about six weeks in the enforcement process.

Family Court Commissioners in Wisconsin occupy a unique position in that they act as both court masters and as prosecutors. Commissioners relieve judges of some investigative duties and issue contempt orders and temporary support orders. All actions are under judicial review.

Despite Wisconsin's success with the Child Support Enforcement program, the dedicated staff don't rest on their laurels. Under Duane Campbell's leadership, Sherwood Zink (Legal Counsel), Betty Massey (PLS head), Howard Anderson (Chief, Fiscal and Reporting Section) and the entire staff constantly seek new ways to improve the program.

By the end of 1979, the State will be ready to implement Project 419 to determine an absent parent's assets using the Internal Revenue Service. The State has also developed a major new data system and is consulting with the Child Support Association regarding its implementation.

Wisconsin's IV-D staff plan to continue and intensify their efforts toward program improvement. Duane Campbell would like the State's work to be evaluated in terms of "how well we have applied the State and Federal law within a broad framework of respect for the rights of human beings." On these criteria, Wisconsin rates high.

SUFFOLK COUNTY *continued*

partnership agreements or "doing business as" documents) are also examined. Evidence obtained from the investigation is developed into a financial profile to be used in court. "County records are a tremendous tool, and they're available to everybody," Morrissey says.

Suffolk County's creative approach to financial investigation has yielded some dramatic results. One parent, the owner of a construction company, was surprised one morning to find the sheriff hauling away several large pieces of construction equipment. At the execution sale, he hastily paid his entire arrearage in cash--over $10,000. Another parent finally paid up when the IV-D staff took steps to seize his sailboat. In still another case, the investigator literally used her head to gather information on the absent parent--she made an appointment at his hairdressing salon, and copied information from his license as he styled her hair.

Morrissey and Deputy Child Support Director Tom O'Donnell keep track of their cases through a simple yet highly developed management information system. Each case is assigned to one of 60 categories, according to the type of work to be done. As cases move through the system, their categories change. Each week the computer generates a report stating the number of cases, the total arrearage amount, and other information. Other reports indicating number of payments made, number of cases referred to court, etc., aid the case management process.

Suffolk County's collections have more than doubled since January 1977. Says Morrissey, "The percentage of parents paying has been rising every month, and we think we can make it rise even higher."

## REGION VIII: LARGE DISTANCES AND SMALL POPULATION

*Seated: Nancy Laubhan, Garth Youngberg, Garry Peterson*
*Standing: Page Brown, Richard Briones*

HEW Region VIII is composed of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. The region encompasses about one-sixth of the continental U.S. land mass, while its population amounts to only about 2.7% of the U.S. total. Many of these people live in rural areas and small towns separated by vast distances.

Because of the sparse population within the broad land expanse, States of Region VIII have had to be creative in devising ways to implement the Child Support Enforcement program. In one State, telephone interviews and contracts with private attorneys are used extensively to minimize travel. Another State has created a series of child support regional offices by use of agreements with County Commissioners. Variations of this kind of regional structure can be seen in almost all the States in the Region.

The American Indian population of the Region approaches 99,000, which is about 12.5% of the national Indian population. There are 23 Indian reservations, or parts of reservations, in Region VIII.

The significant number of on-reservation AFDC recipients poses a particular problem because the States lack jurisdiction for child support purposes with respect to Indians residing on reservations. Devising voluntary reciprocal arrangements between the tribes and the States is one of Region VIII OCSE's major goals.

Under Garth Youngberg's direction as Regional Representative, responsibility for the States is divided between the two Program Specialists. Garry Peterson is assigned Utah, South Dakota and Colorado, and Page Brown is assigned Montana, North Dakota and Wyoming. The Financial Management Specialist, Richard Briones, carries fiscal responsibility for all six States. Nancy Laubhan acts as secretary and administrative assistant to the Regional Representative and provides necessary clerical support.

Major initiatives within Region VIII include encouraging greater use of IRS collection mechanisms, use of "Phone Power," assisting in the development of new State legislation, and devising effective case monitoring and billing techniques. The Regional Office staff strongly believes that their function is to support program improvement and to foster the interest of the States in the Child Support Enforcement program.

## Policy Notes

The United States Congress is currently considering several bills which, if passed, would have a major impact on the Child Support Enforcement program.

S.257, introduced by Sen. Long, H.R.2649 introduced by Congressman Gradison, and H.R.3014, introduced by Congressman Lederer would amend Section 455 (a) of the Social Security Act to make FFP available for services to non-AFDC cases on a permanent basis, retroactive to October 1, 1978. All three bills are now in committee.

Sen. Hatfield introduced S.1396 which would permit a State to retain the 15% incentive payment for collections it makes in its own behalf. In addition, incentive payments would not be made unless the amount subject to incentive payment exceeded either (a) the expenditures used to collect that amount in that quarter, or (b) 3.5% of the jurisdiction's AFDC payments in that quarter. This bill also requires that 50% of the incentive payments received be used to "enhance, improve, or expand the operation of the State's plan."

Title IV of S.1290 and H.R.4904, the administration's welfare reform proposal, would make various changes to the IV-D program. The major ones are:

-- IV-D agencies would be required to collect spousal support in certain cases.

-- A mandatory fee of 10% of collections for services to non-AFDC families would be imposed.

-- States would be permitted to keep AFDC families on the rolls for up to three months after child support would otherwise make them ineligible. States would also disregard amounts paid to the family during that period while retaining amounts equal to the assistance payment.

-- Advances of Federal funds to State IV-D agencies would be prohibited unless certain collections and expenditure reports are received in a timely fashion.

-- Certain changes would be made to distribution and incentive payment procedures.

The Senate and House bills have each been referred to the appropriate committee(s). The House Ways and Means Subcommittee on Public Assistance held hearings on H.R.4904. The bill was then sent to the full committee for markup. Action was not completed before the August recess, but the committee plans to take up the bill again by September 15. The section dealing with child support was not changed.

H.R.3491 and H.R.3492, introduced by Congressman Matsui, would prohibit the discharge in bankruptcy of any child support obligation. The House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary held hearings on H.R.3492, at which OCSE Deputy Director Louis B. Hays testified in support of the bills.

H.R.3839, introduced by Congressman Jacobs and referred to the Committee on the Judiciary, would establish in Federal law the right of every unemancipated child to be supported by his or her parents and would require certain State courts to enforce that right regardless of the child's residence.

The next Policy Notes column will contain an update on other bills now in Congress.

## APDNS ALERTS PAYERS IN DISTRICT OF COLUMBIA

Under the direction of Eugene Brown, the District of Columbia Office of Paternity and Child Support Enforcement is using the Absent Parent Delinquency Notice Service (APDNS) with success. The APDNS, operated through a minicomputer in OCSE headquarters, can generate billing or delinquency notices geared to the needs of the individual jurisdiction. The service is available free of charge to requesting agencies. APDNS, as used in the District of Columbia, supplies two letters. One is a notice to delinquent parents; the other is a monthly reminder to responsible payers.

*Helen Nelson, Acting Assistant IV-D Director; Eugene Brown, IV-D Director; Norris Sheppard, Supervisor, Enforcement Unit.*

"We are encouraged by the steady 50% response rate, after an initial 61%, in the three months we've been using the APDNS," said Brown. "When a fully automatic system becomes operational in early 1980, we'll be able to reduce the cost of processing data. At that time," said Brown, "we'll be able to input directly into the system and eliminate the manpower cost of hand coding the input forms. The APDNS is effective, but unless an agency has an automatic system, coding costs must be considered."

For the interim, the District of Columbia Office of Paternity and Child Support Enforcement staff, using the APDNS, are discovering cases of parents who are imprisoned, or who have died, or are on public assistance, or are unemployed. In so doing, they are purging their records of these cases. Also, agency staff, relieved of the burden of sending monthly reminders to supporting parents, can concentrate on enforcement and remain on top of their cases. An interesting sidelight, noted by Norris Sheppard, Supervisor of the Enforcement Section, is that in the District of Columbia, a computerized letter apparently is more effective in drawing a response from their clients than the conventional typewritten inquiry. Sheppard also commented that as a side benefit, the APDNS identifies addresses in need of verification. District workers have verified new addresses for 15% of the returned notices.

"For us, in the District of Columbia," said Brown, "the APDNS has aided the staff in enforcing support. The system has been tailored to our needs. As with any innovative process, however, only through use have we discovered the benefits and drawbacks of that system."

## Update on the States

JIM O'BRIEN is the new IV-D Administrator in Hawaii. . .JIM KIDDER has been named Director, Bureau of Child Support Enforcement in Utah.

## The Top Ten

Measuring the percentage of the absent parents who made payments in a quarter provides a good indication of the penetration of the IV-D program. The following table represents the percentage of the AFDC absent parent caseload from whom collections were made for the second quarter of Fiscal Year 1979

| State | Percentage of AFDC Absent Parent Caseload From Whom Collections Were Made, 2nd Qtr FY'79 |
|---|---|
| 1. New Hampshire | 41 |
| 2. Connecticut | 34 |
| 3. Michigan | 26 |
| 4. Washington | 24 |
| 5. Wisconsin | 23 |
| 6. Rhode Island | 23 |
| 7. New Jersey | 15 |
| 8. Utah | 14 |
| 9. Idaho | 10 |
| 10. Nevada | 8 |

The percentages are based on data obtained from the OCSE-3 Statistical Reporting Form, and were derived as follows: line C1 (number of cases in which a collection was made in the second month of this quarter) divided by line A4 (cases open on last day of quarter). States that did not submit an OCSE-3 for the quarter under consideration and States that provided incomplete or inconsistent data were not included in this analysis.

For a complete ranking of all available States and jurisdictions on this criterion, contact the Reference Center.

## IRS ASSETS IDENTIFICATION PROGRAM SHOWS RESULTS

Internal Revenue Service Project 419, the determination of assets of a responsible parent through review of income tax data, is being implemented in St. Louis County, Missouri, by District II of the Missouri Child Support Enforcement Program.

Designated as the 406 Program on the local level, St. Louis County case workers are obtaining information from the IRS that enables them to pursue delinquent parents claiming inability to support.

In one case, described by supervisor Bonnie Mosely, a self--employed parent's ability to pay was confirmed by reviewing his IRS tax form, resulting in a referral to the Prosecuting Attorney for action. In another instance, a check of the IRS data showed that a parent was not irresponsible but unable to support his dependents.

To guarantee that the confidentiality of the IRS information is not breached, District II case workers store tax data separately from support records in compliance with 419 regulations. In addition, information obtained from the tax return is not disclosed during litigation.

"Federal tax records supply financial information that is not available using conventional methods," said Ms. Mosely, "and we are using Project 419 to help discover the true financial status of a responsible parent."

# Law in Brief

CHILD SUPPORT: KANSAS ADOPTS MINORITY VIEW THAT A PARENT WHO PAYS SUPPORT PURSUANT TO A LUMP SUM AWARD SHOULD BE ALLOWED TO REDUCE SUPPORT PROPORTIONATELY AS THE CHILDREN BECOME OF AGE WITHOUT COURT ORDER

The Supreme Court of Kansas recently adopted the minority view as to the ability of a parent to reduce lump sum support payments proportionately as each child attains the age of majority without a court order. In this case a mother attempted to cite her former husband for contempt for failure to pay $250 child support as directed in the original award contained within the divorce decree. The former husband had reduced his support payments by one-third when his eldest child reached eighteen years of age, and similarly reduced his payments by another third when the middle child came to live with him. The facts of the case at the trial court level indicated that there had been at least an implied consent on the part of the mother with regard to these actions until her current petition to the trial court.

The Kansas Supreme Court stated that, contrary to the mother's contentions, a divorce order providing for child support payments to continue "until further order of the court" does not give a court the power to order support beyond the age of majority. Any order requiring either parent or both parents to pay for the support of any child until the age of majority shall terminate when such child attains the age of eighteen years, unless by prior written agreement approved by the court such parent or parents specifically agreed to pay such support beyond the time such child attains the age of eighteen. The order terminates without further order.

Although the court also held that accrued, unpaid child support payments cannot be modified under Kansas law, it approved trial court action giving the former husband credit against the judgment for the period of time the middle child lived with the husband through the age of seventeen. This was done despite the fact that the husband had never appealed to the court for a modification of the support order. It is also interesting to note that the case arose over a dispute between the parents as to whether the father should pay the costs of a college education for the two older children. It can be inferred from the ruling that the Kansas courts will not sanction such expenditures on the part of the obligor aside from a specific agreement between the parties. Despite new decisions from other States, Kansas follows the rule that the controlling factor will be the State's law pertaining to the age of majority. Education beyond that age is not a "reasonable expenditure" empowering a court to modify a decree which has previously been silent as to this issue.

Brady v. Brady, 592 P.2d 865 (Kan. 1979)

Law in Brief is compiled and edited by the National District Attorneys Association

## Conference Calendar

September 9-12 - Minnesota Family Support and Recovery Council Training Conference; Brainerd (contact Daniel Haley, Program Chairman, 612-296-4699).

September 12 - IV-D Conference for Maryland States Attorneys; Annapolis (contact John Williams, 301-383-3501).

September 18-21 - Southeastern Regional Meeting of American Public Welfare Association; Biloxi, Mississippi, IV-D Workshop, September 20 (contact Bruce Gaunt, 404-221-2180).

September 23-26 - Annual Meeting of Domestic Relations Association of Pennsylvania; Philadelphia (contact Sterling Wees, 814-355-1272).

September 27-28 - Western Regional Seminar of the National Conference of State Legislatures; Denver (contact Deborah Bennington, 303-623-6600).

October 17-19 - Semi-Annual Child Support Conference; Portsmouth, Rhode Island (contact Thomas Hughes, 617-223-1138).

October 22-23 - Washington Family Support Council Meeting; Seattle (contact Washington Association of Prosecuting Attorneys, 206-753-2175).

October 22-23 - Eastern Regional Seminar of the National Conference of State Legislatures; Hartford, Connecticut (contact Deborah Bennington, 303-623-6600).

November 11-15 - 28th Annual Conference on Child Support Enforcement; Lake Buena Vista, Florida (contact Tim Morrison, 515-262-6807).

November 14-17 - 3rd Annual Title IV-D Systems Workshop; Orlando, Florida (contact Horace Churchman, 301-443-1310).

Child Support Report

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NATIONAL CHILD SUPPORT ENFORCEMENT
REFERENCE CENTER

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HEW 397

U.S.MAIL

Office of Child Support Enforcement
6110 Executive Blvd.
Rockville, Maryland 20852


# SYSTEM 5000 BULLETIN

Inforex, Inc.

is proud to announce

C. A. S. E.

(The Child, Alimony and Support Enforcement System)

HISTORY OF TITLE IV-D

Child, Alimony and Support Enforcement (C.A.S.E.) has become a major undertaking by all states and counties throughout the country. This is the result of increasing concern by public officials over the irresponsibility of many parents in failing to support their children, and the consequent rise in the cost of public aid programs.

Congressional attention has focused on this area since 1950 when section 402 (a) (11) was added to the Social Security Act. This required state welfare agencies to notify law enforcement officials when AFDC was furnished to children who had been deserted or abandoned by a parent. However, this rather obsure provision received little attention by social service agencies and law enforcement officials.

Subsequently, in 1965, public law 89-97 was enacted which allowed HEW to provide social service agencies with the names and places of employment of absent parents. In 1967 a further amendment to the Social Security Act added Section 402 (a) (17), (18), (21), (22), which required each state to establish within their welfare structure a unit to establish paternity and to collect support money for children receiving public assistance. These amendments proved to be substantial aids to public officials who had recognized the problems of non-support and developed support and paternity programs as well as providing an incentive for other public officials to become involved.

The mechanisms established by Congress worked with varying degrees of efficiency. Efforts were hampered by a lack of enthusiasm in many welfare agencies and a lack of adequate funding for investigation and prosecution. Increased pressure by prosecutors and welfare agencies recognizing the problem of rapidly rising AFDC caseloads, resulted in Congress enacting Part D of the Social Security Act which is contained in Public Law 93-647.

This new act seeks to encourage states to develop effective child support programs through a series of fiscal incentives and the threat of withdrawal of the federal share of AFDC funds for ineffective state programs. Included as incentives were federal funds to assist the public officials in developing and staffing collections programs. It also establishes a set of defined enforcement procedures and federal requirements that must be addressed on a statewide basis in order to take advantage of these incentives. A further examination of the impact of Title IV-D is warranted.

In light of this background, the significance of child support programs to state/county government is apparent as is their importance to the public in terms of shifting the burden of supporting abandoned or deserted children from the taxpayers to the absent non-supporting parent.

TITLE IV-D REQUIREMENTS/INCENTIVES

The passage of Title IV-D presents both additional requirements and a significant opportunity to every county/state involved in administering child support enforcement. Although each state has developed its own unique plan and organization structure to comply to Title IV-D the requirements and incentives are the same nationwide:

Requirements:

- Insure timely response to all requests for support enforcement from either individual dependents or the state IV-A agency. Maintain detailed case records and insure proper establishment and execution of support court orders.
- Provide local/state level parent location services required to effectively enforce support programs.
- Provide support payment collection services for all state IV-D cases. Insure proper accounts receivable control and audit trails.
- Provide similar collection services for all IV-D cases referred from other states under URESA.
- Properly control the disbursement of collected support payments to appropriate dependent or welfare agency (if AFDC case).
- Identify all delinquent payees within 30 days of delinquency. Take appropriate steps to rectify the situation.
- Maintained sufficient records and audit trails to define cost of program administration. Submit supporting documents for federal participation and incentive payments.

Incentives:

- The state/county general fund will be reimbursed for costs related to IV-D administration for those cases related to welfare as follows:
  - 75% of the development costs
  - 75% of operating/administration costs (direct & indirect)
- The state/county general fund will receive 15% of all support payments collected in welfare related cases.

The program requirements are relatively well defined. They present a massive adminstrative challenge for every state/county agency involved. With literally thousands of cases active at any one time, the process of maintaining accurate case information and payment histories, tracking delinquent payors and complying with the federal audit requirements can be overwhelming.

Yet, effective compliance with IV-D will provide significant benefits in areas such as reduced welfare costs, increased federal incentive payments, and generally improved services to the community.

## Inforex Committment

We, at Inforex, believe that the key to success in effectively meeting the challenges of Title IV-D is MAKING INFORMATION WORK FOR YOU. A system where information is not simply collected and filed but is utilized to:

- quickly answer field questions
- automatically highlight exceptional conditions
- coordinate IV-A and IV-D activities
- provide basis of federal audits

Information in a filing cabinet is useless! The key to success in Title IV-D is developing a system that effectively collects information and is capable of retreiving that information in a manner that is responsive to the needs of you and your personnel.

Over a year ago Inforex committed itself to develop just such a system. We dedicated a team of system analysts to the task of learning the requirements of Title IV-D and building a packaged information system that would meet them. The team was led by a system analyst who had recently designed a similar system for a major county in Ohio. For the past year they have worked under H.E.W. guidelines and in an actual user environment to insure that the system would meet federal requirements and still be flexible enough to keep pace with your dynamic requirements. We have committed literally man years of effort and over a half million dollars to insure success.

Our committment has resulted in the Inforex C.A.S.E. (Child, Alimony and Support Enforcement) application package. A system:

- Designed to make information work <u>for</u> you
- That meets Federal requirements
- That has been tested in a live environment
- Designed for easy installation
- Designed in functional modules to insure that it can be flexibly applied to individual state/county organization structures
- Designed to be used by non-data processing people

Inforex recognizes that each individual installation is somewhat unique and that information requirements change over time. That is why our commitment goes beyond the initial program development. We are dedicated to insuring that C.A.S.E. continues to meet your requirements in the years to come. We have over 400 field systems and maintenance engineers in more than 30 major cities available to insure that our information systems and supporting equipment are tuned to meet your daily requirements. They are professionals. They are trained and ready to help you make the most of information.

C.A.S.E. - INTRODUCTION

The Inforex C.A.S.E. application is a packaged solution to the administrative challenge of Title IV-D. The solution consists of:

- **Minicomputer** — The System 5000 is a versatile piece of equipment that is designed with simplicity and expandability in mind. It can be expanded to 32 terminals and and over a billion bytes of storage. Typewriter-like keyboards allow your operators to create, store and retrieve information records in seconds.

- **Application Software** — The C.A.S.E. package has been designed to take advantage of the simplicity of the System 5000. Your present staff will be able to effectively operate the system in a matter of days. The features of the C.A.S.E. package itself are highlighted in the next section.

- **Maintenance** — Inforex professionals are trained and equipped to keep your System 5000 tuned to top performance.

- **Training Support** — Inforex systems personnel will train your present staff to use the System 5000 C.A.S.E. applications and equipment.

C.A.S.E. - APPLICATION DESCRIPTION

## Functional Overview

The flow chart on the next page graphically illustrates the functional flow of the Child Support Enforcement process. At an earlier system development workshop conducted by the Federal Department of Health, Education and Welfare these functions were grouped into six major categories:

- Case Management
- Parent Locator Services
- Accounts Receivable
- Support Distribution
- Support Enforcement
- Administrative Accounting

The Inforex C.A.S.E. system is a comprehensive package of application software designed for the System 5000. It is a powerful file management system that meets federal IV-D requirements in all these areas. The following section highlights the C.A.S.E. application features in each category.

## Case Management

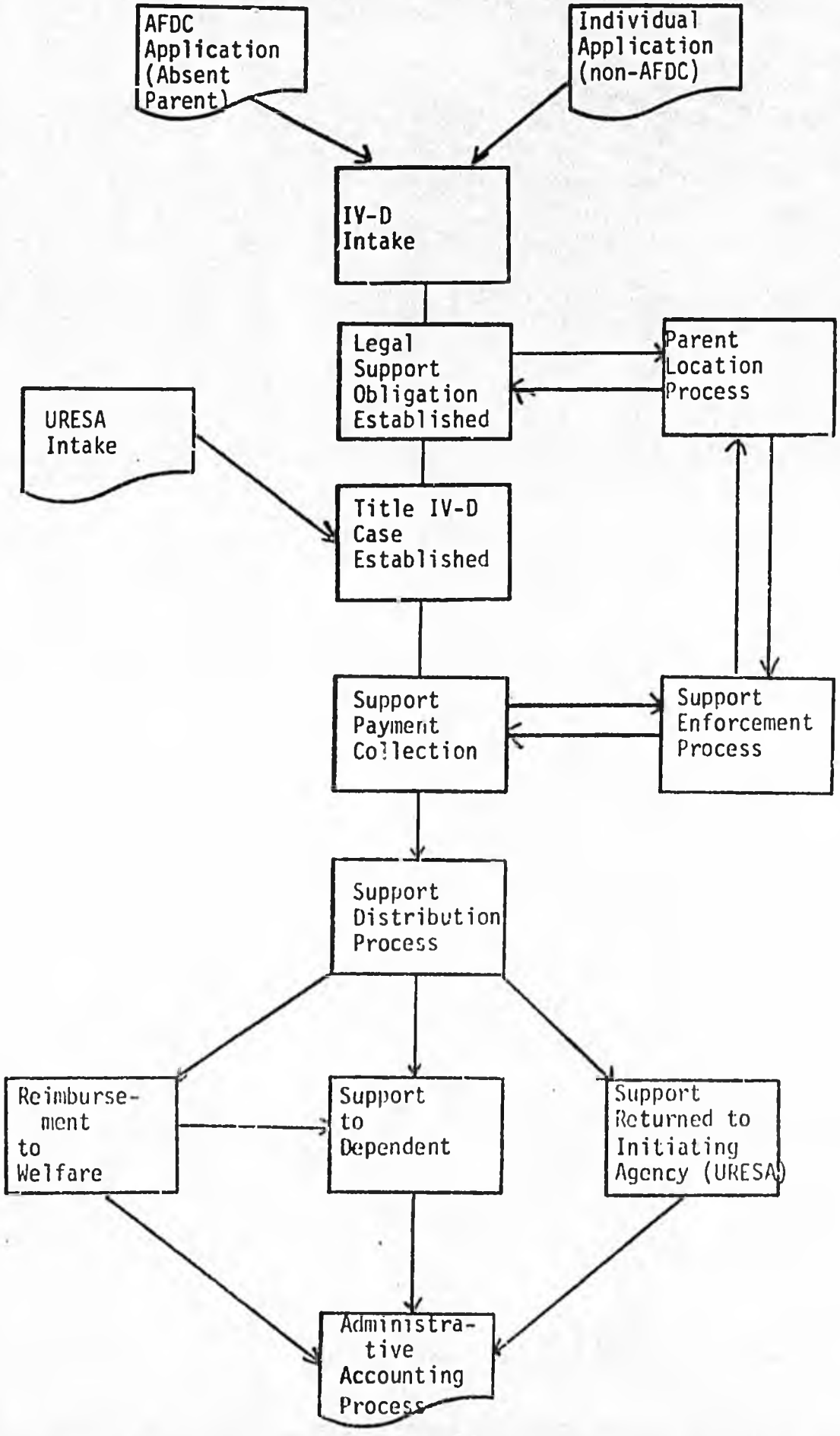
Defined as activities, information requirements and reports relating to establishing and monitoring IV-D cases, as well as information required to effectively monitor counselor case loads, case status, etc.

C.A.S.E.:

- Maintains statistical/financial detailed records for each payor, payee and case. The system easily handles:
  - multiple payees per case
  - multiple payors per case
  - multiple children per payee
- Maintains complete charge, payment and disbursement histories
- Generates "introduction" letter to payee and payor detailing:
  - how/when to pay
  - what to do in case of questions
  - confirmation of address and other data

CHILD SUPPORT ENFORCEMENT

Functional Process Flow



- Easily handles court order modifications
- Provides an optional Welfare records interface to allow case worker to check AFDC status of applicant as well as other pertinent information
- Provides a complete set of statistical and management reports to track case activity, initiate periodic case reviews, analyze counselor case loads, etc.

Parent Locator Services

Defined as activities required to initiate and track requests for parent location services at county, state and federal levels.

C.A.S.E.:

- Maintains information to aid in location process.
- Provides a weekly report of all parent locator requests sorted by individual parent locator

Accounts Receivable

Defined as activities related to payment collection, cash control, arrearage control, deposit/reconcilation of monies as well as the generally accepted accounting standards of batch balancing and audit trails.

C.A.S.E.:

- Easily handles payments made by mail or in person.
  - Mailed payments are processed in a batch with full batch balance control and tracking
  - Payments made in person are posted immediately and a receipt acknowledgement is immediately generated for the payor.
- Processes pre-payments and tracks them on a per case basis
- Monitors "bounced checks" performance of payor and disallows personal checks based on past performance.
- Maintains a complete detailed payment history
- Provides daily and monthly payment registers

Support Distribution

Defined as activities required to disburse collected support payments to the appropriate parties. Including eligibility determination, incentive tracking, check writing, etc.

C.A.S.E.

- Provides a flexible hierarchy of distribution to allow disbursement of support in accordance with IV-D regulations.
- Generates detailed distribution registers
- Automatically handles collection fee calculation/deduction (if selected)
- Assigns support for AFDC receipients to the local Welfare agency
- Distributes payments in accordance with due dates established in each court order.
- Provides information needed to track incentive reimbursements.

In addition, the following types of receipt and disbursement situations are handled automatically by C.A.S.E.:

- Various payment frequencies (i.e. weekly, bi-weekly, semi-monthly, and monthly)
- Specified pre-payments (i.e., payments made by a payor for an entire year to be disbursed according to court ordered due dates for payee)
- Payments made by a payor both of a continuing nature and with regard to paying off a fixed obligation.
- Printing of checks to payees on a due date basis as well as complete check reconcilation processes and reports.
- Generation of a single disbursement check for multiple payments to the local Welfare Agency along with a detailed listing of the payments included within this single check

Support Enforcement

Defined as activities and information requirements associated with identifying delinquent payors and enforcing compliance with court orders.

C.A.S.E.:

- Monitors case status and generates exception reports/forms:
  - Late payment notices
  - 5, 10, 30 day default listings
  - Form letters to payee explaining default enforcement rights and remedies
  - Counseling notices and reports

Administrative Accounting

Defined as all activities required to track program cost (direct and indirect) and all federal reporting and audit requirements.

C.A.S.E.:

- Provides valuable management information including:
  - Case status and activity
  - Fiscal status and activity
  - Enforcement work load analysis
- Maintains complete accounting controls
  - Batch balanced payment posting procedures
  - Detailed payment registers
  - Complete check creation
  - Detailed disbursement register
  - Detailed check register
  - Check reconcilation procedures

## Summary of C.A.S.E.

| System | Subsystem/Applications | Benefits | |
|---|---|---|---|
| | | Tangibles | Intangibles |
| C.A.S.E. | • Collection and distribution of Child Support and Alimony Payments.<br>• Parent Location.<br>• Counciling.<br>• Cashiering.<br>• Finance. | • Reduce non-compliance with court ordered payments.<br>• Prevent possible public assistance.<br>• Better cash management.<br>• Better collections.<br>• Assure accurate accounting procedures.<br>• Increase Title IV D incentives to county.<br>• Increase compliance by monitoring and issuing of late payments.<br>• Centralize collection and distribution of payments.<br>• Reduce collection costs and increase collection revenues.<br>• Encourage payment thru location and follow-up counciling.<br>• Ability to attach and monitor wages.<br>• Reduce filings of non-support thus reducing docket.<br>• Professional/Management Productivity. | • Decrease errors.<br>• Increase delivery of payments.<br>• Better control of revenue.<br>• More accurate, timely and complete information.<br>• Auditing tool.<br>• Increase response to judicial and customer inquiry.<br>• Standardize judgements (all pay thru court).<br>• Better Management of county funds.<br>• Leadership shown to other counties.<br>• Generate respect for court orders.<br>• Keep parent responsible for support instead of public sector.<br>• Increase flexibility of staffing.<br>• Improve planning.<br>• Improve resource utilization.<br>• Improve tax payer services. |

CHILD SUPPORT ENFORCEMENT SEMINAR
National Conference of State Legislatures
October 1979

Guide to Handout Materials

Seminar Agenda

List of Seminar Participants and Faculty

Designation of Participants into Groups for Workshops

Concurrent Session-Guidelines for Discussion Groups

Seminar Evaluation Form

Technical Assistance Request Form

NCSL Child Support Enforcement Project Announcement

National Institute for Child Support Enforcement Brochure

Child Support Enforcement Resources

Office of Child Support Enforcement Program Description

National Child Support Enforcement Reference Center Information

Office of Child Support Enforcement Newsletter "Child Support Report" August, 1979

Information Sharing Index, OCSE Reference Center

Third Annual Report to Congress, September 30, 1978, HEW, OCSE

Demographic Factors in Child Support Enforcement

Discussion Papers, prepared by Robert E. Keith for the NCSL Child Support Enforcement Seminar

"The New Clout in Child Support Enforcement," Dennis C. Cooper and Mary Volgyes, State Legislatures, October 1979

"Men Who Know They Are Watched: Some Benefits and Costs of Jailing for Nonpayment of Support," David L. Chambers, Michigan Law Review, April-May, 1977

Uniform Marriage and Divorce Act

Uniform Parentage Act

Revised Uniform Reciprocal Enforcement of Support Act

Uniform Child Custody Jurisdication Act

Tourist Information

# CHILD SUPPORT ENFORCEMENT RESOURCES

National District Attorneys Association, Child Support Enforcement Project,
666 North Lake Shore Drive
Suite 1432
Chicago, Illinois 60611
312/944-4610
a. Newsletter, terminated - back issues available
b. Legal Clearinghouse - Extensive bibliography, Case Law Index and Several Other Resources

National Reciprocal and Family
Support Enforcement Association
503 East Fifteenth Street
Des Moines, Iowa 50316
a. Newsletter
b. Annual Conference

Office of Child Support Enforcement
Reference Center
6110 Executive Blvd.
9th Floor
Rockville, Maryland 20852
301/443-5106
a. Index of government publications and reprints of relevant publications
b. Newsletter
c. Bibliography in topical areas of child support enforcement

National Institute for Child Support Enforcement
1601 North Kent Street
Suite 1101
Arlington, Virginia 22209
703/522-3010
a. Technical Assistance for IV-D agencies
b. Training courses for IV-D personnel

Child Support Enforcement Project
National Conference of State Legislatures
1405 Curtis Street
Suite 2300
Denver, Colorado 80202
303/623-6600
a. Legislative Seminars
b. Technical assistance, state workshops
c. Information Clearinghouse for legislators and staff
d. Legislator's Guide to Child Support Enforcement

# DEMOGRAPHIC FACTORS

# IN CHILD SUPPORT ENFORCEMENT

## Family Characteristics

- The average family size has decreased from 3.67 persons in 1940 to 2.81 in 1978, while the fertility rate has fallen to near the replacement level.

- The divorce rate is the highest among those of industrialized countries, at 5.1 per thousand. (The U.S. is followed by Australia (4.3), U.S.S.R. (3.4), and Sweden (2.7). 38 percent of all marriages in the U.S. will end in divorce. 56 percent of these divorces involve children.

- One-parent households now comprise 14.4 percent of all families. Of one-parent families, 85 percent are headed by a woman. While employment of such women has increased from 45 percent in 1960 to 58 percent in 1978, 65 percent of those who are employed hold low-paying clerical, blue-collar, or service-type jobs.

- The proportion of children living with both of their natural parents to the total child population has decreased from 75 percent in 1960 to 63 percent today. Further, by 1990 only one-half of all children will be living with their natural parents. (These families include one-parent households, families in which there is a step-parent, and other custodial arrangements.)

- The illegitimate birth rate has increased. 500,000 children were born out of wedlock in 1978, accounting for 15 percent of all births.

## AFDC Caseload Characteristics

- Children in families receiving AFDC comprised 11.5 percent of the child population in 1978, down slightly from 12 percent in 1975.

- Within the AFDC population, the number of families receiving assistance because of the father's absence from the home (as opposed to other reasons) decreased from 6.7 million in 1976 to 6.2 million in 1978, after a 30-year long rise.

- The proportion of AFDC cases involving children of unwed parents has increased greatly, from 22.6 percent of AFDC cases involving children living with one parent in 1970 to 33.8 percent of such cases in 1978.

(Statistics compiled from: Bureau of Labor Statistics Monthly Labor Review
Census Bureau Population Bulletin Vo. 32 No. 5
Monthly Vital Statistics Report PHS Vol. 27 No. 5)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF CHILD SUPPORT ENFORCEMENT
ROCKVILLE, MARYLAND 20852

INFORMATION MEMORANDUM
OCSE-IM-79-9
May 8, 1979

| | | |
|---|---|---|
| TO | : | STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS |
| SUBJECT | : | The National Child Support Enforcement Reference Center's Information Sharing Index |
| ATTACHMENT | : | Attached is the Information Sharing Index prepared by the National Child Support Enforcement Reference Center. The Index enumerates materials available from the Reference Center and describes other materials pertinent to the Child Support Enforcement program. |
| SUPERSEDED MATERIAL | : | OCSE-IM-79-2 dated January 17, 1979 and OCSE-IM-78-24 dated September 26, 1978 |
| INQUIRIES TO | : | The National Child Support Enforcement Reference Center |

Louis B. Hays

Deputy Director
Office of Child Support Enforcement

# NATIONAL CHILD SUPPORT ENFORCEMENT REFERENCE CENTER
# INFORMATION SHARING INDEX

Department of Health, Education and Welfare
Office of Child Support Enforcement
6110 Executive Boulevard - 9th Floor
Rockville, Maryland 20852

May 1979

TABLE OF CONTENTS

# INTRODUCTION

The Information Sharing Index is prepared quarterly by the National Child Support Enforcement Reference Center. The Index enumerates materials available from the Reference Center and describes other materials pertinent to the child support enforcement program.

To request materials from the Center, please forward the following information:

1. The topic area (example: case prioritization, fee schedules).
2. Title of specific publication and quantity desired.
3. The address to which the Center is to send the material.
4. The name and telephone number of an individual who may be contacted for clarification or follow-up.

If you would like to contribute materials or have specific materials added to the Reference Center, please contact Mrs. Barbara Olivere. The address of the Center is:

The National Child Support Enforcement Reference Center
6110 Executive Boulevard - 9th Floor
Rockville, Maryland 20852
(301) 443-5106

## I. STATE PLANS

The Reference Center has copies of each State's plan -- The plan is a description of how each State will operate the IV-D program in accordance with existing federal regulations.

## II. STATE OPERATING PROCEDURAL MANUALS

The Reference Center has copies of the following procedural manuals. These manuals provide a somewhat detailed description of how the functions inherent in the operation of the IV-D program are conducted. The manuals are intended as resource materials and copies are not available through the Center.

Alabama Operational Manual
Alaska Child Support Enforcement Procedures
Arizona Child Support Enforcement Procedures
Arkansas Child Support Enforcement Manual
California Parent Locator Service Investigative Resources Manual
Florida Child Support Enforcement Manual
Georgia Child Support Enforcement Manual
Hawaii Child Support Enforcement Manual
Idaho Procedures Manual
Illinois Child Support Enforcement Handbook
Indiana Child Support Manual for Circuit Clerks
Indiana Child Support Manual for County Welfare Directors
Indiana Child Support Manual for Prosecuting Attorneys
Kansas Location and Support Manual
Louisiana Support Enforcement Manual
Maryland Child Support Enforcement Manual
Minnesota Child Support Enforcement Title IV-D Manual
Mississippi Manual of Policies and Procedures
Missouri Support Enforcement Manual
Montana Child Support Enforcement Manual
Nebraska Child Support Materials
New Hampshire Child Support Enforcement Manual
New York Administrative Directives
North Dakota Child Support Enforcement Program Procedures Manual
Oklahoma Child Support Enforcement Internal Procedures Manual
Oregon Manuals of Procedures
Puerto Rico Operation Manuals of IV-D Units
Rhode Island Bureau of Family Support Operational Manual
South Dakota Operations and Procedures Manual
Texas Child Support Handbook
Utah Office of Recovery Services Manual

Virgin Islands IV-D Manual
Virginia Support Enforcement Manual of Policy and Procedure
Washington Support Enforcement Manual
West Virginia Policy and Procedural Manual
Wisconsin Child Support Enforcement Manual
Wyoming Child Support Enforcement Manual

IIA. OTHER OPERATING PROCEDURAL MANUALS

Family Support and Welfare Fraud Forms Manual for Fresno County, California
Paternity and Child Support Procedures for the Juvenile Court of Memphis and Shelby County, Tennessee

III. OFFICE OF CHILD SUPPORT ENFORCEMENT ACTION TRANSMITTALS (currently in effect)

1975

| | |
|---|---|
| Title IV-D of the Social Security Act: Child Support Enforcement Program (State plan)* | OCSE-AT-75-2 6/26/75 |
| Quarterly Statement of Financial Plan | OCSE-AT-75-4 8/8/75 |
| Incentive Payments to Political Subdivisions under Section 458(a) of the Act and 45 CFR 302.52 | OCSE-AT-75-5 10/2/75 |
| Guidelines for costing Title IV-D services purchased from public agencies or obtained through cooperative agreements | OCSE-AT-75-6 9/26/75 |
| Payments to States for expenses incurred during July 1975 | OCSE-AT-75-7 11/12/75 |
| Safeguarding Information and Operation of the Child Support Enforcement Program in the Absence of an Assignment (plan preprint)* | OCSE-AT-75-9 11/10/75 |
| Cost Allocation-Child Support Enforcement Program under Title IV-D of the Social Security Act (Plan preprint)* | OCSE-AT-75-11 12/12/75 |

1976

| | |
|---|---|
| Applications for Certification for Collection of Child Support by the Internal Revenue Service | OCSE-AT-76-2 2/11/76 |
| Requests to the Federal Parent Locator Service for Information as to the Whereabouts of Absent Parents | OCSE-AT-76-3 2/13/76 |

III. Continued

1976

| | |
|---|---|
| Instructions for the Distribution of Child Support Collections and the Payment of Incentives to States and Political Subdivisions Making Child Support Collections | OCSE-AT-76-5<br>3/11/76 |
| Payment of Internal Revenue Service Collections and Fees | OCSE-AT-76-7<br>5/24/76 |
| Application by States to use the Courts of the U.S. to Enforce Child Support Orders<br>(Revision to Page 3) | OCSE-AT-76-8<br>5/24/76 |
| Applications for Child Support Services by Individuals not Otherwise Eligible | OCSE-AT-76-9<br>6/09/76 |
| First Annual Report to Congress on the Child Support Enforcement Program | OCSE-AT-76-10<br>7/1/76 |
| Eligibility Determination in Cases of Continued Absence: Agency Responsibility and Federal Matching Rate | OCSE-AT-76-14<br>9/13/76 |
| Exchange of Successful Program and Administrative Practices | OCSE-AT-76-18<br>11/9/76 |
| Incentive Payments to Political Subdivisions Under Section 458(a) | OCSE-AT-76-22<br>12/21/76 |
| Instructions for Allocation of Incentive Payments Among Jurisdictions Pursuant to Section 458(b) of the Act | OCSE-AT-76-23<br>12/21/76 |

1977

| | |
|---|---|
| Proposed Instructions for Interstate Collections and Incentive Payments Under Title IV-D of the Social Security Act | OCSE-AT-77-1<br>1/3/77 |
| State Employment Offices to Supply Data to Assist in the Administration of the Child Support Enforcement Program | OCSE-AT-77-2<br>1/4/77 |

III. Continued

1977

| | |
|---|---|
| Documentation Required to Support Claims for Federal Financial Participation Made Pursuant to Cooperative Agreements | OCSE-AT-77-3 1/28/77 |
| Instructions for Allocation of Incentive Payments Among Jurisdictions Pursuant to Section 458(b) of the Act (revised page 3) | OCSE-AT-77-5 3/1/77 |
| Restriction on FFP for Publicly Owned Buildings | OCSE-AT-77-8 7/28/77 |
| Affirmation of Continuing Reporting Requirement for Quarterly Statements of Financial Plan (OCSE-OA-25) | OCSE-AT-77-9 8/3/77 |
| Requests to the FPLS for Address Information on Absent Parents | OCSE-AT-77-10 9/9/77 |
| Instruction for Preparation of Quarterly Statement of Expenditures for the CSE Program Approved under Title IV-D of the SSA | OCSE-AT-77-11 10/14/77 |
| Tax Reform Act of 1976 | OCSE-AT-77-13 10/27/77 |
| Availability of Federal Financial Participation (FFP) for the Reimbursement of State Agencies Providing Address Information | OCSE-AT-77-14 11/3/77 |
| Federal Parent Locator Service Implementation of an Automated Search for Absent Parent Social Security Numbers | OCSE-AT-77-15 11/30/77 |
| Incentive Payment Under Title IV-D of the Social Security Act* | OCSE-AT-77-16 12/9/77 |

III. Continued

| | |
|---|---|
| Preparation of Requests for Proposals/ Support Services for the Procurement of Automated Child Support Enforcement Information Systems | OCSE-AT-77-17 12/9/77 |

1978

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|---|---|
| Revised Instructions for Form SRS-OA-41, Quarterly Statement of Expenditures Summary Sheet | OCSE-AT-78-2 1/25/78 |
| Federal Parent Locator Service Implementation of an Automated Address Information Exchange with the National Personnel Records Center | OCSE-AT-78-3 2/14/78 |
| Submittal Procedures for Financial Reports | OCSE-AT-78-5 3/7/78 |
| Statistical Report on Child Support Activities and Staff, Form OCSE-3 | OCSE-AT-78-6 3/15/78 |
| Reconsideration of Disallowances Under the Public Assistance Programs | OCSE-AT-78-7 3/28/78 |
| Good Cause for Refusing to Cooperate (Program Instruction) | OCSE-AT-78-8 4/5/78 |
| Affirmation of Continuing Reporting Requirements for Quarterly Statements of Financial Plan (OCSE-OA-25) | OCSE-AT-78-9 4/13/78 |
| Bonding of Employees and Handling of Cash Receipts in the Child Support Enforcement Program | OCSE-AT-78-10 4/13/78 |

III. Continued

1978

| | |
|---|---|
| Administration of Grants | OCSE-AT-78-13 |
| Notice of Proposed Rule Making-Implementation of Section 11 of Public Law 95-142-Medical Support Enforcement | OCSE-AT-78-14 9/12/78 |
| General Policies and Procedures on Grants to States for the Child Support Enforcement Program | OCSE-AT-78-15 10/3/78 |
| Procedures for Implementing Changes to 45 CFR 302.35, 302.70, and 303.3, Affecting Access to the Federal Parent Locator Service | OCSE-AT-78-16 10/16/78 |
| State Plan Preprint Amendments Parent Locator Service* | OCSE-AT-78-17 10/16/78 |
| Changes in Submitting Requests for Address Information to the Federal Parent Locator Service (PLS) | OCSE-AT-78-18 10/27/78 |
| State Plan Preprint Amendments-Good Cause for Refusing to Cooperate* | OCSE-AT-78-20 10/31/78 |
| Introduction of Form OCSE-4134, the Quarterly Statement of Total AFDC and Non-AFDC Child Support Collections Under Title IV-D of the Social Security Act | OCSE-AT-78-21 11/8/78 |
| Conditions for Federal Financial Participation in the Costs of Automatic Data Processing Under Medical and Public Assistance Programs | OCSE-AT-78-22 11/17/78 |

1979

| | |
|---|---|
| FY 1979 Matching Payments to States for Non-AFDC Families | OCSE-AT-79-1 4/6/79 |
| Affirmation of Continuing Reporting Requirements for Quarterly Statements of Financial Plan (OCSE-OA-25) | OCSE-AT-79-2 4/13/79 |

*State Plan Materials - available only for the State IV-D Agency

IV. OFFICE OF CHILD SUPPORT ENFORCEMENT INFORMATION MEMORANDA (currently in effect)

1975

| | |
|---|---|
| Accounting for the Child Support Enforcement Program (Title IV-D) | OCSE-IM-75-3 12/1/75 |

1976

| | |
|---|---|
| Accounting for the Child Support Enforcement Program (Title IV-D) | OCSE-IM-76-6 4/2/76 |
| Accounting for the Child Support Enforcement Program (Title IV-D) | OCSE-IM-76-10 10/1/76 |
| Federal Parent Locator Service Terminal Interface Instructions | OCSE-IM-76-11 10/4/76 |

1977

| | |
|---|---|
| Exchange of Successful Program and Administrative Practices | OCSE-IM-77-1 1/5/77 |
| Child Support Enforcement Collections and Expenditures During FY76 | OCSE-IM-77-4 3/31/77 |
| Use of Revenue Sharings Funds as the Non-Federal Share | OCSE-IM-77-5 4/6/77 |
| Research Report on "Techniques and Procedures to Establish the Paternity of Children Born Out of Wedlock" | OCSE-IM-77-6 4/19/77 |
| Compilation of Child Support and Related Regulations 45CFR Chapter 300 and Selected Regs from Chapter 200 | OCSE-IM-77-7 5/19/77 |
| Title IV-D, Social Security Act: Nondiscrimination Against the Handicapped | OCSE-IM-77-8 5/19/77 |
| Amendments to Title IV-D of the Social Security Act | OCSE-IM-77-10 6/15/77 |
| Research Report on "Using Blood Tests to Establish Paternity" | OCSE-IM-77-11 6/27/77 |

IV. Continued

| | |
|---|---|
| "Guide for Determining the Ability of an Absent Parent to Pay Child Support" | OCSE-IM-77-12 6/29/77 |
| Continuation of FFP for Child Support Activities for Non-AFDC | OCSE-IM-77-13 7/12/77 |
| Supplemental Report to Congress on the Child Support Enforcement Program | OCSE-IM-77-15 7/25/77 |
| IV-D Technology Transfer Model | OCSE-IM-77-16 8/18/77 |
| Massachusetts Phone Power Project | OCSE-IM-77-17 9/9/77 |
| Collections and Expenditure Tables, August 1, 1975 | OCSE-IM-77-18 10/5/77 |
| HR3 - Medicare-Medicaid Anti-Fraud and Abuse Amendments | OCSE-IM-77-19 10/28/77 |
| Garnishment of Executive Branch (including the government of the District of Columbia) Pay for Child Support | OCSE-IM-77-20 11/4/77 |
| Compilation of Child Support and Related Regulations | OCSE-IM-77-21 11/9/77 |

1978

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|---|---|
| Second Annual Report to Congress on the Child Support Enforcement Program | OCSE-IM-78-1 1/17/78 |
| The Texas Training Film and Manual for the Trial of Contested Paternity Proceedings | OCSE-IM-78-2 1/17/78 |
| Article by David L. Chambers Entitled "Men Who Know They are Watched: Some Benefits and Costs of Jailing for Non-Payment of Support" | OCSE-IM-78-3 1/31/78 |
| Paternity Case Processing Handbook | OCSE-IM-78-4 2/9/78 |

IV. Continued

| | |
|---|---|
| FY77 Collections and Expenditures | OCSE-IM-78-5 |
| Compilation of Child Support and Related Regulations | OCSE-IM-78-6 2/22/78 |
| Federal Parent Locator Services - Schedule for Internal Revenue Service Processing of Address Requests | OCSE-IM-78-7 2/22/78 |
| Second Annual Report to the Congress for the Period Ending September 30, 1977 | OCSE-IM-78-10 4/25/78 |
| Amendments to Title IV-D of the Social Security Act | OCSE-IM-78-11 4/25/78 |
| Paternity Claims and Adoption Proceedings Involving Members and Former Members of the Armed Forces | OCSE-IM-78-12 5/17/78 |
| Collecting on Child Support Arrearages by Intercepting Tax Refunds | OCSE-IM-78-13 5/17/78 |
| Michigan's Support Specialist Training Manual | OCSE-IM-78-14 6/6/78 |
| Procedures for Intervention in Divorce Cases | OCSE-IM-78-15 6/7/78 |
| Beneficial Modifications to Wisconsin's Divorce Laws | OCSE-IM-78-16 6/14/78 |
| Federal Parent Locator Service State History Data and Statistics | OCSE-IM-78-18 7/14/78 |
| Requests for Address Information from the Immigration and Naturalization Service | OCSE-IM-78-19 7/14/78 |
| Guidelines on Software Development Management for State Title IV-D Systems | OCSE-IM-78-21 7/17/78 |

IV. Continued

| | |
|---|---|
| Compilation of Child Support and Related Regulations | OCSE-IM-78-23<br>9/6/78 |
| Relocation of Headquarters Staff of the Office of Child Support Enforcement, HEW | OCSE-IM-78-25<br>11/14/78 |
| URESA Agents in Canada | OCSE-IM-78-27<br>11/20/78 |
| Indicators of Program Effectiveness for First Half of FY 1978 | OCSE-IM-78-29<br>12/5/78 |
| Use of the "Team Approach" in Management | OCSE-IM-78-30<br>12/13/78 |

1979

| | |
|---|---|
| Washington's Telephone Referral | OCSE-IM-79-1<br>1/9/79 |
| Collection of Child Support Obligations | OCSE-IM-79-3<br>1/22/79 |
| Annual Report to the Congress for the Period Ending September 30, 1978 | OCSE-IM-79-4<br>1/23/79 |
| Sampling Manual for OCSE Statistical Reporting Requirements | OCSE-IM-79-5<br>2/16/79 |
| Restriction on Garnishment | OCSE-IM-79-6<br>3/1/79 |
| State IV-D Agency Listing | OCSE-IM-79-7<br>4/4/79 |
| Annual Report to the Congress for the Period Ending September 30, 1978-Reprinting | OCSE-IM-79-8<br>4/10/79 |

## V. RESEARCH, DEMONSTRATION AND OTHER MODEL PRODUCTS

Absent Parent Child Support Cost -- Benefit Analysis
2 Volumes: Volume I - Program Analysis
Volume II - Process Analysis
A study prepared by the Arthur Young and Company, under contract number SRS-74-56. The purpose of the study was to develop a cost-benefit model which can be used to help State and local governments structure an efficient and effective program to collect child support payments from absent parents. The Executive Summary and the Detailed Summary of findings are available through the Reference Center.

IV-D Technology Transfer Model
Report prepared by the National Reciprocal Family Support Enforcement Association which includes a list of recommendations critical to the operation of an effective and efficient program.
OCSE-IM-77-16 August 18, 1977

Guide for Determining the Ability of an Absent Parent to Pay Child Support
Prepared by the Community Council of Greater New York, the guide offers a well-defined list of considerations that may be used in determining the amount of a support obligation.
OCSE-IM-77-12 June 29, 1977

Model Administrative and Reporting System
Arthur Young's State IV-D Model Administrative and Reporting System for IV-D Collections and Expenditures. The model consolidates successful features from several existing programs in the areas of financial and case management. OCSE-IM-78-17 June 14, 1978

Office of Child Support Enforcement Warrant Unit Project Manual June 1978
A project manual provided by New York for the demonstration project "The Cost Effectiveness of Enforcing Title IV-D Related Family Court Support Warrants." The manual includes project procedures, evaluation procedures, forms, the work flow chart, a fully executed agreement between the Department of Social Services and the New York Police Department, and Welfare Research Incorporated's Technical and Business Proposals.

Paternity Case Processing Handbook
A handbook developed by the University of Southern California's Center for Health Services Research. It contains a detailed description of effective methods for processing a paternity case through its various possible phases, including suggestions on when and how to proceed from one phase to another.
OCSE-IM-78-4 February 9, 1978

V. Continued

Sampling Manual for OCSE Statistical Reporting Requirements

A sampling manual prepared under contract by JWK International Corporation intended for use by States that choose to provide sampling estimates rather than actual data when completing the OCSE-3 statistical reporting form. Several sampling plans are explained along with guidelines for choosing a sampling plan that is appropriate for a particular organizational situation. The manual also describes procedures for constructing a sample, collecting data, estimating the desired items, and determining the precision of estimates.

Techniques and Procedures to Establish the Paternity of Children Born Out of Wedlock

A report prepared by the University of Southern California Center for Health Services Research. It includes discussions of paternity case processing systems, the use of blood testing and polygraph testing as paternity establishment techniques, the judicial acceptability of blood and polygraph test results and uniform laws concerning paternity establishment. These discussions offer potentially useful information to jurisdictions that are currently developing, or intend to develop, more effective procedures for the establishment of paternity.
OCSE-IM-77-6 April 6, 1977

Using Blood Tests to Establish Paternity

A report prepared by the University of Southern California's Center for Health Services Research describing the results of a study in which laboratories throughout the nation were surveyed to ascertain the existing capacity and capability for blood testing to determine paternity. The study includes considerations of the various blood factor systems and their usefulness in paternity determination.
OCSE-IM-77-11 June 27, 1977

## VI. Management/Training Materials

Collecting Overdue Accounts
An instructional booklet on Phone Power. It describes the steps involved in making a collection call, including pre-call planning, the call itself, and the follow-up. Practice exercises are included.

Massachusetts Phone Power Project
An information memorandum describing the use of established telephone collection procedures for locating absent parents.
OCSE-IM-77-17 September 9, 1977

Michigan's Support Specialist Training Manual
A comprehensive training manual developed by Michigan's Department of Social Services in 1973 for training new child support enforcement personnel.
OCSE-IM-78-14 June 6, 1978

The Texas Training Film and Manual for the Trial of Contested Paternity Proceedings
The Texas Department of Human Resources has developed a training film and manual for the trial of contested paternity proceedings. The film outlines the basic steps in the paternity determination process including interviewing the client, jury selection, examining witnesses and making the closing statement. While both the film and manual emphasize prosecutorial strategy, the manual also stresses anticipated approaches by respondent's counsel and suggests tactics for countering them. A copy of the film and the manual can be borrowed from the Reference Center or from the appropriate Regional Office.
OCSE-IM-78-2 January 17, 1978

Model Administrative and Reporting System
A State IV-D Model Administrative and Reporting System for IV-D collections and Expenditures has been developed by Arthur Young and Company. The model consolidates successful features from several existing programs in the areas of financial and case management.

Use of the "Team Approach" In Management
A description of Utah's approach to case management-the team approach. It involves breaking down local office personnel into small work units, each of which has complete responsibility for the management of a set of cases from beginning to end. The team approach combines maximum control over cases with maximum flexibility in case handling.
OCSE-IM-78-30 December 13, 1978

## VII. Systems

### Conditions for Federal Financial Particpation in the Costs of Automated Data Processing Under Medical and Public Assistance Programs

Regulations which consolidate and codify in a single part the Department's procedures in claiming Federal financial particpation for the acquisition and use of automatic data processing equipment and services.

### Guidelines for Documentation of Computer Programs and Automated Data Systems

Prepared by the National Bureau of Standards, these guidelines are intended to be a basic reference and checklist in planning and evaluating documentation practices.
U.S. Department of Commerce/National Bureau of Standards. Federal Information Processing Standards Publication. February 15, 1976

### Guidelines on Software Development Management for State IV-D Systems

Guidelines prepared to assist State and local IV-D Administrators in planning, controlling and managing the development and operation of their computerized IV-D systems. It outlines the system development process, required documentation and the roles and responsibilities of program and technical staff.
OCSE-IM-78-21 July 17, 1978

### Information Systems Workshop

Proceedings from the First Annual Information Systems Workshop held in Orlando, Florida in April, 1977. Workgroup topics were:

- data elements and file structures
- flow and processing of payments
- modules comprising a IV-D system
- IV-A/IV-D interface
- distribution of support payments
- interstate transactions

### Information Systems Workshop

Proceedings from the Second Annual Information Systems Workshop held in Berkley, California in June, 1978. Workgroup topics were:

- program management
- best systems practices and techniques
- computer processing requirements of a IV-D System
- interstate payments and incentive processing.

Lessons Learned About .. Acquiring Financial Management and Other Information Systems

Booklet prepared by the Comptroller General of the United States "to disseminate the lessons learned by many Federal agencies and contractors in designing, developing, and implementing management information systems." August 1976

OCSE Model Child Support Enforcement System

- Requirements Document presents the required features for a Child Support Enforcement System for the State of New Mexico. In addition, the System is to be designed with the ability to be used in other States, specifically Nevada and Hawaii.
- General System Design presents the functional design specifications of a Child Support Enforcement System for implementation in New Mexico, Nevada and Hawaii.
- Detail System Design presents a detailed discussion of the design methodology and incorporated system features of the Model.
- Discription Module Description presents to potential users of the model design philosophy and operating methodology incorporated within the Distribution Module. It is prepared for the system user rather than data processing personnel in that it discusses the distribution process in terms of IV-D functions and requirements rather than in terms of file and data manipulation methods.

## VIII. Legislation/Regulations

Child Support - Data and Materials
Background information prepared by the staff for the use of the Committee on Finance. November 10, 1975

Child Support - Data and Materials
Information prepared by the staff for the use of the Committee on Finance. March 19, 1979

Compilation of Child Support Regulations
Regulations governing the child support program.

| | | |
|---|---|---|
| OCSE-IM-77-7 | | 5/19/77 |
| OCSE-IM-77-21 | (revisions) | 11/9/77 |
| OCSE-IM-78-6 | (revisions) | 2/22/78 |
| OCSE-IM-78-23 | (revisions) | 9/6/78 |

Good Cause Regulations - Public Hearings
Transcript of public hearings held on May 5, 1978 and additional statements and letters submitted for the hearing record.

1979 Suggested State Legislation (Volume 38)
Proposals for legislation prepared by the Council of State Governments. Included for 1979 is a suggested "State Parent Locator Act...designed to aid in the effective operation of State child support programs by enabling local social service districts to more readily recover child support payments."

Uniform Parentage Act
Legislation providing appropriate procedures and legal rules to establish paternity uniformly between the States.

Wage Garnishment, Attachment and Assignment, and Establishment of Paternity
Babkground information prepared by the staff for the use of the Committee on Finance. October 1975

# THE REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA)

The table which follows is intended to assist the investigator in identifying the remedies available under the URESA laws of the other states. To interpret the table correctly, the responses therein are to the following questions:

1. Paternity - Is there a provision in the state's URESA law under which paternity can be adjudicated?

2. Civil - Is there a civil proceeding in the URESA law?

3. Criminal - Is there a criminal proceeding in the URESA law?

4. Support, Custody, Visitation - Is there a provision in the URESA law which makes it clear that disagreements between the natural parents concerning custody or visitation may not be claimed as defenses to the duty of support?

5. Registration - Does the URESA law contain a provision for registration of prior court orders?

6. Information Agency - What agency is designated as the State Information Agent to which petitions shoul be sent when the court with jurisdiction over URESA petitions is unknown?

7. Citation to Act - What is the statutory reference in the laws of the responding state containing the uniform reciprocal support laws?

8. Court of Jurisdiction - What court is designated under the URESA law to handle reciprocal support cases?

"Developed by the Virginia Department of Welfare"

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| ALABAMA 1977 | NO | YES | YES 30-4-06 & 30-4-07 | NO | NO | Department of Pensions and Securities 30-4-02 | Code of Alabama Title 30, Ch. 4 30-4-00 30-4-98 | Juvenile Ct. 30-4-88(a) |
| ALASKA 1977 | YES 25.25.170 | YES | YES 25.25.040 & 25.25.050 | NO | YES 25.25.254 25.25.258 | Child Support Enforcement Agency 25.25.150 | Alaska Statutes Title 25, Chap. 25 25.25.010-25.25.270 | Superior Ct. |
| AMERICAN SAMOA | NO | YES | YES 951 & 952 | NO | YES 1071-1073 | Attorney General 17-906 | Code of American Samoa, Title 901-1075 | High Court of American Samoa |
| ARIZONA 1977 | YES 12-1676 | YES | YES 12-1654 & 12-1655 | YEL 12-1672 | YES 12-1604 12-1609 | Attorney General 12-1566 | Arizona Revised Statutes Ann. Title 12, Ch. 9 Art. 10 12-1651 -12-1679 | Superior 12-1659 |
| ARKANSAS 1977 | YES 34-2427 | YES | YES 34-2405 34-2406 | YES 34-2423 | YES 34-2435 34-2440 | State Welfare Departments' Attorney Office | Arkansas Statutes, Title 34 Ch. 24 34-2401 -34-2443 | Chancery Ct 34-2410 |
| CALIFORNIA 1977 | YES 1695 | YES 1670, et seq. | YES 1660-61 | YES 1694 | YES 1697-1698.3 | Attorney General 1679 | West's Ann. Calif. Codes, Civil Procedure Title 10a 1650-1699 | Superior Ct |
| COLORADO 1976 | YES 14-5-120 | YES | YES 14-5-106 14-5-107 | YES 14-5-124 | YES 14-5-116 14-5-141 | Department of Social Services 14-5-110 | Colorado Revised Statutes, Title 14, Articles 14-5-101 thru 14-5-143 | District Courts 14-5-111 |

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| CONNECTICUT 1978 | NO | YES | NO | NO | NO | Executive Sec. Judicial Dept. 17-140 | Conn. General Statutes Ann. 17-327-17-355 | Court of Common Pleas 17-332 |
| DELAWARE 1977 | YES 630 | YES 620 | YES 610 | NO | YES 639 | Dept. of Health & Soc. Services | Delaware Code Ann. Title 13, Ch. 6, 601-630 | Family Court 13-622 |
| DISTRICT OF COLUMBIA 1975 | YES 30-320 | YES | NO | NO | NO | Corporation Counsel 30-313 | District of Columbia Code Encyclopedia Title 30, Ch.3 30-301 - 30-32 | Domestic Relations Court 30-306 |
| FLORIDA 1977 | NO | YES | YES 88-061 & 88-071 | NO | YES 88-321-88-371 | Department of Legal Affairs 88-171 | Florida Statutes Ann., Title VI C.88 88-011 thru 88-371 | Circuit Court 88-101 |
| GEORGIA 1977 | YES 99-922 a.1 | YES | YES 99-906(a) | NO | NO | Department of Human Resources | Code of Georgia Ann. Title 99, Ch. 99-9A, 99-901(a) - 99-912(a) | Superior Ct. 99-903(a) |
| GUAM 1974 | NO | YES 1306, et seq. | YES 1304 & 1303 | NO | NO | Attorney General 1515 | Civil Procedure Code of Guam 1500 - 1531 | Island Ct. of Guam |
| HAWAII 1976 | NO | YES 576 - 21, et seq. | YES 576-11 & 576-12 | NO | NO | Legislative Reference Bur. 576-10 | Hawaii Revised Statutes, Title 31, Ch. 576, 576-1 thru 576-41 | Circuit Ct. 576-1(3) |

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| IDAHO 1977 | YES 7-1074 | YES | YES 7-1052 & 7-1053 | YES 7-1070 | NO (Previous Section Repealed) | Commissioner of Public Asst. 7-1064 | Idaho Code, Title 7, C. 10, 7-1040 - 7-1089 | County Dist. Courts 7-1057 |
| ILLINOIS 1978 | YES 60-127 | YES | YES 60-105 & 60-106 | YES 123 | YES 60-136 thru 60-140 | State Department of Public Aid 60-117 | Illinois Statutes Ann. Ch. 60, 101-160 | Circuit Court 60-102(a) |
| INDIANA 1977 | NO | YES | YES 31-2-1-5 & 31-2-1-6 | NO | YES 31-2-1-32 thru 31-2-1-37 | State Department of Public Welfare 31-2-1-17 | Indiana Statutes Ann. Title 31, Art. 2, 31-2-1-1 thru 31-2-1-37 | Circuit Court 31-2-1-10 |
| IOWA 1977 | NO | YES | NO | NO | NO | Dept. of Social Serv. Div. of Children's and Family Services 252.A 12 | Code of Iowa Ch. 232A1 thru 25A.12 | Any Court of Equity |
| KANSAS 1977 | YES 23-476 | YES 23-457 et seq. | YES 23-455 & 23-456 | YES 23-472 | YES 23-402 thru 23-408 | Secretary of Soc & Rehabilitative Services 23-467 | Kansas Statute Ann., Ch. 23, Art. 23.4 23-451 - 23-40 | County Dist. Court 23-460 |
| KENTUCKY 1977 | NO 407.410 | YES | YES 407.130 | YES | NO | Department of Economic Sec. 407.240 | Kentucky Rev. Statutes, Title XXXV, Ch. 407 407.010 - 407.440 | Circuit or District Ct. 407-100(4) |
| LOUISIANA 1977 | NO | YES 1661, et seq. | YES 1631 & 1652 | NO | YES 1691-1696 | State Department of Public Welfare 1669 | Louisiana Statutes Ann., Title 11, Ch.6 1641-1699 | Juvenile Ct. 1642.4 |

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| MAINE 1977 | YES 411 | YES 392, et seq. | YES 361 & 362 | YES 402-C | YES 413-419 | Department of Health & Welfare 400 | Maine Revised Statutes Ann. Title 19, Ch.7 331-420 | Superior or District Court 332.1 |
| MARYLAND 1977 | NO | YES 89C-7, et seq. | YES 89C- 5 & 6 | NO | YES 31-36 | Division of Child Support Enforcement of St. Soc. Serv. Adm. 17 | Ann. Code of Maryland, Art. 89C 1-39 | Circuit Court 89C 10 |
| MASSACHUSETTS 1977 | NO | YES | NO | NO | NO | None provided in the Act | Annotated laws of Mass., Part IV, Title 1, Ch. 273A 1-17 | District Court 273 A 6 |
| MICHIGAN | NO | YES | YES 700.156 & 700.157 | NO | NO | State Department of Social Welf. 700.151 - 700.174 | Michigan Compiled Laws Ann Ch. 700 700.151 - 700.174 | Circuit Court in Chancery 700.160 |
| MINNESOTA 1978 | NO | YES | YES 518.51 | NO | YES 518-419 | Not specified | Minn. Statutes Ann. Chapter 518 518.41 - 518.51 | District or County Court 518.42(5) |
| MISSISSIPPI 1977 | NO | YES | YES 93-11-11 thru 93-11-13 | NO | NO | Attorney General 93-11-31 | Miss. Code Title 93 Ch. 11 93-11-1 thru 93-11-65 | Chancery Ct. 93-11-19 |
| MISSOURI 1978 | NO | YES | YES 454.040 & 454.060 | NO | YES 454-290 thru 454.340 | Division of Welfare 454.170 | Annotated Missouri Statute 3, Ch. 454 454.010 - 454.360 | Circuit Court 454-100 |

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| MONTANA 1977 | YES 93-2601-67 | YES 93-2601-47, et seq. | YES 93-2601-45 | YES 93-2601-63 | YES 93-2601-75 thru 93-2601-80 | State Department of Social and Rehabilitative Services 93-2601-57 | Revised Code of Montana 93-2601-41 thru 93-2601-82 | District Court 93-2601-50 |
| NEBRASKA 1977 | YES 42-788 | YES 42-760, et seq. | YES 42-766 & 42-767 | YES 42-704 | YES 42-796 thru 42-7108 | Department of Public Welfare 42-778 | Revised Statutes of Nebraska Ch. 42, Art. 7 42-762 thru 42-7104 | District Ct. 42-771 |
| NEVADA 1976 | YES 130.245 | YES 130.090 - 130-315 | YES 130.070 & 130.080 | YES 130-210 | YES 130.320, et seq. | Attorney General 130.106 | Nevada Revised Statutes, Title 11, C. 130 130.010 - 130.310 | District Court 130.115 |
| NEW HAMPSHIRE 1976 | YES 546:26(a) | YES 546.7 thru 546.32(a) | YES 546.5 & 546.6 | YES 546:23 | YES 546:30 | Division of Welfare 546.17 | New Hampshire Revised Statutes Ann., Ch. 546 546.1-546.41 | Superior Ct. |
| NEW JERSEY 1977 | NO | YES 2A:4-30.7 et seq. | YES 2A:4-30.5 & 2A:4-30.6 | NO | NO | Administrative Director of Courts 2A:4-30.23 | N.J. Statutes Ann. 2A:4-30.1 thru 2A:4-30.22 | County Juvenile and Domestic Relations Ct. 2A:4-30.2(d) |
| NEW MEXICO 1975 | YES 22-19-53 | YES | YES 21-19-32 233 | YES 22-19-49 | YES 22-19-61 thru 22-19-66 | Department of Health and Soc. Services 22-19-44 | New Mexico Statutes Ann., Ch. 22, Art. 19 22-19-28 22-19-68 | District Ct. 22-19-37 |
| NEW YORK 1977 | NO | YES | NO | NO | NO | None Specified | McKinney's Consolidated Laws of New York, Ch. 14, Art. 3-A 10-43 | Family Court 14-31 |

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| N. CAROLINA 1977 | YES 52A-9.2 | YES | YES 52A-6 & 52A-7 | NO | YES 52A-25 thru 52A-30 | State Div. of Soc. Services 12A-24 | Statute of N. Car. Ch. 12A 12A-1 thru 12A-32 | Any Court of Record |
| NORTH DAKOTA 1977 | YES 14-12.1-27 | YES 14.12.1. 07, et seq. | YES 14-12.1-05 & 14-12.1-06 | YES 14-12.1-23 | YES 14-12.1-46 | North Dakota Public Welfare Board 14-12.1-17 | North Dakota Code Title 14, Ch. 14-12.1 14-12.1-01 - 14-12.1-43 | District Ct. 14-12.1-10 |
| OHIO 1976 | YES 3115.24 | YES | YES 3115.04 & 3115.05 | YES 3115.21 | YES 1115.32 | Attorney General 3115.15 | Ohio Revised Code, Title 31 Ch. 3115 3115.01 - 3115.34 | Any trial Ct. of Record 3115.08(B) |
| OKLAHOMA 1977 | YES 1600-20 d | YES | YES 1600.6 & 1600.7 | YES 1600.20(c) | YES 1600.32 thru 1600.37 | Director, Dept. of Public Welf. 1600.17 | Oklahoma Statutes Ann., Title 12, Ch. 32 1600.1 - 1600.29 | District Court 12.1600.10 |
| OREGON 1975 | NO | YES 110.161 et seq. | YES 110.051 & 110.061 | NO | NO | Attorney General 110 161 | Oregon Revised Statutes, Title 12 3115.01 - 3115.34 | Circuit Court 110.091 |
| PENNSYLVANIA 1977 | YES 62-2043.29 | YES 2043.9, et seq. | YES 2043.7 & 2-43.8 | YES 2043.25 | YES 2043.37 thru 2043.43 | Department of Public Welfare 2043.19 | Pa. Statutes Ann, Title 62 | Court of Common Pleas 62-2043-12 |
| PUERTO RICO 1976 | NO | YES 3313, et seq. | YES 3312 & 3312(a) | NO | NO | Office of Court Administrator 3313 u | Laws of Puerto Rico, Title 32 Ch. 262 3311-3313 u | Superior Court 3311(a) |

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| RHODE ISLAND 1977 | NO | YES | YES 15-11-10 thru 15-11-12 | NO | YES (not Binding) 15-11-14 thru 15-11-17 | None listed in statutes | General law of Rhode Island Title 15, Ch. 11, 15-11-1 - 15-11-17 | Family Court 15-11-15 |
| S. CAROLINA | NO | YES | YES 20-7-370 | NO | YES 20-7-410 thru 20-7-460 | Department of Social Services 20-7-140 | Code of S.C. Title 20, Ch. 7, Art. 3 20-7-100 thru 20-7-470 | Any court having jurisdiction to determine child support 20-7-1004(4) |
| S. DAKOTA 1977 | NO | YES | YES 25-9-24 thru 25-9-26 | NO | NO | Attorney General 25-9-3 | S. Dakota certified Laws, Title 24, Ch. 25-9-1 thru 25-9-31 | Circuit Court 25-9-2 |
| TENNESSEE 1977 | NO | YES | YES 36-905 & 36-906 | NO | YES 36-929 | Department of Human Resources 36-916 | Tennessee Code Ann. Title 36, Ch. 9 36-901-36-1001 | Circuit Court 36-902 |
| TEXAS 1978 | NO | YES | YES 21.21 et seq. | NO. | YES 21.61-21.66 | State Department of Public Welfar | Texas Family Code, Title 2, Ch. 21 21.01-21.66 | District Cts. 21.24 |
| UTAH 1977 | NO | YES | YES 77-61a-5 | NO | YES 61-6-31 thru 61-9-37 | Chairman of Public Welfare Commission 77-61-9-17 | Utah Code Title 66, Ch. 61 a 77-61a-39 | District Court 77-61a-10 |
| VERMONT 1977 | YES 15-415 | YES 15-395 et seq. | YES 15-391 | YES 15-411 | YES 15-424 thru 15-428 | Department of Social Welfare 405 | Vermont Statutes Ann. Title 15, Ch. 7 395-428 | District Court 306 |

| STATE | PATERNITY | CIVIL | CRIMINAL | SUPPORT CUSTODY VISITATION | REGISTRATION | INFORMATION AGENCY | FULL CITATION TO ACT | COURT OF JURISDICTION |
|---|---|---|---|---|---|---|---|---|
| VIRGINIA 1977 | YES 20-88:26.1 | YES 20-88:18 et seq. | YES 20-88:16 & 20-88:17 | YES 20-88:30 | YES 20-88:30.5 & 20-88:30.6 | State Department of Welfare 20-88.15.1 | Michie's Code of Virginia (1950), Title 20, Ch. 5.2 20-88:12 20-88:31 | Juvenile and Domestic Relations District Cts. 20-88:20.2 |
| VIRGIN ISLANDS 1976 | NO | YES | YES 16-401 & 16-402 | NO | NO | United States Attorney 16-470 | Code of the American Virgin Islands, Title 16 341-429 | Municipal Court Juvenile & Domestic Relation Division 16-392 |
| WASHINGTON 1976 | NO | YES | YES 26.21.040 | NO | YES 26.21-221 thru 2621-270 | Attorney General 26.21-106 | Revised Code of Wash. Title 26 Ch. 26.21 26.21.010 - 26.21 910 | Superior Ct. 26.21-010 |
| WEST VIRGINIA | YES 48-9-76 | YES | YES 48-9-5 20-9-6 | YES 4-9-22 | YES 4-9-34 thru 4-9-39 | Attorney General 4-9-17 | W. VA Code, Ch.48, Art. 9 48-9-1 thru 48-9-42 | Criminal, Intermediate, or Circuit Ct. 48-9-10 |
| WISCONSIN 1977 | YES 52.10 (27) | YES | YES 52.10(5) & 52.10(6) | YES 52.10(23) | YES 52.10(35) - 52.10(40) | Dept of Health and Soc. Serv. 52.10(17) | Wisconsin Statutes Ann. 52 52.10(1) - 52.10(42) | Family Court Div. of Circuit or County Court 52.10-2 |
| WYOMING 1977 | YES 20-4-123 | YES | YES 20-4-105 & 20-4-106 | YES 20-4-123 | YES 20-4-134 thru 20-4-136 | Attorney General 20-4-117 | Wyoming Statutes, Ann. Ch. 81 20-4-101 thru 20-4-130 | District Ct. 20-4-110 |

# MEN WHO KNOW THEY ARE WATCHED: SOME BENEFITS AND COSTS OF JAILING FOR NONPAYMENT OF SUPPORT

*David L. Chambers**†

Suppose that by some mysterious process the police in your town received each Monday a list of all the robberies and burglaries committed during the preceding week and the names of the persons who committed them. Suppose further that the list itself was admissible in evidence at trial and generally led to conviction. And suppose finally that persons considering committing offenses knew that the police had such a list and used it, relentlessly tracking down the miscreants named on it. Under such circumstances, one would probably expect that many potential offenders in the town with the magical list would resist the temptation to rob or burgle stores.

For one offense, such a list does exist. For over fifty years, each county government in Michigan has maintained an agency called the Friend of the Court that is responsible for receiving all child-support payments from parents under orders of support after a divorce or adjudication of paternity. The agency knows on Monday if the parent under an order of support failed to make a payment the preceding Friday, and the parent under an order of support, almost always the father, knows that the agency knows. He is also aware

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* Professor of Law, The University of Michigan. A.B. 1962, Princeton University; LL.B. 1965, Harvard University.—Ed.

 This article reports part of the findings of a study of child support conducted over a five-year period. The full results should be available in 1978. A grant from the National Science Foundation provided funds for several stages of the study, including the stage reported here. Additional funds were provided by the Center for Studies in Criminal Justice at The University of Chicago and the William W. Cook Research Funds of The University of Michigan Law School.

The study would have been impossible without the active cooperation of the Friends of the Court in the 28 counties we examined. To them, and especially to Robert Standal of Genesee County and Richard Benedek of Washtenaw County, I am immensely grateful. I am also grateful to the score of persons who have worked on the project at various times. Three require special mention here: Ray M. Shortridge, who served as my research associate from 1974 to 1976, and who shaped and oversaw the execution of much of the 28 county phase of the study; Terry K. Adams, who served as research associate in earlier phases and has advised me throughout; and Priscilla Cheever, who has performed nearly all of the computer work for the last several phases of the project. William Birdsall, economist on the faculty of The University of Michigan School of Social Work, assisted me greatly by his comments on the drafts of this article.

that, if he does not make the payment, he stands a risk of being arrested by the agency's own deputized officers and sentenced to jail by a judge for civil contempt for failing to obey the court order. Each year Michigan judges sentence thousands of men for nonsupport—in 1974 around 4000, and probably more today. On any given day in several Michigan counties, the number of men in the local jail under sentence for nonsupport commonly exceeds the number under sentence for all other jailable offenses combined.

How do fathers behave in places with such a list and an ardent enforcement staff? If all fathers who can pay do so without prodding because of their affection for their children, even an omniscient and industrious police force would have no effect on payments. Nor would the police have an effect if those men who do not pay are men so angry or bitter that even fear of jailing would serve as an inadequate prod.[1] Unless love or anger is so powerful, however, one would expect that knowledge that an agency is aware of their nonpayment would cause some fathers to pay who otherwise would not, and the additional knowledge that the agency acts forcefully against nonpayment would lead even more to pay. The system should have effects.

For five years, a number of associates and I have been recording and analyzing data from the files of Michigan's Friends of the Court. We find, sad to say, that love alone fails to propel most parents into regular payment. On the other hand, we find that a well-oiled enforcement process capped by a substantial reliance on jail seems to lead significant numbers of men to pay who otherwise would not, although we cannot say with certainty whether the link between payments and jail is through fear of being jailed or some more subtle process of conveying through the use of jail the seriousness of a social obligation.

How we reached our conclusions about jail's effects on payments is the subject of this essay. For readers unfamiliar with research on deterrence, I hope the study can serve, as it has for the author, as a palatable introduction to a form of inquiry often reported in unnecessarily obscure terms. For those familar with such research, the study may still have value, for the nature of the offense and the

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1. The angriest account of the divorce process from a male perspective that I have read is M. FRANKS, HOW TO AVOID ALIMONY (1975), an altogether nasty book. A fine, tempered book is J. EPSTEIN, DIVORCED IN AMERICA (1974). An early study of women after divorce that remains impressive and timely despite its age is W. GOODE, WOMEN IN DIVORCE (1965), originally published as W. GOODE, AFTER DIVORCE (1956).

thoroughness of the public records have permitted us to measure the effects of a jailing policy with considerably greater precision than is usually possible. For both groups, the study may reveal a process—the enforcement of child support—about which most people know very little.

Many states are moving swiftly to improve their systems for collecting child support in welfare cases. They are doing so to conform to recent federal legislation that conditions full reimbursement of welfare costs to the states on their making much more organized efforts than in the past to secure and enforce support orders against absent fathers.[2] Our findings, if read too hastily, might lead some people to conclude that payment levels can be improved simply by jailing a large number of nonpayers. Our findings do not support this conclusion; rather, they suggest that jailing makes a significant difference in collections if, but only if, it is coupled with a well-organized and visible system of other efforts to collect. There are no easy shortcuts.

More than money is at stake when we jail people. After reporting our findings on the deterrent effects of jailing, we will share some of our doubts about the wisdom of relying heavily on jail even if it does yield more dollars than it costs. We will then examine briefly an alternative to the use of jail that may be more effective even when measured solely by the return in dollars collected.

## I. The Nature of the Research

Research on deterrence often focuses on persons on whom a particular sanction has been imposed to learn whether they commit the same acts again. Parts of our research included such an inquiry, but in this article we do not report on these men. Here we will deal with the effects of the use and threat of jail on the whole population who may commit an offense, the so-called "general deterrent" or "general preventive" effects. We will look, that is, at how the punishment of some fathers affects the behavior of all fathers, including those who are never arrested or jailed. Measuring these effects is a vexing task.[3] When large numbers of men who have been

2. See Title IV(D) of the Social Security Act, 42 U.S.C. §§ 651-6[illegible] (Supp. V 1975). Throughout this article, the term "welfare" refers to the program of Aid to Families with Dependent Children established by Title IV of the Social Security Act.

3. Among lawyers and social scientists, three persons have been largely responsible for providing a theoretical foundation for deterrent research and for cataloguing its pitfalls. The first is Johannes Andenaes of the University of Oslo. *See, e.g.*, Andenaes, *General Prevention—Illusion or Reality*, 43 J. Crim. L.C. & P.S. 176

jailed make lump-sum payments immediately preceding their release and immediately after release begin a period of regular payments for the first time in years, we can be fairly confident in most cases of a causal link between the jailing and the payments. When we look, however, at the records of men never jailed and find steady payments year after year, we cannot say anything about whether fear of jail, rather than affection for the child or something else, produced their payments.

To look for such "general deterrent" effects of jailing on the behavior of a group who might commit an offense, social scientists typically use either of two risky methods of inquiry.[4] Under one method, a single place—a state, a county—is followed through time to examine the relationship between changes in the incidence of the undesired behavior and changes in the rates of imposing certain sanctions. As the jail rate or hanging rate increases, does the crime rate decline? This was the method employed by Isaac Ehrlich in his recent and much-discussed study of the general deterrent effects of the death penalty.[5] Under the other model, several places—several states or counties—are examined, typically during a common period of time, in an effort to see whether the places that jail or execute more offenders have a lower incidence of the undesired behavior. Thorsten Sellin employed this method in an earlier and no less celebrated study of the death penalty.[6] It is also the method used in the study reported here.

That the two death penalty studies reached opposite conclusions on the same issue suggests the difficulties deterrence research en-

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(1952); Andenaes, *General Deterrence Revisited: Research and Policy Implications*, 66 J. CRIM. L. & C. 338 (1975). The other two are Franklin Zimring and Gordon Hawkins, authors of F. ZIMRING & G. HAWKINS, DETERRENCE—THE LEGAL THREAT IN CRIME CONTROL (1973). Economists have also become interested in deterrence research. *See, e.g.*, Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968); AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, ECONOMICS OF CRIME AND PUNISHMENT (Rothenberg ed. 1973).

4. *See* F. ZIMRING & G. HAWKINS, *supra* note 3, at 249-93.

5. Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 AM. ECON. REV. 397 (1975). A series of responses and comments to Ehrlich have been published recently in the *Yale Law Journal*. *See* Baldus & Cole, *A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment*, 85 YALE L.J. 170 (1975); Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 YALE L.J. 187 (1975); Ehrlich, *Deterrence: Evidence and Inference*, 85 YALE L.J. 209 (1975); Ehrlich, *Rejoinder*, 85 YALE L.J. 368 (1976); Peck, *The Deterrent Effect of Capital Punishment: Ehrlich and His Critics*, 85 YALE L.J. 359 (1976). *See also* Zeisel, *The Deterrent Effects of the Death Penalty: Facts v. Faiths*, 1976 SUP. CT. REV. 317.

6. T. SELLIN, THE DEATH PENALTY (1959).

counters. All such research depends upon accurate counts of comparable data. It must begin with reasonably precise figures, either across locations or through time, of the incidence of the undesired behavior and of the sanction the impact of which one is seeking to gauge. Usually the frequency of imposing a certain sanction can be counted by poring through court records, but for many offenses, such as drug sales or larceny, it is much more difficult to determine the actual incidence of the undesired behavior. Figures on citizen complaints or police arrests may reflect quite unevenly across time or locations the actual incidence of the behavior.

After obtaining accurate information about the crime and the punishment, one can see whether there is less of the undesired behavior in places that make substantial use of penal sanctions. Half the job remains, however, for one must then determine whether the relation between sanction and conduct is actually a mirage:[7] whether, that is, some aspect of the enforcement process other than the incidence of sentences to jail—for example, the swiftness in sending reminders that payments are due—more adequately or wholly explains the relation between punishment and crime. Or, apart from any aspects of the enforcement process, perhaps what appear to be the effects of enforcement are properly attributable to differences in the characteristics of the population or to changes in the same population over time, differences that might affect attitudes toward the conduct or responsiveness to the same enforcement efforts. It is this latter part of the undertaking that has most bedeviled researchers into deterrence and has most bedeviled us.

## II. The Twenty-Eight County Study

### A. *Michigan's Friends of the Court and the Enforcement of Support*

Among American jurisdictions, Michigan's Friend-of-the-Court system is quite unusual. In most states, if a parent under an order of support fails to make payments, the custodial parent discovers that, unless she is a recipient of welfare benefits, there is no agency comparable to the Friend of the Court to which she can turn for assistance in enforcing the order. She must hire her own attorney to search for the father and bring him to court by civil processes. In Michigan, by contrast, a Friend of the Court in each county oversees all aspects of the child-support process in divorce, separate

7. The opposite phenomenon can also occur: a relationship between crime and punishment does not appear initially but emerges after controlling for other variables.

maintenance, and paternity cases.[8] The agency begins each case by gathering financial information from the parents and advising the judge on the appropriate size of the support order. After an order is entered, it collects all payments and forwards them to the appropriate receiver, either the custodial parent or the welfare department. Finally, it pursues the parents who fail to pay. In nearly all cases in which a support order is entered, payments are handled through the agency. Its responsibilities extend equally to welfare and non-welfare cases.

To carry out these tasks, a few small counties have only one or two full-time employees. By contrast, the Friend of the Court in Wayne County, the core of the Detroit metropolitan area, has a staff of over three hundred. Most agencies of any size have computerized payment records and full-time enforcing officers, many of them deputized by the county sheriff, who go into the field to arrest men who have not paid.

Jailing plays a part in this process because the willful or negligent failure to make payments ordered by the court is treated as a form of contempt that, by special state statute, can lead to a sentence in jail of up to one year, subject to earlier release upon the defendant's paying his full arrearage or working out some lesser arrangement satisfactory to the court.[9] Most men jailed do in fact purchase their early release by paying an amount less than full arrearage.

The steps taken before jailing and the extent of reliance on jail vary from county to county, but in every county the agency mails warning letters to delinquent fathers, and nearly all agencies issue orders to show cause directing the men to appear in court to explain their delinquency. Even in the counties that rely most upon jailing, the number of collection efforts short of jail dwarfs the number of sentences; in one that we examined particularly closely, for example, warnings mailed to men in the caseload exceeded jail sentences imposed by twenty-five fold. For men who fail to appear in response to warnings and orders to show cause, the agency staff secures and, in many counties, serves arrest warrants and then acts as prosecutor before the courts in delinquency hearings. After a hearing, if the man is sentenced, the same staff arranges deals with jailed men who wish to secure their early release from jail on payment of less than the full arrearage.

8. Michigan's legislature authorized the creation of Friends of the Court in 1919, 1919 Mich. Pub. Acts 412, and then made them mandatory in 1921. 1921 Mich. Pub. Acts 147. The provisions of current law that provide for Friends of the Court and fix their duties are found in MICH. COMP. LAWS § 552.251-.255 (1970).

9. *See* MICH. COMP. LAWS § 552.201 (1970).

Our study of jailing for nonsupport was undertaken because we found that rather like the biologist's fruitfly or guinea pig, nonsupport lends itself to closer inquiry than is possible with most other forms of behavior treated as criminal. As watchdogs over custody and support, the agencies maintain records of every aspect of the process: their files include information on family characteristics, weekly payments, and enforcement efforts. Their records and their cooperation made our inquiry possible.

### B. *The Research Design and Findings*

As our first step, we drew a random sample of divorce cases in each of twenty-eight Michigan counties. The counties we picked were those in the southern half of Michigan that had reported caseloads of at least 1,000 in 1973.[10] Stretching from the eastern to western edges of the state, the counties contained all the cities in the state with 1970 populations of more than 50,000 and included all but one of the counties with populations of more than 100,000. On the other hand, four of the counties had populations under 50,000 and ten had populations under 80,000. Our research thus examined data sources ranging from the intensely urban southeastern corner through counties of farms and small towns.

The samples we drew in each county averaged 430 cases, for a total across the twenty-eight counties of about 12,000 cases. In each county, we drew a random[11] selection of all cases in which a final decree of divorce had been entered and an order of support had been in effect during the entire period we measured. Thus men paying every week were included, as well as men whose cases had been open for many years but who had never paid anything. For each case in each county, we recorded only a few pieces of information: the amount each person paid, the total amount he was under an order to pay during a fixed period, and whether the children covered by the support order were currently receiving welfare benefits. In most

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10. The counties studied were Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Eaton, Genesee, Gratiot, Ingham, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, St. Clair, St. Joseph, Shiawassee, Van Buren, Washtenaw, and Wayne. Two other counties, Muskegon and Ottawa, had caseloads meeting the numerical criterion we set. However, scheduling difficulties prevented our studying their files.

11. In all but a few counties, payment records were maintained in alphabetical order. To produce our random samples for these counties, we simply determined the size of the caseload and selected an interval (*e.g.*, every seventh case or every twelfth case) that would permit us to cull about 450 cases by moving once through the alphabet.

counties the period we used was calendar 1974 or a one-year period including some months in 1974, depending on the way the counties' bookkeeping records were kept. From this information, we computed how much each man had paid of all that he was supposed to have paid during the period—his batting average, so to speak.[12]

We then computed three payment figures for each county: the overall average of the individual payment rates within the county, a figure that is close, though not identical, to the portion collected by the county of all the dollars it was supposed to collect;[13] the portion of men in the county paying nearly nothing during the period (we put into this group men paying 10% or less of the ordered amount); and the portion of men paying everything due or close to everything due (we put into this group men paying 80% or more of everything due).

Checking the records of a county for any given one-year period, one would probably expect to find that most men either paid nothing or paid regularly, leaving few men in the middle. And in fact that is what we did find. The striking differences among our counties were in the portions of payers at the bottom and the top. Across the counties, the proportion of men in the high-paying bracket varied from one-third to two-thirds of the caseload; the proportion in the low-paying bracket ranged from one-tenth to one-half. Accordingly, across the counties the average portion paid by men of their amounts due varied widely—from a low in two counties of only 45% and

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12. In most counties, we used the following formula: $\frac{d}{tw}$, where d = dollars paid during period, t = number of weeks in period, and w = weekly order in dollars. In some counties, where the records provided only a running total of the arrearage and no total of the dollars paid during a period, we used a different formula: $\frac{tw-(a_2-a_1)}{tw}$ where $a_2$ = arrearage at end of period, $a_1$ = arrearage at beginning of period, and t and w represent the same values as above. So long as there were no artificial adjustments in the arrearage during the period, the two formulae yield identical results. Because there were in fact some such alterations in the arrearage not reflecting actual payments, usually to the payer's advantage (for example, when a credit was given because the noncustodial parent kept the children for an extended visit), we made a small adjustment downward in the payment figures for the counties in which we had to use the second formula. The adjustment was based on our experience in two counties, Washtenaw and Genesee, in which we had computed individual payment records by both formulae.

13. The figures would be identical if all orders were of the same size. Within our samples in Genesee and Washtenaw, there were, of course, variations in the size of orders, and there was in fact a very slight positive correlation between order size and payment rate, so that it is probable that the figure we use, the mean of individual payment rates, is quite close to (but slightly lower than) the portion the agency collected of everything due under all its orders.

46% of the ordered amounts to a high in two other counties of 85% and 87% of everything due. Nearly half the counties collected between 61% and 70% of the amounts due. Table 1 reveals the distribution of collections in the counties. We found that the portion at the bottom and the top correlated so overwhelmingly with the mean level of payments that we have used the county's mean for reporting almost all of our findings.[14]

TABLE 1

MEAN PORTIONS COLLECTED OF EVERYTHING DUE FROM DIVORCED PERSONS UNDER ORDERS OF SUPPORT IN TWENTY-EIGHT MICHIGAN COUNTIES DURING SURVEY PERIOD, 1974-1975

| Counties Collecting a Mean of | No. of Counties | % of Counties in this Range | % of Fathers Paying 10% or Less | % of Fathers Paying 80% or More |
|---|---|---|---|---|
| 41-50% of amount due | 2 | 7% | 47% | 32% |
| 51-60% of amount due | 5 | 18% | 38% | 42% |
| 61-70% of amount due | 13 | 47% | 24% | 50% |
| 71-80% of amount due | 6 | 21% | 16% | 60% |
| 81-90% of amount due | 2 | 7% | 8% | 72% |
| | 28 | 100% | 25% (mean) | 51% (mean) |

When we speak, as we will shortly, of some counties as high-collecting, we need to remember that, even in the two counties with the highest mean payments, nearly 30% of the men paid less than 80% of the total amount due.[15] Thus, even in the high-collecting counties, many women and children already in precarious financial condition[16] went without needed income. Throughout, when we speak of high collections, we intend solely to convey relative levels of payment.

After determining the levels of collections for each county, our goal was to determine why some counties collected so much more

14. The product-moment correlation between the overall mean and the portion of the caseload paying less than 10% of everything due was —.935. The product-moment correlation between the mean and the portion of the caseload paying more than 80% was +.899.

15. In 1974, unemployment was at disastrously high levels throughout Michigan. Our findings suggest that nearly all the counties would have somewhat higher collection rates during periods of lower unemployment. *See* note 25 *infra*.

16. *See generally* W. GOODE, *supra* note 1; H. ROSS & I. SAWHILL, WOMEN IN TRANSITION (1975).

than others, despite the fact that all counties had Friends of the Court charged with enforcing orders. We were primarily interested in measuring the impact of the use of jailing as a technique of enforcement. To this end, we counted for each county the number of persons sentenced to jail during calendar year 1974. A few Friends of the Court maintained their own logs of all persons sentenced; more frequently we were forced to turn to the logs of the judges of each Circuit Court and scour the year's records of all court business for postings of sentences for nonsupport.

We found, as we had expected, a range of reliance on jail in 1974 from almost no jailings in a few counties up through several hundred jailings in a few others. Table 2 reveals the frequency of sentences to jail in absolute numbers and in terms of the rate of jailing for every 10,000 persons in the county (a figure that closely parallels the number of jailings as a portion of the Friend of the Court caseload).[17] Nearly all the Friends of the Court reported that the numbers jailed in 1974 had been much the same in the immediately preceding year or two.

TABLE 2

INCIDENCE IN TWENTY-EIGHT MICHIGAN COUNTIES OF SENTENCES TO JAIL FOR CONTEMPT OF COURT FOR FAILURE TO PAY SUPPORT IN 1974

| Number of Men Sentenced to Jail for Nonpayment in 1974 | Number of Counties | Per cent of Counties |
|---|---|---|
| Under 10 men | 6 | 21% |
| 11-30 men | 9 | 32% |
| 31-100 men | 7 | 25% |
| 100-300 men | 3 | 11% |
| Over 300 men | 3 | 11% |
| | 28 | 100% |
| **Number of Sentences to Jail for Nonsupport in 1974 Per 10,000 Persons in County* (1970 census)** | | |
| 0-1 per 10,000 | 8 | 29% |
| 2-3 per 10,000 | 8 | 29% |
| 4-6 per 10,000 | 6 | 21% |
| 7-10 per 10,000 | 3 | 11% |
| 11 or more per 10,000 | 3 | 11% |
| | 28 | 101% |

Total Sentences to Jail in 28 Counties (1974)—3046 men (of a total caseload of around 290,000)

* Roughly equivalent to the number of jailings for every 250 persons in the Friend-of-the-Court caseload in 1974. *See* note 17.

17. The size of the caseloads of the Friends of the Court and the populations of the counties correlate very highly, largely because the divorce rate varies remarkably little among the Michigan counties in our sample. In fact, the correlation is

We found a substantial positive correlation (+0.492) between the counties' rates of jailings and their rates of collections: in general, the more they jailed, the more they collected.[18] But this finding, though striking, was the merest beginning. Our task then was to develop measures of all the other factors that might also affect performance and then learn whether the apparent relationship between jailing and collections still held.

As a starting point, it was possible that jailing had a relation to collections through a more subtle link than the bare jail rate alone. For example, men might have been affected not by the mere incidence of jailing but rather by the sentencing rate among those summoned to appear at a hearing for nonpayment, or they might have been affected by some combination of the sentencing rate and the length of sentences commonly imposed. We accordingly developed indices to test for these possible causal links.

It was also possible that the jailing rate had nothing directly to do with payment rates at all. Counties that jailed more might well have had enforcement agencies that tried harder in other respects—sent more warnings, held more hearings, used larger enforcement staffs—and one or more of these other factors and not the jailing rate might actually best explain variations in performance. Accordingly, we gathered as much information as we could about all aspects of the counties' collections and enforcement systems—staff-caseload ratios, the use of computerized records, the rate of use of orders to show cause, and so forth.

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so high that we were unable to test whether awareness of the possibility of jail, and thus the deterrent effect, depends on the size of the caseload or on the population. Within the counties in our study, the ratio of the county's population (in 1970) to number of men (or families) making up the caseload (in 1974) ranged from about 35:1 to 40:1. Thus our figure of the "number of jailings per 10,000 population" is roughly equivalent to the "number of jailings per 250 men in the caseload." We have consistently used the population figure as the denominator because in a few counties we were never confident that we had a precise count of the caseload of orders still in effect.

18. Here is another view of the relationship between collections and the rate of jailing:

RELATION OF JAILING TO COLLECTIONS IN TWENTY-EIGHT MICHIGAN COUNTIES

| Number of Jailings per 10,000 persons in County: | Number of Counties: | Mean rate of collections: (mean of average portion collected of amounts due) |
|---|---|---|
| 0-1 per 10,000 | 8 | .60 |
| 2-3 per 10,000 | 8 | .63 |
| 4-6 per 10,000 | 6 | .67 |
| 7 or more per 10,000 | 6 | .75 |
| | 28 | .655 (mean) |

Additional factors had to be taken into account. Payment performance could be affected by factors that varied from county to county but had no direct connection with the enforcement system. More fathers might have paid in County A than in County B—and a higher proportion of nonpayers jailed—because the people in County A felt more strongly about obligations of support or about their general obligations to obey the law or to adhere to social convention. Lacking county-by-county polls of citizen attitudes, we coded a wide range of possible, but quite indirect, indicators of attitude, such as the portion of county population living in a rural setting, total population and population density, conservative voting patterns, general crime rates, and formal church membership. We also recorded the results of our own survey of the attitudes of each county's Friend of the Court toward the functions of the enforcement process and toward possible legislative changes in the enforcement system.

We lastly coded information about income and unemployment rates because it was plausible, indeed likely, that men in all counties were not equally able to pay. For this we drew on 1970 census information about median incomes and portions of the population above and below various income levels and on census and Michigan Employment Security Commission figures regarding levels of unemployment.

It was during the phase of the study that we sought to control for the multitude of factors apart from jailing that might have affected payments that we skated on thinnest ice. We ourselves had computed parents' payment rates and developed confidence in our accuracy. We had similarly counted with care the exact number of men sentenced to jail during a common time period. But for the remaining factors other than the incidence of jailing that might have affected payment rates, we encountered the problems that have plagued all social scientists performing research on deterrence.[19]

Certain problems stood out above the others. First, for many plausible factors that might have affected payments—especially, as we have said, those bearing on people's attitudes toward their obligations—we often had to resort to the most oblique sorts of evidence. Even unemployment data was available only for residents of each county as a whole and so may not have accurately reflected actual rates of unemployment among men under orders of support.

19. *See* F. ZIMRING & G. HAWKINS, *supra* note 3, at 264-66, 269; Baldus & Cole, *supra* note 5, at 177-83.

Secondly, when there was information that we could code, we had to worry about the comparability of the information across counties. For example, the seemingly simple task of counting the size of county "enforcement staffs" forced us to grapple with many different definitions given the term "enforcement" by the agency heads we interviewed and with multiple uses of individual staff members.

Finally, some sorts of information that were available and reliable displayed so little variation among the counties that we were unable to assess the significance of certain elements of the enforcement process or of the demography of the population of supporting fathers. For example, in setting orders, the counties made use of quite similar schedules that took into account men's earnings and the number of dependent children. (In nearly all, for example, the size of the support order for a family with two children was about one-third of the father's take-home earnings.) Because of the similarity across counties, we were unable to test for differences in collections that might have accrued from larger or smaller orders in relation to incomes.

After gathering all the relevant information that we could, we used multiple regression analysis to determine which factors best accounted for the differences in collections among the counties. Regression analysis is a technique used by social scientists and others to estimate the relationship between factors through the use of numerical data.[20] Complex in formula, yet readily accessible through computer programs, it permits one to estimate the relation between some phenomenon one wishes to understand (here, the level of payments across counties) and other measured factors that might have a bearing on that phenomenon (jailings, median incomes, and so forth). It permits learning the direction and strength of the relationships among the factors used in the analysis.

When we completed a long series of analyses of our own data, three factors stood out among all others as powerfully related to the levels of collections of support. The first was an aspect of the enforcement process: fourteen aggressive Friends of the Court, which we will call "self-starting," watched for a few weeks of missed payments or the accumulation of an arrearage of a certain number of dollars (say $100) and then sent a warning notice to the nonpaying parent. These counties that had a practice in nonwelfare cases of initiating enforcement efforts without waiting for complaints from

20. An explanation of regression analysis readily accessible to most lawyers is Finkelstein, *Regression Models in Administrative Proceedings*, 86 HARV. L. REV. 1442 (1973). A helpful basic text is H. BLALOCK, SOCIAL STATISTICS (1960).

the mothers collected more than those that relied on complaints.[21] The second significant factor was the rate of jailing. Even after controlling for other factors, counties that jailed more men in relation to their population still collected more. The third factor was population—the larger the county, the lower the collections. For example, none of the seven highest collecting counties had populations greater than 70,000. Nine of the ten lowest collecting counties had populations greater than 100,000.[22] Table 3 summarizes our findings with regard to these three factors, doing so at the cost of simplifying for display the true variations in population and rates of jailing.

These three factors were interrelated to some degree. The self-starting enforcement policy brings more men into the enforcement system, which in turn brings more men before judges for possible sentencing; similarly, large counties were somewhat less likely to be self-starters. Nonetheless, each of the three factors had independent explanatory importance. The three principal factors alone account for about 60% of the variation in payment rates among the counties.[23] Put another way, if you knew any Michigan county's population, whether its agency was self-starting, and its frequency of jailing, you could within our sample predict, typically within a few percentage points, how much the county actually collected of the total amount owed.[24]

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21. In the regression analysis we used a simple binary variable that captured whether or not the agency had an established practice in nonwelfare cases of initiating enforcement efforts without awaiting complaints.

22. Not surprisingly, the relation between population and collections is not what social scientists would call "linear." A rise in county population from 30,000 to 130,000 will have far more impact on collections than a rise from 1,030,000 to 1,130,000. In our analysis, we used the $\log_{10}$ of population as a more plausible indicator of the relation of population to performance.

23. A list of all variables analyzed may be obtained by writing the author directly. In a regression analysis with the three factors only, the three explained 62.4% of the variance (unadjusted) and 57.7% of the variance (adjusted). See Appendix at the end of the article.

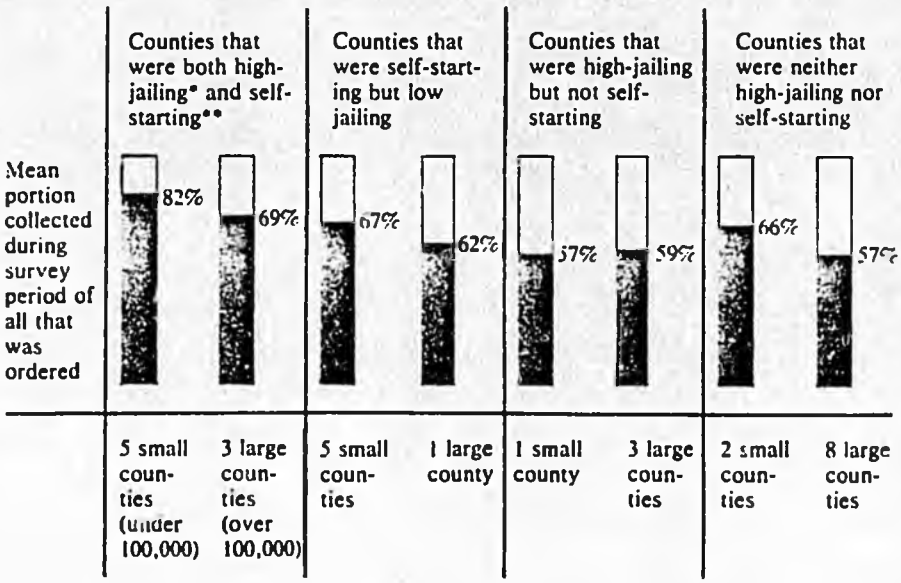
When we created a binary variable that contrasted all counties that were self-starting and high-jailing (four or more jailings per 10,000 population) with all other counties not having both enforcement policies, we accounted for 71.9% of the variance (unadjusted) and 69.7% (adjusted) with this variable and the population variable alone. See Appendix at the end of the article.

24. When we calculated what a county should be expected to collect within our sample using the regression coefficients for population, the jail rate and the "self-starting" factor, the actual collections varied from the predicted collections by more than six percentage points for only nine counties. For eleven counties, the prediction was off by less than three percentage points. Only one county, our highest collecting county, collected over ten percentage points more than would be predicted. That county impressed us even before surveying its records as the most thoroughly organized of all. Conversely, only one county, one of our two lowest collecting, collected more than ten percentage points less than was predicted. This county seemed about the least well organized for collections. It was the only county in our sample with a

## TABLE 3

### INTERRELATION OF THREE MOST IMPORTANT FACTORS RELATING TO COLLECTIONS IN TWENTY-EIGHT MICHIGAN COUNTIES

How much the county jails, whether Friend of the Court initiates enforcement without awaiting complaints, and county population




Mean collections:

13 small counties (under 100,000)—72%
15 large counties (over 100,000)—60%
12 high-jailing counties*—71%
16 low-jailing counties—61%
14 self-starting counties**—71%
14 non-self-starting counties—60%
5 small, high-jailing, self-starting counties—82%
8 large, low-jailing, non-self-starting counties—57%

* A high-jailing county, for our purposes, was one that jailed 4 or more men for nonsupport during 1974 for each 10,000 persons in the county population in 1970. The mean jailing rate for the high-jailing counties was 6.0 per 10,000. The mean rate for the low-jailing counties was 1.7 per 10,000. See further explanation in Appendix A.

** A self-starting county was a county that had had for some years a policy of initiating enforcement efforts in delinquent nonwelfare cases without waiting for complaints.

One other factor helps slightly in explaining differences in collections. When unemployment rates are higher, collections are lower. It is not, of course, surprising that payments should be lower in places where unemployment is high. It was surprising to us only

population over 100,000 whose agency head had only a part-time appointment. Later in this article, we discuss Washtenaw County, a low-jailing, non-self-starting county. The ill-organized county to which we are referring in this footnote is not Washtenaw.

that unemployment rates did not account for more of the differences among the counties. By adding in the unemployment factor, we could account for differences among the counties only to a slightly greater degree than we could using the three dominant factors alone.[25] An appendix at the end of this article provides for the reader who is interested more detailed statistical information on the findings.

The rate of jailing makes a difference in collections, but how much of a difference? Table 3 and our own analysis indicate that, for purposes of measuring the difference, it makes little sense to separate the jail rate from the factor of a self-starting enforcement process. The two work together.[26] Counties that have both a high jail rate and a self-starting system collect more than those that have neither and more than those that have one or the other but not both. And those that have one or the other but not both collect only very slightly more than those that have neither. When they are linked together and population and unemployment are taken into account, counties with both a high jailing rate and a self-starting policy collected an average of 25% more per case than was collected by the counties that did not have both.[27]

### C. *The Significance of a Self-Starting Enforcement Process, the Rate of Jailing, and Population*

We have dismembered a complex and emotional process—the payments of divorced parents toward the support of their children.

25. The mean and median unemployment rate in our 28 counties was 10%. In nine of our counties the rate was 12.0% or more. In only eight was the rate less than 8.0%. Oddly, these rates were not useful in accounting for any of the difference, whereas the 1970 rates, when unemployment rates were lower but still checkered, were able to explain some of the variance in county collections.

With the four variables we could explain 65.6% of the variance (unadjusted) and 59.7% (adjusted). The addition of unemployment figures does produce a realignment of the ranking of important factors: population and the jail rate are now somewhat more significant than "self-starting" enforcement. See details in the Appendix at the end of the article.

26. As explained in note 23 *supra*, a single variable that combines the "self-starting" factor with the jail rate accounts for more of the variance than the sum of the two taken individually.

27. In a regression on the performance index using as controls (1) the variable that combined "self-starting" and the jail rate into a single binary factor, (2) $\log_{10}$ population, and (3) the unemployment rate, the combined self-start/jailing factor had a coefficient of 14.77. Since the performance index is coded in percentage collected, the coefficient of 14.77 indicates that a county that had both a self-starting system and a high rate should collect after controls 14.77 percentage points more than those that did not have both. Since the mean collection rate among our counties was 65%, an added 14.8 percentage points collected would represent about a 25% increase in collections for counties pushed from a mean collection rate of several percentage points below 65% to a mean rate of several points above.

Payments go down with a larger population, up with a self-triggering warning system, down with more unemployment, and up with more jailings. Though our findings have surface plausibility, those who cherish life's complexity will be pleased that, when we peered deeper into our pool of data, we found the waters muddier than they initially appeared. The significance of the unemployment rate does seem to signify just what one would expect: those who are not working are likely to pay less or not at all. The significance of the three more powerful factors is less clear, however.

Our finding that counties with Friends of the Court that initiate enforcement without awaiting complaints collected more money than other counties is, at first glance, hardly perplexing. One anomaly nonetheless persists about this "self-starting" factor. We defined a "self-starting" county as one in which the Friend of the Court initiated enforcement efforts in nonwelfare cases without awaiting complaints from the custodial parent. We excluded welfare cases from the definition because all Friends of the Court had self-triggering systems for initiating enforcement in welfare cases, since the custodial parent in welfare cases is not the receiver of support payments and often does not know whether payments are being made. Given our definition, one would have expected that, when we analyzed the welfare cases from our samples in the 28 counties, the "self-starting" factor would not have helped sort the high- and low-collecting counties. In fact, however, the "self-starting" factor is nearly as significant an explanatory factor of the variations in the collections in the welfare cases as it is in the caseload as a whole, suggesting that the counties that are self-starting simply collect support in both welfare and nonwelfare cases more effectively, for reasons related to but distinct from the self-starting attribute alone. Several other attributes of the enforcement process—efficiency of bookkeeping, size of the enforcement staff in relation to caseload, and so forth—correlate mildly with performance and with the self-starting factor. It appears that "self-starting" may simply capture best the sum of the attributes of an efficient and persistent organization.

That organization to collect and the rate of jailing work hand in hand is also unsurprising. Under a self-starting enforcement system more men who falter are told to "pay up." The high rate of jailing seems to add, "and we really mean it." All rather tidy. We had expected, however, that the rate of jailing would not have been the only way to say "we really mean it," but at least within our study no other aggressive aspect of the enforcement system served anywhere nearly as well to explain the differences in overall collections.

We looked, for example, at the use of orders to show cause, the orders to appear at hearings that are issued when men fail to respond to warning letters. We had a reasonably accurate count of such orders during the same period for which we counted jailings, and we found that counties varied widely in their rate of use of such orders and in the ratio of orders to subsequent sentences to jail. We had hypothesized that the rate of orders themselves, with their stern directive to appear in court, might well have served as a more effective indication than the sentencing rate itself of the seriousness of the enforcement agency. We found, however, that neither the rate of orders to show cause nor any combination of the show-cause rate and jail rate (to measure the conviction rate among those ordered to appear at hearings) helped sort the higher from the lower collecting counties nearly as well as the jail-rate alone.[28] Within the range of measures that were readily available to us, the incidence of that which men actually fear—jail itself[29]—appears to communicate most effectively the necessity of paying their support obligations.

It is possible, nonetheless, that some unmeasured aspect of the enforcement process short of jailing better explains what the jailing rate appears to explain. We were, for example, unable to count the number of warning letters mailed in the twenty-eight counties during 1974 or any other year. We thus could not calculate the rate at which the agency sent warnings either in relation to the number of cases in the caseload or in relation to the number of cases with payments in arrears at some point during the year. The only information we could obtain about the average time between the development of an arrearage and the mailing of a warning was the agency head's statements regarding the policy of the office. While we believe it highly probable that our "self-starting" factor would correlate strongly and positively with each of these measures had we been able to develop them, the self-starting factor's form is not subtle—every county either was or was not "self-starting" in our definition. There were no gradations. It is thus possible that one or more of these other dimensions of the enforcement process would account

28. Whereas the product-moment correlation of the jail rate and the collections rate was +.492, the correlation between the order-to-show-cause rate and the collections rate was only +.121. When used with other variables or combined into other indices with the jailing rate, the show-cause rate offered virtually no explanatory power. Similarly, the combination of the sentencing rate with mean sentence length provided far less explanation of variations in payments than the sentencing rate alone and offered no significant explanatory power when used in a regression run with the jail rate as one of the other independent variables.

29. We used the jail rate in unaltered form and in logarithmic form, with closely similar results. See Appendix at the end of the article.

for all or some part of the differences in collections that we have attributed to the rate of jailing.

A problem for analysis would persist even if we were to find within our twenty-eight counties that the jailing rate added nothing to the explanation of the variations in collections among counties, but that measures of milder enforcement efforts were powerful explainers of variation. Since the form letters of warning in nearly all counties carried threats of judicial action that many men probably read as a threat of jailing, a finding that nonpenal enforcement efforts, but not the jail rate, were a significant explainer of performance could have either of two very different meanings: it could mean that the threat of jail was truly irrelevant and that men can be propelled toward payments by reminders alone, or it could mean that letters threatening judicial action are sufficient in themselves to create the fear of jail, regardless of the actual rate of jailing. If the latter were the case, then, even though the actual jail rate was not a factor in collections, collections might well still decline if jail were removed as a legally permissible sanction and parents under orders of support learned of the change in the law.

The final significant factor apparently affecting collections was the county's population. Our findings suggest that, if two counties have a self-starting system of enforcement, jail at the same rate, and have the same rate of unemployment, the county with fewer residents[30] will still collect more money. Why should this be so? The lower collections in highly populated areas cannot be attributed to higher poverty there. On the contrary, the portions of the population living in poverty were higher, and median incomes appreciably lower, in the smaller Michigan counties than in the larger ones.[31]

The relevance of high population seems rather to lie either in attitudes of city dwellers about obligations to pay or, more likely, in a greater insulation of city dwellers from the enforcement process. In several of the small counties but none of the large, the director of the Friend of the Court knew personally most of the men in his county's caseload, a fact that probably affected some of the men

30. Since the counties in our sample vary little in geographic area, absolute population and population density correlated overwhelmingly.

31. For example, in the six counties in our sample with the smallest population, the median income (in 1970) and the unemployment rates during the months we surveyed averaged $9600 and 12.5% respectively. By contrast, during the same periods median income and unemployment for the six largest counties averaged $11,900 and 10.8% respectively. Similarly, in the six smallest counties the average portion of families living on incomes below the poverty line was 8.6%, whereas the average portion in the six largest was 5.9%.

under orders. I walked with one agency head into a coffee shop on the town square in his county seat. He exchanged good-morning banter with several persons and then leaned over to me and whispered, "Now I'm not telling you who, but three of the men in here with us now are under orders in my office." The difference for the parent under an order in the smaller county is probably not merely that someone whose esteem he may value knows whether he is paying. It is also likely that he believes—correctly—that he is easily located. Staffs of the Friend of the Court in populous counties often reported severe problems of finding nonpayers, even when the defaulters had remained within the county.

## III. A Peek Inside: How Does Awareness of the Possibility of Jailing Affect Payments Within a County?

Within our samples, ardent agencies collect more than the less vigilant. But how does this factor exert its effect? Even in places with the laxest enforcement some men pay all the time. Even in places with the most terrorizing enforcement some men never pay at all.

Among questions that the reader may already be asking is whether the difference between the higher-collecting counties and the lower-collecting counties lies solely in the jailed men themselves: the high-collecting counties jail more men, jailed men pay better after release than they did before, and unjailed men pay at about the same mean rate in all counties. And if a fresh inspiration of those actually jailed does not account for the differences in collections among counties, how does the prospect of jailing work its black magic on the men who are never jailed?

We cannot fully answer these questions, but our close inquiry into two counties, one an ardent enforcer and the other not, permits us to say a good deal more than we otherwise could. When the remainder of our study is published, much of it will deal with the men within these two counties—their families, their financial situations, their payments, their treatment at the hands of the agency and the court, and their responses to all manner of enforcement efforts. Here we will address a couple of the questions especially invited by the discussion of general deterrence.

One of the two counties, Genesee County, where Flint is located, had a population in 1970 of 444,000. Its Friend of the Court has long had a "self-starting" enforcement process, and its courts have long favored jail to punish defaulters. During 1974, Genesee County

judges imprisoned 224 men for failing to pay support, a rate of 5 per 10,000 persons in the county, making Genesee one of the high-jailing counties. In a random sample we drew of over 400 divorced men whose cases were open in 1970, the men had paid an average of 74% of the total amount due over the lives of their decrees up to the point that we coded, a mean of seven years. Only 14% of the men had paid less than 10% of all amounts due under their decrees.

The other county, Washtenaw County, the county of Ann Arbor and Ypsilanti, was rather different. For most of this last decade, its Friend of the Court has expended a higher portion of its budget than any other Michigan county on social workers and other professionals concerned with marital counseling and child-custody matters.[32] A much smaller portion of staff efforts was addressed to collections. Thus, it is perhaps not surprising, even if somewhat disheartening, that a random sample of about 400 men under support decrees in Washtenaw had paid on the average only 56% of everything due, over 25% less than the average portion paid by the Genesee men. This was true despite the fact that median earnings are higher in Washtenaw, unemployment lower, and the county population only slightly more than half as large.[33] Over twice as many Washtenaw men (30%) had paid less than 10% of their amounts due.

The enforcement systems in the two counties differed greatly. Two such differences are familiar to the reader. For several years up to and including the years we studied, Washtenaw had not been a "self-starting" county: a woman not receiving welfare benefits had to phone in a compiaint before a form notice of arrearage was sent to the father and had to complain again, this time in writing, before a nonresponding father was sent an order to show cause. Moreover, though many Washtenaw men in the caseload had been arrested for nonsupport, often through the serving of a warrant when arrested for an altogether different offense like a traffic violation, Washtenaw's judges jailed far fewer persons for nonsupport. In the year that Genesee's judges sentenced 224 men, Washtenaw's sentenced only five.

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32. The special orientation of Washtenaw's Friend of the Court is indicated by the scholarly writing that the head of the agency, Richard Benedek, has undertaken with his wife, Elissa, a psychiatrist. *See, e.g.*, Benedek & Benedek, *Postdivorce Visitation: A Child's Right*, 16 J. AM. ACAD. CHILD. PSYCH. 256 (1977).

33. Median income in Washtenaw in 1970 was $12,300, whereas it was $11,300 in Genesee; unemployment during the months we surveyed was under 5% in Washtenaw but over 11% in Genesee. In 1970, Washtenaw had a population of 234,000; Genesee a population of 444,000.

### A. *The Role of the Jailed Men*

It is possible that men who are never jailed pay at nearly identical average rates in both high- and low-collecting counties and that the only reason one group of counties collects more is that men actually jailed, much more numerous in that group of counties than the other, are frightened into paying more regularly. This explanation, while plausible, does not appear to hold for our counties. The margin of difference in collections between the self-starting, high-jailing counties and others is too great to be accounted for by the small portion of the men in those counties who have both been jailed and begun and continued to pay after release.[34]

Moreover, it is simply not the case that the never-jailed men in the higher-jailing counties are unaffected by the policy around them and pay at essentially the rate of the never-jailed men in the low-collecting counties. Everyone pays better in Genesee. Men sentenced, men arrested but never sentenced, and men never arrested all pay, as groups, significantly better in Genesee than their counterparts in Washtenaw.[35] Whatever it is about the system in Genesee that induces men to pay reaches the jailed and unjailed men with similar effect.

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34. During the one-year period we studied in the 28 counties, only a small portion of the men in the sample, even in the counties that jailed most heavily, had been jailed in the recent past. Even if we assume that this previously jailed group paid at the unlikely mean rate of 60% during the year we surveyed and further assume that had they not been jailed they would have all paid nothing (equally unlikely), their numbers are not substantial enough to have boosted the collective average of the whole county by more than a third of the difference we have computed to be the effect of the jailing policy.

As a matter of fact, in Genesee, the payment rate for our sample of jailed men was .33 in the year after their release; a comparable sample of jailed men in Macomb County paid at a rate of .50. In the case of Genesee, the portion of the jailed men who maintained payments declined even further with the passage of time after release.

35. Our comparative data on Genesee and Washtenaw Counties, in table form, is as follows:

COMPARISON OF PAYMENTS OF MEN IN TWO COUNTIES WHO WERE AND WERE NOT EVER ARRESTED OR SENTENCED FOR NONPAYMENT
(Random Sample of Divorce Cases)

| | *Washtenaw County* | | *Genesee County* | |
|---|---|---|---|---|
| | N | Average Payment Rate Over Life of Decree | N | Average Payment Rate Over Life of Decree |
| Men Sentenced to Jail | 8 | .31 | 60 | .55 |
| Men Arrested but Never Sentenced | 75 | .46 | 57 | .73 |
| Men Who Were Never Arrested or Sentenced | 327 | .60 | 292 | .80 |
| | 410 | .57 | 409 | .74 |

Why do the men who are arrested or sentenced pay so much better in Genesee than in Washtenaw? One might have expected that jail would be equally chastening in both counties. Again, we cannot be completely certain of the reason. A partial answer may lie in the fact that the men arrested in Genesee had a smaller arrearage at the time of arrest. Men chastened earlier may respond better. Or, perhaps, as economists would predict, many jailed men ask themselves after release much the same question that the canny nonpayer asks who has never been jailed: not "how painful is jail?", but "how likely is it that I will soon (again) be arrested?" In Genesee, but not Washtenaw, the agency moved quickly against previously sentenced men who did not begin to pay. Indeed, when a Genesee man was in jail for the first time he would likely note that a significant portion of the other men there with him were persons who had been sentenced for nonsupport before;[36] only one person in our Washtenaw sample had been sentenced twice. To be sure, people who have been jailed are not in an identical position with the never-jailed—once jailed, a man no longer has to imagine the discomfort or embarrassment of jail—but the tendency to regard the jailed and never-jailed men as different species, though inviting, is misguided.

### B. *The Effects of Enforcement on Payments over Time*

As time passes after the entry of an order of support, some men cease to pay, some begin to pay, and some pay at the same rate. A comparison of the patterns of payment performance of fathers in Genesee and Washtenaw over the lives of their decrees sheds more light on the effects of a zealous enforcement process. Consider first Table 4, which shows for our random samples of men in each county the portion of men paying nearly nothing, paying nearly

36. In a sample we drew in Genesee County of 191 men jailed in 1969 and in the first nine months of 1970, more than a quarter had been previously sentenced for nonsupport. On any given day, the portion of men in jail for nonsupport who had been previously sentenced was likely to have been even higher because the previously jailed men were typically held for longer terms.

## TABLE 4

### COMPARISON OF PAYMENT RATES IN GENESEE AND WASHTENAW COUNTIES THROUGH SIXTH YEAR OF ORDER (FOR CASES OPEN FOR AT LEAST THAT LONG)

**Genesee County***

| | Year of Judgment | 2d Year | 3d Year | 4th Year | 5th Year | 6th Year |
|---|---|---|---|---|---|---|
| Low Payers (portion paying 10% or less of ordered amount) → | 16% | 20% | 21% | 22% | 21% | 24% |
| Part-Payers → | 35% | 30% | 21% | 23% | 24% | 18% |
| High Payers (portion paying 80% or more of ordered amount) → | 49% | 50% | 58% | 55% | 55% | 58% |
| | N=305 | N=311 | N=317 | N=321 | N=321 | N=306 |
| Mean of individual pay rates: | .67 | .66 | .69 | .70 | .69 | .72 |

**Washtenaw County**

| | Year of Judgment | 2d Year | 3d Year | 4th Year | 5th Year | 6th Year |
|---|---|---|---|---|---|---|
| Low Payers (portion paying 10% or less). → | 12% | 23% | 29% | 30% | 30% | 36% |
| Part-Payers → | 32% | 24% | 19% | 23% | 19% | 18% |
| High Payers (portion paying 80% or more) → | 56% | 53% | 52% | 47% | 51% | 46% |
| | N=154 | N=170 | N=170 | N=172 | N=172 | N=175 |
| Mean of individual pay rates: | .70 | .65 | .61 | .60 | .60 | .53 |

* In this table, we have made an adjustment for a small group of low-paying cases opened prior to 1966, when the Friend of the Court in Genesee put its payment

everything, or paying somewhere in between year by year after the entry of the decree.

In the first year in each county most men pay either nearly everything or nearly nothing, and over the years, quite predictably, more and more men are found at the extremes. The difference between the two counties, subtle but distinct, lies in the portions paying at high and low rates. In Genesee in the first year, of every twelve men, six are high payers and two are low payers. By the sixth year, seven are high payers and three are low payers.[37] The mean level of payments rises slightly over the years, up to .72. In Washtenaw, the pattern is better than Genesee in the beginning but worse at the end. In the first year, seven of every twelve men are high payers and only between one and two are low payers. By the sixth year, however, the portion of high payers has declined to five of twelve and the portion of low payers has risen to over four in twelve. The mean level of payments in Washtenaw falls somewhat every year, ending at .57. Were we able to control for population and unemployment, the earlier results suggest that Washtenaw, both smaller and with less unemployment, would appear even worse.

The distribution of payments in the two counties over time suggests that in each county a substantial number of men consciously or unconsciously test the enforcement system in the early years. In Genesee a significant number are "burned" and move toward full payments. In Washtenaw, many who paid nearly in full or in part in the first year move toward nonpayment after finding either that a period of haphazard payments is ignored or followed by hollow threats or that, even if they are arrested, they are soon released and forgotten. Our findings regarding the use of warning letters and the responses to warnings in Genesee corroborate these conclusions.

Standing next to Genesee's system, Washtenaw's may seem largely ineffectual. In fact, however, the presence in Washtenaw of a full-time agency has significant effects on collections that can be appreciated by comparing Genesee and Washtenaw with a jurisdiction in

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records on computer. By examining all orders set by the courts in 1960 and 1963, we have determined that about 7% of cases opened in those years had been closed by 1966 for consistent nonpayment without request for enforcement. In the adjustments we have made, we have increased the total cases to reflect an additional number of cases presumably closed and placed all such assumed closed cases in the "no payments" column. The effect is slight. For the six years reprinted here, the actual number of files prior to the adjustment is 15 fewer than reported above in the first and last years and 16 fewer than reported above for the years in between.

37. The patterns in each county were actually somewhat more complex than these figures suggest since the figures represent only net movement. Few men, however, shifted from one bracket to another and back again.

which there is no systematic enforcement system at all. In the mid-1960s, Kenneth Eckhardt conducted a study of child-support collections in Dane County, Wisconsin.[38] This county, containing both the state capital and the main campus of the state university, was as prosperous as Washtenaw and Genesee and was substantially smaller than Genesee in its population.[39] In Dane, though an office of the court collected child-support payments and forwarded them to the wife, the agency played no routine role in enforcing orders and had no staff devoted to reminding men of their default. The mother who was not receiving payments had to find an attorney and pursue private remedies. Most defaulters were left completely alone. On the other hand, substantial numbers of men were prosecuted and jailed for nonpayment not as a capstone of a well-focused effort to enforce support but largely, it appeared, as a part of the enforcement of other laws: most of the jailed men seem to have been wanted by the prosecutor for committing other offenses not as easily proved.[40]

Table 5 contains information on the payment levels in the Wisconsin county and how they changed over time. The differences from our Michigan counties are startling. In Dane, as in our Michigan counties, a large portion of the men paid nearly all amounts due in the first year, but, whereas this full-paying group shrank only slightly over time in Washtenaw and grew over time in Genesee, the full-paying group in Dane shrank steadily and rapidly. By the sixth year only 17% of the caseload was paying in full. Moreover, the portion of men paying nothing began at a much higher level in Dane—nearly 40% paid nothing in the first year, in contrast to the nonpayment rate in the first year of around 15% in each of the two Michigan counties. By the sixth year, the group paying nothing in Wisconsin grew to 71% of the caseload.

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38. K. Eckhardt, Social Change, Legal Controls, and Child Support: A Study in the Sociology of Law (unpublished dissertation, University of Wisconsin 1965). Parts of the results of his study are also to be found in Eckhardt, *Deviance, Visibility and Legal Action: The Duty To Support*, 15 Soc. Prob. 470 (1968).

39. 1970 Census Figures

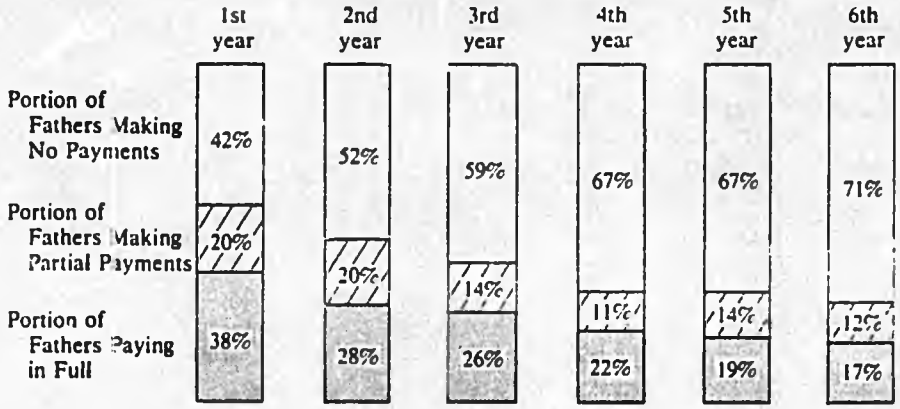
| | Dane County, Wisconsin | Genesee County, Michigan | Washtenaw County, Michigan |
|---|---|---|---|
| Population | 290,000 | 444,000 | 234,000 |
| Per cent of labor force unemployed | 2.9% | 5.3% | 5.0% |
| Median family income | $11,300 | $11,300 | $12,300 |
| Portion of workers-white collar | 59% | 38% | 56% |

*See* United States Bureau of the Census, County and City Data Book, 1972 at 234, 236-37, 522, 524-25 (1973).

40. K. Eckhardt, *supra* note 38, at 261-65.

TABLE 5

DISTRIBUTION OF PAYMENTS BY DIVORCED FATHERS IN DANE COUNTY, WISCONSIN THROUGH SIXTH YEAR AFTER DIVORCE*




| | 1st year | 2nd year | 3rd year | 4th year | 5th year | 6th year |
|---|---|---|---|---|---|---|
| | N=163 | N=163 | N=161 | N=161 | N=160 | N=158 |
| Mean of individual payment rates** | .50 | .40 | .34 | .29 | .27 | .24 |

* Data from K. Eckhardt, *Social Change, Legal Controls and Child Support: A Study in the Sociology of Law* 226 (unpublished dissertation, University of Wisconsin 1965).

** Computed by ascribing 100% as payment rate of full payers, 0% as payment rate of nonpayers, and 60% as the rate of partial payers.

Because of the similar socioeconomic conditions in the three counties, two conclusions are invited by a comparison of their rates of collections. The first is that the presence of a full-time enforcement agency in Washtenaw, ready, if requested, to make efforts at enforcement, exerts significant and sustained effects on many fathers' payments throughout the lives of their orders.

Our conclusion that even a minimal, full-time enforcement system such as Washtenaw's Friend of the Court has a significant impact on collections is corroborated by the information collected annually by the Department of Health, Education, and Welfare on support payments in welfare cases in each of the fifty states, many of which, until recently, made no organized effort to collect support even in welfare cases. Year after year, up through the mid-1970s, Michigan apparently collected an average of more per case than any other state in the country.[41]

41. *See, e.g.*, STAFF OF THE SENATE COMM. ON FINANCE, 94TH CONG., 1ST SESS., CHILD SUPPORT: DATA AND MATERIALS 151 (Comm. Print 1975). Washington and

The second conclusion suggested by comparing the Michigan and Wisconsin data concern the effects of jail as an instrument of enforcement. We found within Michigan that, in the absence of a self-starting enforcement system, a heavy jailing rate makes little difference in collections. The experience of the Wisconsin county, collecting so little but jailing as many men as Genesee, bolsters our own tentative conclusion about the futility of jail as an instrument of collection unless it is perceived by potential offenders as likely to occur to them, a belief that apparently arises not from the mere occurrence of jail but from an effective reminder system well marked with road signs pointing toward confinement.

## IV. Implications of the Study for Collection of Child Support

An aggressive enforcement system, capped by jailing, induces many men to pay who otherwise would not. Working men who willfully refuse to support their children are widely considered immoral. On these two grounds alone, most Americans would probably consider jailing for nonsupport justifiable, even desirable. Before embracing jail too warmly, however, several further questions need answers: Do the dollar costs of a self-starting enforcement policy that relies in part on the use of jail exceed the dollars in added returns? Are there other costs to a jailing policy that cast doubt on the wisdom of relying on it? And finally, are there alternative systems not relying on jailing that can yield results that are as good as or better than those generated by jailing?

### A. *The Dollar Costs and Benefits of Ardent Enforcement*

The answer to the first question—do dollar costs of especially aggressive enforcement exceed dollar benefits—seems to be a clear "no." The financial costs of a self-starting, high-jailing system—of extra enforcement officers, extra court time, jail operations, and so forth—are considerable, but the additional amount of support collected is simply greater. As we discussed above, within the Michigan study, counties with both a self-starting enforcement policy and a substantial reliance on jailing collected on average 25% more than counties that did not have both, after controlling for population and unemployment. Thus, in Genesee County the marginal dollar costs of the arresting, jailing, and self-starting policy in 1974 might

California also have highly organized systems for collection in welfare cases. Because some data are missing, it is possible that in some years Washington collected as much or more on the average as Michigan.

conceivably have been as high as $500,000,[42] but the amount of collections attributable to these enforcement efforts might have been nearly $3.5 million of the more than $17.3 million collected by the agency that year.[43]

We have so far been comparing costs and benefits among counties with full-time agencies, some more strident than others. If we compare instead the probable costs and returns of two jurisdictions, one having a full-time aggressive agency and the other having no agency at all and leaving each parent to private devices, by hypothesis, the savings in enforcement costs would be even greater for the latter. Yet, as the Dane County, Wisconsin, study suggests,[44] we would almost certainly find that the foregone collections would be vastly greater yet.[45]

Our calculations do not include conceivably determinable losses of wages by the men jailed or losses of tax revenues from them, but these losses, while not trivial, need not necessarily be great. If, as

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42. More work remains to be done by us on the marginal costs of a jailing policy. As usual, numerous factors complicate the calculations. For example, each Genesee judge spent a few hours a week on child-support cases, but removal of these cases from the dockets would not have led to a reduction in the number of judges. The long average jail terms in Genesee must have inflated enforcement costs, but a portion of these costs were probably avoidable without any loss in collections since, within the counties in our study, neither the length of the sentence nor the amount of time served affected county collections. Our calculation that Genesee incurred marginal costs of $500,000 in order to sustain an aggressive, high-jailing system is based on a generous estimate of the expenses. *Viz.*, we assumed that a shift to a passive enforcement system would have allowed a reduction of one-half in the size of the enforcement staff and a savings of $100,000 in court time. We further assumed that the average jail term served would be 60 days (far longer than that in most high-collecting counties) and that the costs of jailing were $10 per inmate per day, the figure used by the Genesee sheriff in preparing his 1974 budget. Even with these highly inflated figures, costs barely totaled $400,000, while in 1974 Genesee's Friend of the Court collected $17.3 million.

43. Given our finding that a high-jailing, self-starting enforcement system boosts collections by roughly 25%, *see* text at note 27 *supra*, Genesee's collections in 1974 would have been about $13.8 million, rather than the $17.3 million actually collected, but for this system.

44. *See* text at and following notes 38-40 *supra*.

45. *See also* COMPTROLLER GENERAL OF THE UNITED STATES, COLLECTION OF CHILD SUPPORT UNDER THE PROGRAM OF AID TO FAMILIES WITH DEPENDENT CHILDREN (1972) (report to the House Committee on Ways and Means).

A study of child-support collections that has been done for the Department of Health, Education and Welfare in five places with ardent enforcement procedures in welfare cases (including Genesee County, Michigan) found that in all of them the returns in dollars collected vastly exceeded the dollar cost of the enforcement efforts. *See* U.S. DEPT. OF HEALTH, EDUCATION AND WELFARE, ABSENT PARENT CHILD SUPPORT COST-BENEFIT ANALYSIS (1975). The study was conducted by Arthur Young & Company. This study did not compute the costs of jailing. On the other hand, it included all the costs of a bookkeeping and enforcement system in both divorce and paternity cases.

other parts of our study suggest, the deterrent effect of the sentencing rate turns not at all on the length of sentences imposed nor on the number of days served (some of the highest-collecting counties imposed the shortest sentences), most men could be held only a day or two with loss of little, if any, of the general deterrent effect.

We must remember when we are comparing costs and benefits that we are often referring to costs to the taxpayers to produce benefits to individual families. Only in welfare cases does the government both bear the costs and reap the gains and, even in the welfare setting, federal, state, and local governments bear uneven shares of the costs in relation to their shares of the returns.[46] In nonwelfare cases, dollars collected by the state are sent on to the custodial parent. At any given time, most divorced parents with children are not receiving welfare benefits. Across our twenty-eight counties, an average of 30% of the families were receiving welfare at the time we sampled. For the 70% of families not on welfare, the relevant cost-benefit question differs from that appropriately asked when the government is collecting for itself: in a society that normally relies on private ordering, the question is whether public enforcement offers values over private enforcement sufficient to justify the expenditure of public funds. Because public enforcement is so much more effective and because so many dollars are at stake for the benefit of children, most Americans would probably answer "yes," but reaching such an answer does require more than simply counting dollars.[47]

### B. *Other Costs of a Jailing Policy*

Even if a jailing policy yields more dollars than it costs, there may well be other reasons for doubting the wisdom of reliance on jail as an instrument of enforcement. An initial doubt about jailing for nonsupport is jurisprudential in nature. We might well decide that even willful nonsupport is not one of those forms of human misbehavior appropriately dealt with by criminal sanctions. Though not one of the "victimless" offenses, it is nonetheless an intra-family offense often signifying the continuation after divorce of patterns of behavior that were a part of the marital relationship: withholding as a technique of communication. Divorced men often "forget" to pay

46. *See, e.g.*, Title IV(D) of the Social Security Act, 42 U.S.C. §§ 655, 658 (Supp. V 1975).

47. To some degree the costs of public enforcement can be passed on to the "consumer." In Michigan, for example, each person subject to an order of support is charged $18 a year to offset part of the agency's operating expenses.

not out of vicious disregard for their children but from more prosaic human failings of jealousy or anger. Divorced women may similarly "forget" that Tuesday was the day the father was coming to visit the children. Citing the "emotional stress" of the post-divorce period and child support's connection with "an intimate personal relationship," the Committee on One-Parent Families of Britain's Department of Health and Social Security thus recently recommended that Parliament eliminate jail as a permissible sanction for nonsupport.[48]

Although the British Committee apparently assumed, contrary to our findings in Michigan, that neither jailing nor the threat of jailing produces beneficial effects on parents' payments, the Committee's judgment about the inappropriateness of penal sanctions in this context has appeal nonetheless. To be sure, the fact that behavior occurs between family members should not by itself place it beyond the reach of the criminal law. Few would recommend removing penalties for the killing of one spouse by another, even though it is connected with "an intimate personal relationship" and committed under "emotional stress." To most people, however, killing and nonpayment of support are simply not of the same order of seriousness. Thus, recognizing the emotional stress that lies behind the failure of many men to pay support may undercut our sense that the act should be considered criminal and the offender marked with our most severe form of public condemnation, even though the same degree of stress would alter only slightly our sense of the heinousness of murder.

Examining the men who end up in jail provides a second source of misgivings about using it widely. Most of us have probably growled over news accounts of a physician or insurance agent earning $60,000 but failing to make his support payments. Well, few doctors or insurance agents languish in Michigan jails for failing to pay child support. The hundreds of men found in Michigan's jails on any given day typically have unsteady work histories as unskilled workers. A high portion have alcohol problems.[49]

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48. 1 DEPARTMENT OF HEALTH AND SOCIAL SECURITY, REPORT OF THE COMMITTEE ON ONE-PARENT FAMILIES 128-32 (1974).

49. In our sample of 191 men sentenced to jail in Genesee County in 1969 and 1970, over two-thirds had indications in their file—wife's complaints, arrests for alcohol offenses—of some sort of alcohol problem. Half of this group had two or more such indications in their files. In a mail survey of the 28 Friends of the Court in our study, 18 answered a question asking whether there were any "recurrent patterns" among the men sentenced to jail for nonsupport in their county: 13 of these mentioned alcoholism or alcohol problems as one recurrent characteristic among their jailed men.

The agencies do not wink at nonpayment by the doctor; rather, the doctors who fail to pay are more likely, if jail is imminent, to have access to sufficient cash to appease the agency. Several aspects of the skewed population in the jails should give us pause. To the extent that we punish the unskilled worker in order to produce higher payments from thousands of higher-income fathers, we are repeating a familiar and dubious pattern in our society that finds its analogues in the use of jailing for street-corner gambling as well as in medical experimentation on prison inmates. To the extent that we punish the blue-collar workers because we are angry at them themselves, our anger is sometimes misplaced. While most of the men jailed could, in the literal sense, have paid more than they did, many see themselves, with some justification, as barely making do, scraping the sides of the bowl of thin gruel provided the least-skilled workers in our society. We blame such men and their supposedly footloose ways for the rise in the welfare rolls, just as some persons in the eighteenth century viewed those who did not pay their bills as a cause of the decay of civilized society. Jailing for nonsupport is a twentieth-century form of jailing for debt.[50]

A third and more tangible reason for avoiding criminal sanctions for nonpayment of support is the conditions of our jails. America's county jails are among our most vicious institutions of incarceration.[51] Often jammed with far more inmates than they were built to hold, they rely on forced inactivity and breed bodily and sexual assault. The character of our jails should be seen as particularly troublesome in this setting when we recall the high level of jailing in many of Michigan's counties. Judges sentence close to 4,000 Michigan men each year for nonsupport. In several counties their numbers outstrip by far the number of men sentenced to jail for drunken driving or larceny offenses. It is probable that each year at least 1,000 more Michigan men under support orders spend a day or so in jail under arrest without later being sentenced. While many sentenced men serve no more than a day or two, it is still alarming that we label as criminal one in ten or one in twelve of all divorced noncustodial

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50. *See* P. ROCK, MAKING MEN PAY 307-16 (1973) (tracing the use of jailing for debt in 18th and 19th century England).

51. "Life in many institutions is at best barren and futile, at worst unspeakably brutal and degrading . . . . No part of corrections is weaker than the local facilities that handle persons awaiting trial and serving short sentences." PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 159, 178 (1967).

*See also* R. GOLDFARB, JAILS: THE ULTIMATE GHETTO (1975); Mattick, *The Contemporary Jails of the United States: An Unknown and Neglected Area of Jus-*

parents at some point during the life of their support orders.[52] Studies in other settings have shown well the long-term scars that can develop from labeling people as criminal deviants.[53] If Michigan's aggressiveness were replicated in the rest of the country, as might conceivably occur under the new pressures for collection the federal government is applying in welfare cases, we could find courts sentencing 100,000 American parents for nonpayment of support each year.

Frequently men who have been jailed flee the county upon release.[54] We have little way of measuring how many other men, never jailed, leave because they fear that jail may befall them, although that group also appears to be substantial in number.[55] Since those who leave because of such fears may well be men with a strong desire not to pay, it is unclear how many of them would have continued a relationship with their children if they had remained in the county. Jailing may nonetheless damage the quality of the relationship between parent and child, even when the father does continue to visit and pays support regularly. What is the impact of an ever-present threat of jail on the relationship between a noncustodial par-

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*tice* in HANDBOOK OF CRIMINOLOGY 777 (D. Glaser ed. 1974). County jails typically include a mix of persons under sentence for misdemeanors (such as drunkenness) and persons awaiting trial for serious felonies who cannot make bail.

52. In Genesee, approximately one of every seven men in the active caseload in 1970 had been sentenced to jail at least once. Table 2 in the text shows that in 28 Michigan counties 3046 men, or 1.05%, from a total caseload of about 290,000 were sentenced to jail in 1974. However, the number of men in the caseload who have ever been jailed is much higher, since most men sentenced in one year remain in the caseload for succeeding years. A case typically will last 12 to 15 years, from divorce to the 18th birthday of the youngest child.

53. *See* H. BECKER, OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE 31 (1963): "One of the most crucial steps in the process of building a stable pattern of deviant behavior is likely to be the experience of being caught and publicly labeled as a deviant." *See also* R. SCOTT & J. DOUGLAS, THEORETICAL PERSPECTIVES ON DEVIANCE (1972); THE LABELLING OF DEVIANCE: EVALUATING A PERSPECTIVE (W. Gove ed. 1975).

54. In a sample we drew of 191 men sentenced to jail in Genesee County during 1969 and 1970, over one-third (61 of the 172 whose records were complete and whose cases remained open for another year) fled town within a year after their release from jail. We use the verb "flee" here because the payment rate in the year after the release of those jailed persons who leave town is so low (.09) in comparison to those jailed persons who stay (.48) that, for most, avoidance of jail seems to have been a primary motive for their leaving town.

55. In our random sample of 411 divorced families in Genesee County, 70 fathers appear from our records to have moved away from the county after divorce. If this group had paid at roughly the same rate as those who stayed, we could make no inferences about their motive for leaving. In fact, this group paid so much less well than those who appear to have stayed (a mean payment rate of .35 as opposed to a mean of .82) that it seems highly probable that many left to avoid the enforcement system.

ent and his child? How, that is, does a parent begin to behave toward a child to whom he feels tied not by affection alone but at least in part by fear? Can jail's distant possibility make even more tense the already awkward visits between parent and child after divorce? Can it aggravate the injuries to the child's development?

Since little research exists on the impact on children's development of various patterns of relations between the child and noncustodial parent after divorce,[56] it is hazardous to speculate on the particular effects that the prospects of jailing could have. In many cases, perhaps most, my worries may we'l be groundless. Many fathers may be induced into regular payments in part through vague awareness of the jailing policy but form a habit of payment so routine that they soon cease altogether to be affected by the dire consequences of ceasing to pay. For them, the jailing policy may indirectly improve rather than corrode the relation with their children by removing friction between the divorced parents over erratic payments.

### C. *An Alternative to Jail: Deductions from Wages*

Even if one concluded that the benefits of a jailing policy greatly exceeded all these possible social costs, jailing might still be wisely avoided or curtailed if an alternative method of enforcement exists that can produce as much or more money with lower costs. Such an alternative may well be available. In the United States, child support and taxes are the only personal financial obligations routinely enforced by public agencies. For the collection of income and Social Security taxes, Americans are well accustomed to the withholding of wages. "Wage assignments" for child support operate similarly when imposed on an employer and are authorized by law in Michigan and several other states. In most states, including Michigan, however, courts may not impose a wage assignment except on a person already in default,[57] and in all states a wage assignment ends

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56. Parts of the results of a University of California at Berkeley study of children of divorce will be appearing in the summer of 1977. Kelly & Wallerstein, *Part-Time Parent, Part-Time Child: Visiting After Divorce*, J. OF CLINICAL CHILD PSYCH. (Summer 1977). See also Benedek & Benedek, *supra* note 32.

57. *Compare* MD. ANN. CODE art. 27, § 88 (1976) *and* MICH. COMP. LAWS § 522.203 (1970) (both requiring default before imposing a wage assignment) *with* WIS. STAT. § 247.265 (1973) (permitting wage assignment to be imposed "at any time.") *See also* 42 U.S.C. § 659 (Supp. V 1975), by which Congress recently provided that wage assignments for support of children would be honored for employees of the United States government as if the United States were a private employer. Thus, if state law permitted, a United States employee could be subject to an involuntary wage assignment without proof of default.

when a person ceases to work for the employer against whom it was ordered.

If a federal system were established under which withholding occurred from the first moment of an order and traveled with a person wherever he took work within the country, the need for much of the current enforcement system would largely disappear. To effectuate this network, the federal government would need to create a national computerized system tied to the man's Social Security number. Employers would be required to make a check on a new employee through a Social Security office to learn whether support payments were to be withheld from his wages. Under such a system, the frequency of payments would be nearly perfect except by the unemployed,[58] the self-employed, and those able to evade the floating wage assignment by falsifying their social security numbers or by colluding with the employer.[59]

A compulsory deduction system would, to be sure, have many troublesome aspects. It would be cumbersome to administer, a fountain of details inviting errors. Unlike income-tax withholding, deductions for child support would be required only for certain employees, who would not look any different at the time of hiring from other new employees. Unlike income taxes, support payments would generally have to be funneled to a recipient other than the federal government, a process likely to take several weeks, even months.[60] At varying intervals, as children reached majority, the amount to be withheld would change.

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58. No sanctions should ever be imposed on unemployed men without other income. In Genesee, many unemployed men were jailed after a finding that they could have been working, a chimerical finding in a nation with over 7% unemployment. A few men are willing to starve themselves to avoid paying support, but their numbers are worth neither the effort to ferret them out, nor the injustice to those who are unemployed for reasons beyond their control.

59. An additional advantage of the assignment system is that it would allow the court to fix orders in terms of a percentage of the individual's net earnings, rather than following the universal practice of defining the order as a fixed dollar amount based on the individual's income at the time of the divorce. Although courts have the power to modify an order to reflect changes in earnings, the procedure is cumbersome and in many places infrequently used.

60. Presently, employers pay Social Security taxes quarterly. If, under the system envisioned here, employers had to forward support withholdings only once a quarter, some support payments would remain in the employers' accounts for over three months. Even if employers were required to forward payments weekly, the forwarding would likely be to a single federal office, which would in turn forward the amount either to the custodial parent, to a welfare department, or to another forwarding agency such as a Friend of the Court. The record of sloth and error in the Social Security Administration's handling of old-age and disability benefits is hardly encouraging.

The drawbacks of a compulsory wage-assignment system would not be solely ones of administration. Such a system would also curtail individual liberty. Many people feel strongly about their right to decide for themselves what to do with their earnings. They would resent involuntary wage assignments for child support as much as they would resent involuntary deductions for their utility bills, even though they would agree that it was reprehensible not to pay their bills. Whether seen as a right or an obligation, many noncustodial parents attach importance to their weekly voluntary writing of a support check, viewing it as a means to demonstrate their love for their children.[61]

A wage-assignment system would also involve another sort of federal intrusion on privacy. We can appropriately worry about a federal computer system carrying detailed information about the failed marriages of millions of citizens. Indeed, the employers would invariably learn through the system that their employee was divorced or the parent of an illegitimate child. Today, agencies often hesitate to impose wage assignments in cases in which they fear that the father is likely to be fired because his employer either does not want the bother of making an additional deduction or thinks ill of a person who is divorced or the parent of a "bastard." This troublesome problem of employer attitude could well continue under the system proposed here.

For all these reasons, it is easily understandable why only a bare majority of the Friends of the Court indicated in a mailed survey that they would favor a change in Michigan law to permit the imposition of a wage assignment at the moment the support order first takes effect, despite the fact that, as a group, they are strongly committed to improving collections of support.[62] In the end, however, the issue is not the evil of such a wage deduction system in the abstract. Rather, it is whether it is better or worse than the sin-based system that we have now—the system in which we dangle before men the opportunity not to pay, often so inviting because of the pain of continued recollection of the old family and the burdens of new ex-

61. This observation is based on field interviews with staff members of Genesee County's Friend of the Court during the summers of 1972 and 1973. From those interviews, we also learned that men often view the wage assignment with disfavor because it curtails their bargaining power in the post-divorce period. In the absence of a wage assignment, they can retaliate by slowing up on payments when the custodial parent reneges on visitation. When a wage assignment is in effect, they can retaliate in the same way only by quitting their job.

62. Twenty-three Friends of the Court among the 28 in our study responded to our questionnaire. Of the 23, 12 favored such a change in the law, one was neutral and 10 opposed.

penses, and, then, when men respond to the opportunity, clap them into jail.

If state and federal governments remain committed to compelling long-absent parents to support their children and determined to enforce the obligation aggressively, I for one would choose the compulsory deduction system over the system now found in Michigan. The deduction system would be my preference not so much because it would almost certainly lead to even higher collections than Michigan obtains today, but rather because of the doubts I have expressed about the justness of a jail-based system and about the atmosphere that system creates. The choice may seem easier because the new system does not yet exist. It is, however, hard to believe that a new system, however intrusive, could be as distasteful as one that depends heavily on imprisonment and the fear of imprisonment. If you have any doubts in this regard, turn yourself in for a weekend at your nearest county jail.

Another alternative to the heavy use of jail exists. It is simply for states to create efficient full-time enforcement offices, comparable to Friends of the Court, with courts empowered to use sentences to jail but rarely actually doing so. Remember that in eight of our counties, the judges jailed few people but the full-time agencies in each still collected vastly more than Dane County, Wisconsin. To those to whom jail is repugnant or at least distasteful, this is a possible middle ground that could lead to much higher collections in the many places that now leave mothers not receiving welfare to the same inadequate private remedies available in Dane.

## V. The Implications of the Study for Efforts To Control Other Forms of Undesirable Behavior

If the use of jail deters nonpayment of support, can we conclude that it will similarly deter rape or armed robbery? Of course not. We can expect that jail will have a greater effect when men know that all their actions are observed. Most armed robbers and rapists hope that their identity will remain unknown. Most shoplifters and heroin sellers hope that even the offense itself will never be detected by anyone interested in securing an arrest. In the case of child support in Michigan the fact of the offense and the identity of the perpetrator are always known. Thus the very factor that made our study possible—the all-knowing files of the Friend of the Court—makes our findings ungeneralizable to most other forms of conduct.[63]

63. For a provocative discussion of the quite different problems of deterring

In addition, each form of behavior has its own psychological setting. Persons considering aggressive sexual or physical assaults, even if they know that their identities will be learned, may well be typically less responsive to the threat of incarceration. Nonpayment is not an irreversible act committed in the heat of passion. However angry a man may be at his former wife, a "sudden" decision on Tuesday not to pay can be fully undone and punishment avoided on Wednesday or even a week from Wednesday, after reflecting on the consequences of default.

Most men do not, of course, deliberate each week about payment or nonpayment. Penal sanctions may operate in a much more subtle way to reinforce a person's sense of how much importance the community attaches to a certain form of behavior. In the context of child support, we have been unable to determine the contribution of jailing to this socialization process, and our inability to measure this and compare it with other forms of behavior further reduces the utility of our study for understanding such other forms of behavior.

Despite all these cautions, the study does seem to confirm one commonplace prediction: swift and certain punishment can reduce the incidence of some forms of undesired conduct so long as potential offenders perceive a clear link between their own behavior and a system that leads to punishment. If a policeman is watching and customers know it, fewer candy bars are stolen. The sad finding of our study has been that, in the absence of sanctions, so many fathers fail to pay. The striking finding has been the effectiveness of enforcement agencies in many Michigan counties in creating a sense of a policeman at the elbow.

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"street crime," see N. MORRIS & G. HAWKINS, THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL (1970); J. WILSON, THINKING ABOUT CRIME (1975).

## APPENDIX

*Regression Analysis of Factors Accounting for Differences in Rates of Collections Among Twenty-Eight Counties.*

The measure of county performance used in the study was the mean for each county of the individual payment rates for each person in the sample for the period sampled. That measure is referred to here as the "Mean Payment Rate." For the manner in which the individual rate was computed, see note 12 *supra*. This measure was used as the dependent variable here either in its natural form, its log to base 10, or its "Logit" form, as indicated.

A list of around 40 control variables tested in the analysis can be obtained directly from the author. Below are the controls used in the analyses reported here:

1. *Self-Starting Factor.* A binary variable that records whether (coded 1) or not (coded 0) the county has used for several years an enforcement system in which the agency initiates enforcement in nonwelfare cases without awaiting complaints from the mother.

2. *Jailing Rate.* The number of sentences to jail in 1974 for contempt of court for nonpayment of support for each 10,000 persons in the county population. As explained in note 17 *supra*, this rate closely parallels the rate of jailing for each 250 men in the county caseload.

3. *Population.* The $\log_{10}$ of the county's population from the 1970 decennial census.

4. *Unemployment Rate.* The unemployment rate in the civilian labor force according to the 1970 census. A further explanation of our use of the unemployment figures is found in note 25 *supra*.

5. *High-Jail/Self-Start Factor.* A combination of factors 1 and 2 above into a binary variable that coded whether or not a county was both high jailing and "self-starting". Those counties that had both a jail rate of 4 or more per 10,000 and a self-starting system were contrasted with all other counties. The selected rate of 4 per 10,000 divided our counties approximately at the median and had no other conceptual foundation.

6. *Jail x Self-Start Factor.* Factor 1 above multiplied by Factor 2. The multiplication produced a 0 for all counties without a self-starting policy (regardless of their jailing rate) and their jailing rate (from 1 to 17) for all counties that did have a self-starting policy.

A. Regression on the "Mean Payment Rate"

1. *With three variables that explain most variance*:

| | B | Beta | T-Ratio | Significance Level |
|---|---|---|---|---|
| Self-starting Factor | 8.62 | +0.41 | 2.89 | <.01 |
| Jailing Rate | 0.92 | +0.35 | 2.64 | <.02 |
| $Log_{10}$ Population | −7.91 | −0.34 | 2.53 | <.02 |

Fraction of explained variance: 62.6 per cent (unadjusted)
57.9 per cent (adjusted)

2. *With four variables that explain most variance*:

| | B | Beta | T-Ratio | Significance Level |
|---|---|---|---|---|
| Self-starting Factor | 7.00 | +0.33 | 2.25 | <.05 |
| Jailing Rate | 0.96 | +0.37 | 2.82 | <.01 |
| $Log_{10}$ Population | −8.64 | −0.38 | 1.48 | <.20 |
| Unemployment Rate | −2.35 | −0.19 | 2.80 | <.01 |

Fraction of explained variance: 65.8 per cent (unadjusted)
59.9 per cent (adjusted)

3. *With the "High-Jail/Self-Start Factor"*:

| | B | Beta | T-Ratio | Significance Level |
|---|---|---|---|---|
| High-Jail/Self-Start Factor | 14.8 | +.64 | 6.36 | <.01 |
| $Log_{10}$ Population | −10.8 | −.47 | 4.72 | <.01 |
| Unemployment Rate | −2.65 | −.22 | 2.20 | <.05 |

Fraction of explained variance: 76.5 per cent (unadjusted)
73.6 per cent (adjusted)

4. *With the "Jail x Self-Start Factor"*:

| | B | Beta | T-Ratio | Significance Level |
|---|---|---|---|---|
| Jail × Self-Start Factor | +1.33 | +.55 | 4.30 | <.01 |
| $Log_{10}$ Population | −9.96 | −.43 | 3.50 | <.01 |
| Unemployment Rate | −1.94 | −.16 | 1.25 | — |

Fraction of explained variance: 64.4 per cent (unadjusted)
60.1 per cent (adjusted)

B. Regression on $Log_{10}$ "Mean Payment Rate"

*With principal variables in log form*:

| | B | Beta | T-Ratio | Significance Level |
|---|---|---|---|---|
| Self-starting Factor | 0.047 | +0.33 | 2.06 | <.05 |
| $Log_{10}$ Jail Rate | 0.052 | +0.31 | 2.20 | <.05 |
| $Log_{10}$ Population | −0.059 | −0.38 | 2.69 | <.01 |
| $Log_{10}$ Unemployment | −0.240 | −0.23 | 1.62 | <.20 |

Fraction of explained variance: 62.1 per cent (unadjusted)
55.5 per cent (adjusted)

C. Regression on "Mean Payment Rate" in modified "Logit" form

$$\text{Log}_{10} \frac{\text{Mean Payment Rate}}{\text{1-Mean Payment Rate}}$$

*With principal measures in log form*:

| | B | Beta | T-Ratio | Significance Level |
|---|---|---|---|---|
| Self-Starting Factor | +0.13 | +0.30 | 1.91 | <.10 |
| $\text{Log}_{10}$ Jail Rate | 0.19 | 0.38 | 2.75 | <.01 |
| $\text{Log}_{10}$ Population | −0.18 | −0.37 | 2.67 | <.01 |
| $\text{Log}_{10}$ Unemployment | −0.79 | −0.24 | 1.88 | <.10 |

Fraction of explained variance: 63.9 per cent (unadjusted)
57.7 per cent (adjusted)

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Certainly no one will argue with the logic, and potential benefits of the Child Support Enforcement program. However, as each support agency has experienced, the realities of implementing and administering the program can be overwhelming. To date, the program has shown an acceptable return on investment, however, there are a number of administrative problems that have prevented the program from reaching its full potential benefit to the community and taxpayers.

The paperwork associated with initiating, monitoring and enforcing IV-D related support orders consumes enormous amounts of staff time and budget dollars. This problem is compounded by the need for detailed, historical information on collections, disbursements and delinquencies. These needs have complicated and overloaded conventional filing systems to the point where the program's effectiveness is suffering from a lack of timely and accurate information.

Another major problem area is the need for sophisticated accounting procedures and controls that are capable of handling the arrearages, disbursement hierarchies and a variety of payment terms, that are inherent in a court order based system. These controls are necessarily complicated and time consuming and, in many cases, simply cannot keep pace with the volume of transactions generated by the state or county caseload.

As is the case with any program of this magnitude there are substantial local, state and federal requirements. Although the specific reports vary in almost every case they require a complete review of the caseload on at least a quarterly basis.

All of these factors culminate in the single greatest obstacle to success for the program. Too much time is spent on generating, processing and retrieving information/paperwork and not enough time is spent on the functions that increase collection levels and reduce Welfare roles.

C.A.S.E. is designed to reduce the amount of time required to process the day to day functions of case administration. Once the terms of the support order are established on the system the paperwork associated with the accounts receivable, disbursement and enforcement functions are handled virtually automatically (all under strict accounting/balancing controls). In addition, complete payment, disbursement and case status information is available in seconds.

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## SUMMARY

Inforex, a worldwide leader in intelligent terminals and Data Entry and Information Management systems — the company whose business it is to know and understand end user requirements — offers you the ultimate solution to one segment of the growing Welfare predicament.

Agencies using the Inforex C.A.S.E. will now be able to retrieve, review, alter and store all relevant support information. Information that is immediately available in hard printed form as well as CRT displays. Individual cases can now be reviewed in minutes using simple two-key commands. Specific support checks can be issued, actual letters can now be sent. Legal backlogs will disappear as C.A.S.E. tracks errant breadwinners and dispenses funds with precision, ease and speed. All while using present staff as trained by experienced Inforex personnel.

Inforex has presented us C.A.S.E. This exciting new packaged system is readily available and easily installed. Contact your local Inforex office today for more information, or, call Bill Manuel at Inforex (617) 272-6470.

# C.A.S.E. Features

The Inforex C.A.S.E. system is a complete package designed to meet the challenge of Title IV-D. The package consists of the System 5000 minicomputer, C.A.S.E. application software, training, documentation, and hardware maintenance. It is a powerful file management system that meets federal IV-D requirements in all these areas. The following section highlights the C.A.S.E. application features in six major categories.

- Case Management
- Parent Locator Services
- Accounts Receivable
- Support Distributor
- Support Enforcement
- Administrative Accounting

## CASE INITIATION

- The system accepts input from AFDC as well as non-AFDC cases from an application form.
- Assigns the case to a IV-D worker
- Ability to inquire into a case status
- The system provides for the capability for multiple payees (maximum of 10 allowable) per case in the event that more than one payee receives distribution.

## PARENT LOCATOR SERVICES

- Provides a weekly report of open parent locator requests sorted by individual parent locator.
- Name, current address, place of birth, date of birth, employment data, location status, and date of last status change is included in the system.

## ACCOUNTS RECEIVABLE

- Easily handles payments made by mail or in person.
- Processes pre-payments and tracks them on a per case basis.
- Monitors "bounced checks" history of payee and can disallow personal checks based on past performance history.
- Maintains a complete detailed payment history.
- Provides daily and monthly collection reports by individual case, payor and total per case type category.
- Distributes both AFDC and non-AFDC monies to the appropriate recipient.

## SUPPORT DISTRIBUTION

- Provides a flexible hierarchy of distribution to allow disbursement of support in accordance with IV-D based on AFDC status.
- Generates detailed distribution registers.
- Automatically handles collection fee (poundage) calculation/deduction (if selected).
- Distributes arrearage payments according to obligation priorities.
- Handles overpayments redirected to dependent or refunded to payee.
- Distributes payments in accordance with due dates established in each court order.
- Retains data for federal quarterly reporting.
- Provides information needed to track incentive reimbursements.

In addition, the following types of receipts and disbursement situations are handled automatically by C.A.S.E.:

- Various payment frequencies (e.g. weekly, bi-weekly, semi-monthly, and monthly.)
- Specified pre-payments (i.e. payments made by a payor for an entire year to be disbursed according to due date for payee).
- Payments made by a payor both of a continuing nature and with regard to paying off a fixed obligation (the payor will be notified when the fixed obligation is paid off and any impact therefore on the payment amount).
- Printing of checks to payees on a due date basis as well as complete check reconciliation processes and reports.
- Generation of a single disbursement check for multiple payments to a single agency along with a detailed listing of the payments included within this single check.

## SUPPORT ENFORCEMENT

- Monitors and reports late payments, incomplete payment, and excessive arrearages.
- Monitors case status and (based on parameters defined by appropriate IV-D agency) generates exception reports/forms
  1. Late payment notices
  2. 5, 10, 30 day default listings
  3. Form letters to payee explaining default enforcement rights and procedures
  4. Counseling notices and reports
  5. Notification of court order changes

## ADMINISTRATIVE ACCOUNTING

- Provides a complete set of case analysis reports including: Case status and activity, fiscal status and activity, enforcement work load analysis.
- Maintains complete accounting controls: Batch balanced payment posting procedures, detailed payment registers, check creation, detailed disbursement register, detailed check register, check reconciliation procedures.

INFOREX
21 North Avenue, Burlington, Massachusetts 01803

NATIONAL CHILD
SUPPORT ENFORCEMENT

# REFERENCE CENTER

The National Child Support Enforcement Reference Center collects and organizes useful information and proven techniques to assist States in child support enforcement. The Center is located in the Office of Child Support Enforcement and offers the following services:

1. A library of child support materials.
2. An information exchange service. An Information Sharing Index is published quarterly and lists materials available on request.
3. The publication of a monthly newsletter, *Child Support Report*.
4. The publication of Techniques for the Effective Management of Program Operations (TEMPO's).
5. The publication of the OCSE Annual Report.

These services are intended to promote the exchange of successful practices among States, so that each State may develop an effective program tailored to its individual needs.

We encourage you to provide us with program materials you feel may be of interest to other States. The success of the program depends on an active exchange of information.

To request any of the services offered by the Reference Center, or to submit materials, please call or write:

National Reference Center
6110 Executive Boulevard
9th Floor
Rockville, Maryland 20852
(301) 443-5106

# Child Support Enforcement Program

Created by law in 1975 as title IV-D of the Social Security Act, the Child Support Enforcement (CSE) program is designed to help locate runaway parents, establish paternity of the child or children if necessary, and obtain full or partial child support.

This Federal program, administered by the Office of Child Support Enforcement in the Department of Health, Education, and Welfare, tied together previous efforts by some States to collect support payments on behalf of abandoned children and required all States to have such a program as a condition for receiving Federal funds for Aid to Families with Dependent Children (AFDC) programs.

CSE assistance is provided to all mothers (and, in some cases, fathers) who depend on the AFDC program for financial support of their children. AFDC outlays by Federal and State governments amount to approximately $10 billion a year. Over 80 percent of all AFDC families receive financial assistance because of the absence of the breadwinner from the home. Families who are not receiving AFDC are also eligible for child support services.

Overall results of the CSE program since it began August 1, 1975, are as follows:

**CSE COLLECTIONS AND ADMINISTRATIVE COSTS**
(in millions)

| | AFDC Families | Non-AFDC Families | Total Collections | Administrative Cost |
|---|---|---|---|---|
| FY 1976 | $204 | $308 | $512 | $139 |
| FY 1977 | 423 | 441 | 864 | 277 |
| FY 1978 | 472 | 578 | 1,050 | 321 |

The Federal Government pays 75 percent of the cost incurred by State and local governments in establishing paternity and obtaining child support. In cases where the families receive AFDC payments, the States keep part of the money collected for child support and part goes to the Federal Government to reimburse AFDC costs. Counties may also share in the collections as an incentive for their participation.

When a support payment is sufficient to make a family ineligible for AFDC payments, the family leaves the welfare rolls and the support payment goes directly to them. All non-AFDC child support payments collected are returned to the families affected except for a nominal amount that a State may charge to offset its administrative cost.

(More)

Each State operates its own CSE program, with Federal assistance, through an organization known as the IV-D agency, which can be a new State unit or part of an existing organizational unit such as a department of welfare. The State IV-D agency must:

- require AFDC applicants to assign support rights to the State as a condition of AFDC eligibility;
- locate, establish paternity, and collect support payments on behalf of AFDC children and other families who apply for the services;
- require that AFDC applicants cooperate with efforts to secure support payments unless such cooperation would not be in the best interest of the child.

In addition to assuring compliance with Federal law, the Office of Child Support Enforcement works directly with States in improving the efficiency of their programs and in developing cooperative ties with other States.

Within the Federal Office of Child Support Enforcement and each State IV-D agency there is a Parent Locator Service responsible for locating absent parents. The Federal Parent Locator Service has access to information maintained by other Federal agencies—such as social security records, internal revenue files, and military records. This augments the State's ability to locate parents particularly when the absent parent has left his or her home State.

The Office of Child Support Enforcement can certify interstate child support cases to U.S. district courts for enforcement where existing reciprocal agreements prove ineffective, and can certify court-ordered AFDC child support cases that are deliquent to the Internal Revenue Service for collection.

To accelerate collection efforts, the Office of Child Support Enforcement and the States have established the goal of achieving an annual collection rate of $1 billion for AFDC children by the end of fiscal 1979 (September 30). This special program, called PROJECT RESPONSIBILITY, will meet its goal if $250 million is collected on behalf of AFDC children in the fourth quarter of FY 1979. This is approximately a doubling of present collections.

The Federal Office of Child Support Enforcement is located at:

Office of Child Support Enforcement
Department of Health, Education, and Welfare
6110 Executive Blvd.
Rockville, Maryland 20850

Discussion Papers

Prepared by Robert E. Keith, Assistant Attorney General, Iowa
For NCSL Child Support Enforcement Seminar

## Proposals for Child Support and Paternity Legislation

INTRODUCTION: It is the right of heritage which we consider today, the privilege to know one's ancestry. Whatever else the stigma of illegitimacy imposes, the very word implies a faulty foundation upon which to build one's life. Something essential has been denied. The person entering this world illegitimately is handicapped by the circumstance of his or her birth. No legislative or judicial embracement of due process and equal protection can entirely mend this child's injury. The future, hopefully, may reveal anything; but, one-half of the individual's past may forever remain a mystery. When we speak of assuring an illegitimate child a fair chance, there is but one logical starting point. In order to grant the opportunity for normalcy in their lives, these illegitimate children require special identification, i.e. the identification of their fathers.

Unfortunately, no one can predict in every case whether any lasting good will result from the adjudication of the paternal relationship. The father may or may not show any true affection or even concern for his progeny. He may or may not be in a position to provide a bare minimum of support for the child. Nevertheless, the child has a right to know whence he was derived. In the vast majority of cases, the child has no say in the initiation and prosecution of the paternity claim. A great burden is cast upon society to see that the interests of these children are protected.

More than money is at stake. The knowledge of one's lineage is integral to everyone's sense of personal identity. To arbitrarily foreclose access to one's paternal heritage is an injustice. It happens that some women do not want their children to know their fathers. Public prosecutors are frequently willing to dispense with these cases summarily. There are, no doubt, cases where establishment of the child's paternity will serve no good end and may possibly be injurious to the child. These exceptions should be carefully screened. The expedient rule of inaction may have consequences the child will bear for a lifetime. Despite the inconvenience and the expense, most children should be afforded a legal relationship with their fathers. The illegitimacy rate in this country is high and rising. Our task as law makers and enforcers cannot be emphasized too greatly.

PROPOSAL: No statute of limitations for establishment of the paternal relationship.
ARGUMENT: A number of states recognize that the child is disadvantaged by his or her minority, and cannot even commence

an action until at least age eighteen. It is considered unfair to bar the paternity action before the child is even competent to initiate the suit.

Obviously, it may be unfair in the typical case to impose an obligation to pay back support for a child eighteen years of age. Some states limit the recovery of back support to actions initiated within a few years of the birth of the child. Some bar recovery of back support altogether. The adjudication of paternity, however, provides much more than a prerequisite for the imposition of a support liability upon the father. Social security, workman's disability benefits, veteran's benefits, tort claims, inheritance rights, and similar benefits may be preserved for the child. In addition, the child is permitted a personally invaluable opportunity to have his ancestry legally recorded.

PROPOSAL: Blood tests as statistical evidence of the probability of paternity.
ARGUMENT: The law has lagged consistently about ten to twenty years behind the state of the art of medical science in the area of genetic testing. It is currently possible to exclude over ninety percent (90%) of wrongly accused fathers. If no exclusion is obtained, the court should note, along with other competent evidence, that the accused father is in a statistically ascertainable sub-group of men who could be the child's father. This is the best available, and the only empirical evidence tending to show an actual biological relationship.

Blood test evidence is always as available as the parties to the paternity action. Blood types do not change with age. If there is any question at all concerning the reliability of the testing procedures or the accuracy of interpretation of the results, duplicate testing can be performed at independent laboratories. Blood test evidence should be routinely admitted in evidence by submission of the expert's written report of findings and evaluation of their relevancy. The necessity of expensive and time-consuming personal testimony by the expert should be minimized.

PROPOSAL: Eliminate trial by jury and exclude bystanders from the proceeding.
ARGUMENT: There is no inherent right to jury trial in civil cases, nor does the public at large have any right to attend. In domestic relations and juvenile justice proceedings, in particular, there is a commonly recognized interest in trials to the court which are closed to spectators. Highly emotional

issues are considered. Both parties are testifying regarding the most intimate details of their private lives. The future of a child is ultimately at stake.

In addition, it must be recognized that trials can be conducted more expeditiously if extended jury selection is not required. In many jurisdictions the backlog of civil cases is so great that a jury demand imposes at least a year s delay in the action. Furthermore, both jury and public trials invite spectacular performances by the advocates. Simplifying the trial may ultimately eliminate much of this sensationalism.

PROPOSAL: Long-arm jurisdiction when the child is conceived within the forum state.
ARGUMENT: In a paternity contest, if the father is known and the mother is willing to proceed, the first consideration is securing jurisdiction so that the claim may be adjudicated. If the accused man is not a member of the local community the case is generally transferred to a forum where it is convenient for him to defend. The mother may be required to travel there to pursue her claim. Under our uniform support of dependents laws, an attempt may be made to proceed without benefit of the mother's testimony in court. Occasionally this is satisfactory, but in a probable majority of the cases it is not. The plain fact is that a man may very likely avoid his paternal obligations by staying away from the community where the mother and child reside. Even with State aid, it cannot be expected that mothers of illegitimate children will be shuttled all around the country in order to press their claims.

If the mother and child reside in the state where conception occurred, there should be no reason to require them to take their claim elsewhere to be tried. In this situation the accused father should be required to return and answer for the consequences of his actions. A minor automobile accident, a contractual agreement, or a criminal act in a state are all sufficient basis to require an individual to defend himself where the act occurred, not where it may be convenient for him to proceed. The act of intercourse is no less important a tie to a locality. Long-arm service of process should be used regularly to bring the parties into court in the place where the child came into being.

PROPOSAL: Expand t = right of a husband and wife to testify as to the actual paternity of a child born during their marriage.
ARGUMENT: There is a serious question in the case law as to the evidence which may be considered to rebut a presumption of legitimacy. It is a fact of our times that a great many children are conceived by acts of intercourse between married

women and men other than their husbands. The child does not benefit by being denied a relationship with his or her natural father because of too strong a presumption of legitimacy. The best evidence, the testimony of the husband and wife as to nonaccess, is often barred under the antiquated "Lord Mansfield's Rule" of 1777. When that "Rule" was decreed there was no such thing as a paternity suit and thus an illegitimate child could have no father at all. Most legal scholars and several state supreme courts have rejected the rule denying testimony of the spouses for reason that it denies the court evidence which is otherwise relevant to the proceeding.

The presumptive father should receive notice that an action is pending which would effectively terminate his parental rights. There need not be an actual termination action in most cases as the husband probably is not the father of the child. If he ignores notice of the proceeding or admits under oath that he is not the father, then the case against the alleged father should proceed as in any other paternity suit. If the presumptive father believes he is the actual father, then he may join in the action and defend his rights.

PROPOSAL: Provide that the mother of an illegitimate child has exclusive custody, unless the court orders otherwise, and separate custody and visitation issues from any proceeding to establish paternity.

ARGUMENT: The mother of an illegitimate child should have legal custody from the date of the child's birth, unless otherwise ordered by the court. Many women are afraid to accuse a man of paternity for reason that he may steal the child. If the father is the best suitable parent to have the child, he should petition the court for legal custody. This should not be considered as part of the paternity action. The father should not be permitted to simultaneously deny paternity and seek custody of the child. The paternity issue should be settled before a putative father is given any parental rights. This accords with current case law which grants procedural rights to the unwed father (e.g. notification of pending adoption), but does not consider him to have equal parental rights with the mother until he has actually demonstrated his concern for the child.

This amendment would minimize concern that the accused father would remove the child from the mother without a court order. It would further insure that only paternity and support would be considered at the trial. Once paternity is established, then it is made clear that the father also has rights which he may enforce by a separate proceeding in a court of equity.

The mother may, of course, voluntarily grant visitation rights and the subsequent legal proceeding usually will not be required.

PROPOSAL: Provide for court ordered wage assignemnts, binding upon employers, for child support debtors who have demonstrated their reluctance to voluntarily provide for their children.
ARGUMENT: Citations for contempt of court and piecemeal garnishment, attachment, or other execution proceedings provide, at best, sporadic incentives to comply with the child support order. Payments missed by the debtor in all likelihood will never be recovered. The regular assignment, of an increment of the debtor's weekly or monthly wage insures that he or she will not fall behind. The payment is easier to make and collections fees are totally avoided.

Employers will usually recognize the public benefit supporting the wage assignment. If they have reservations, it is usually because they feel a protective urge on behalf of their employees. The mandatory wage assignment removes any stigma of cooperation with the government to their workers' disadvantage. Another concern, of course, is cost of effecting the wage transfer to the court fund. Legislation should specify that only wage assignments for family support may be made binding upon the employer, and provision for nominal compensation for the employer's expense can also be made.

Additional explanation of proposed amendments and elaboration upon each argument submitted may be obtained by contacting:

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October, 1979

# PENDING FEDERAL LEGISLATION PERTAINING TO CHILD SUPPORT ENFORCEMENT

S. 1396 Providing Incentives to State Administered Programs, introduced by Senators Hatfield (OR), Leahy (VT), and Packwood (OR).

The present federal financial incentive program was established to encourage local political subdivisions in the collection of child support obligations. The incentive system allows a political subdivision to retain 15 percent of the support collected in AFDC cases.

S. 1396 modifies the current program by providing that states as well as subdivisions can receive federal financial incentives. 50 percent of the incentive payments must be used to enhance, improve or expand the IV-D program. This bill will affect 42 states that have been ineligible for incentives because they are state administered.

H.R. 3491 and 3492 Child Support Debts and Bankruptcy, introduced by Representative Matsui (CA).

The "Bankruptcy Reform Act of 1978" reorganized and compiled all federal references to bankruptcy into one act, repealing all of the individual references. One of the original provisions of the federal legislation for child support enforcement prohibited parents from discharging their child support obligations by declaring bankruptcy. That provision was repealed but not re-enacted in the "Bankruptcy Reform Act." H.R. 3491 would reinstate that provision by excluding child support, alimony, and maintenance from debts that can be discharged in bankruptcy whether they are owed to an individual or the state. H.R. 3492 provides that a child support obligation which has been assigned to the state cannot be discharged in bankruptcy.

S. 1669 Additional Conditions for Federal Expenditures for the Operation of State IV-D Programs, introduced by Senator Talmadge (GA).

An additional requirement for federal payments made to state programs is added by S. 1669. Beginning April 1, 1980, federal payments for 75 percent of the cost of operating state IV-D programs will be contingent on quarterly reports from the states. The amount of child support collected and disbursed and all expenditures must be reported by the state prior to the federal payments being made to the state. The bill also allows the federal government to deduct from its payment to the state money that the state owes the federal government in reimbursements on AFDC payments as a result of child support enforcement collections having been made.

S. 1675 Increase Matching Funds for Computer Systems for State IV-D Programs, introduced by Senator Talmadge (GA).

In recognition of their importance in child support enforcement, the bill provides for matching funds to cover costs of computer systems. The bill provides 90 percent federal matching funds for planning, design, development, installation, or enhancement of an automatic data processing and information retrieval system. The option of matching funds for computer systems would be available to states for use in their child support enforcement and establishment of paternity programs.

S. 1676 Federal Participation in Court Expenses, introduced by Senator Talmadge (GA).

Title IV-D of the "Social Security Act" outlines the expenses that the federal government will share with a state through its 75 percent matching funds. S. 1676 allows federal participation in court expenses arising in the performance of services directly related to the operation of a state IV-D program. This new allowance for matching funds could be used for judges, support and administrative personnel and other things.

S. 1677 IRS Services for Non-AFDC Cases, introduced by Senator Talmadge (GA).

Currently IRS services are available to help collect child support debts for recipients of AFDC. S. 1677 would make this service available for non-AFDC cases as well. The IRS services include information about assets of parents taken from the tax returns, as well as actual collection services. If a IV-D agency determines that a case is worth pursuing after receiving information on an absent parent's assets, it may contract IRS to collect support obligations.

S. 1678 Access to Wage Information for IV-D Agencies, introduced by Senator Talmadge (GA).

A new section would be added to Title IV-D of the "Social Security Act" to provide access to wage information retained by the Social Security Administration. State IV-D agencies could obtain information about absent parents concerning their earned income, period for which it's reported, and names and addresses of their employers. Such information, which is necessary for establishing, determining the amount of, or enforcing child support obligations, is often difficult to obtain. Appropriate safeguards against misuse of such information are to be established by the Secretary of the Department of Health, Education and Welfare.

H.R. 3091 Funding for IV-D Services for Non-AFDC Clients, amendment concerning child support enforcement offered by Senator Long. (Louisiana)

H.R. 3091 is a bill addressing tax treatment of state legislators' business expenses. The part of the bill dealing with child support is an amendment concerning funding for the IV-D program. The history of that amendment is as follows: When the original child support enforcement legislation was enacted, federal participation in expenditures for non-AFDC child support services was authorized for only one year. Since that time, the funding has been extended twice. The last expiration date was September 1978. A measure to provide permanent funding for services to non-AFDC clients failed passage during the 95th Congress.

A temporary solution to provide funding for non-AFDC child support services was provided in the 1979 continuing appropriation resolution for HEW. That solution was overturned by the U.S. Treasury Department in March of 1979 when it refused the funding request.

When that portion of the continuing appropriation resolution was overturned, Senator Long attached this amendment to H.R. 3091 to provide federal financial participation for child support services retroactive to October 1, 1978. At

this point, the bill has not been passed for reasons unrelated to the child support amendment.

Ten states have filed suit in U.S. Ditrict Court to force the federal government through HEW to pay for the non-AFDC child support services. On August 8, 1979 a preliminary injunction was filed in favor of the ten states suing HEW. The court's finding was that discontinuation of the funds would cause the states in question and numerous beneficiaries to suffer irrepairable harm.

Prepared by National Conference of State Legislatures for Child Support Enforcement Seminars.

EDITOR'S PROOF OF ARTICLE TO APPEAR IN THE OCTOBER ISSUE OF
"STATE LEGISLATURES"

# The New Clout in Child Support Enforcement

Dennis C. Cooper and Mary Volgyes

**A federal-state program is tracking down parents who ignore their child-support obligations—and taking effective measures to collect the money they owe. The result is both a helping hand for children and a source of revenue for states.**

In alarming numbers, American parents are running out on the next generation.

The fact is often obscured beneath glib generalities about "new lifestyles" or "changing patterns of American family life." But if we allow ourselves a hard look at what is actually happening to *children*, a harsh picture emerges:

- As the divorce rate doubled between 1965 and 1975, one in every six families was left with only one parent in the household.
- As a result of divorce, desertion or illegitimacy, two of every five children born during the seventies can expect to live in a single-parent family at some time during their childhood.
- The economic effect of these circumstances can be catastrophic. Too often, the custodial parent's limited earnings are insufficient to provide adequate support for the family. Many are forced to rely on public support.
- Some of the burdens of single-parent families would be eased considerably if absent parents met their obligation to provide child support. But the fact is that many are unwilling to pay.

No one policy or program can address all of these concerns, and some of them are entirely beyond the reach of public policy. But the specific problem of enforcing child support *can* be addressed, and is being addressed—by a nationwide, state-federal program that locates absent parents, and, when necessary, takes stern, effective measures to collect the money they owe.

This four-year-old program of child support enforcement (CSE) is sometimes called IV-D enforcement after Title IV-D of the Social Security Amendments that established it. The program now operates at state, county and sometimes local levels in all 50 states and in most U.S. territories. The state offices are designed to ensure that parents who leave their homes meet their child support obligations; the offices are set up to establish paternity and child support obligations, and collect money from parents who fail to pay.

The program has more than one group of beneficiaries. While protecting children from parents who neglect their child support obligations, it also provides significant cost savings to states in the form of new revenues that can be used to offset the costs of Aid to Families with Dependent Children (AFDC), or for other purposes as determined by the state.

An increasing number of states are placing a high priority on CSE, as both a way of assisting families and as a revenue-producing strategy. Through well-designed and efficiently managed programs, they are collecting impresive sums. Michigan's system, for example, reported collections of almost $213 million in 1978. A substantial portion of those funds was retained in the state.

## Background

By 1973, no less than 83 percent of AFDC families had an absent pareent, and most of the absentees were failing to pay child support. It became apparent that many billions of dollars could be saved by enforcement of child support obligations.

At the time, however, such enforcement was confined almost entirely to a few states that had taken the initiative in establishing effective programs. Nationally, the traditions of state and local prerogative in matters of family law meant that the judgments of one court were not necessarily honored in other jurisdictions. Besides, the courts had only limited means in most instances to enforce their own decrees concerning child support. Because of loopholes and tradition, a parent who disappeared or left a court jurisdiction could easily avoid paying. The custodial parent had no alternative but to pursue the absent parent through one court after another, often incurring huge legal bills but accomplishing little.

After a divorce, the economic status of the woman—who most often is left heading the family—is normally much lower than that of her former spouse. Authorities agree that since most absent fathers *can* pay to support their children, they should pay. Even so, one study showed that about half of absent fathers paid less than 10 percent of the court-stipulated amount for child support. Judith Cassetty, who recently published a book on child support problems, contends that 75 percent of absent parents who were unwilling to pay were able to escape their obligations. Custodial parents or unmarried mothers who were poor, and could not afford to seek a divorce and child support judgments through a court, had virtually no hope of obtaining assistance from the absent parent.

Economically, the results were disastrous. Figure 1 shows the growth in divorce and illegitimacy rates and the corresponding rise in AFDC expenditures between 1970 and 1976. The curves show the multiplier effects of these trends on the AFDC price tag, which rose over 800 percent during the period, while divorce rates grew almost 180 percent and illegitimacy rates rose 88

percent. The national cost of AFDC rose in 1977 to $10.2 billion, which had to be extracted from already tight federal and state budgets. Medical and other benefits provided to AFDC families added another $15 billion to the total.

Because most states had not been able to enforce child support on their own, the 1975 federal legislation called for vigorous federal leadership. It required states to enforce child support obligations for children of AFDC families and those not on welfare rolls. Title IV-D also called on each state to cooperate in enforcing court orders from other jurisdictions. In addition, the law contained a provision that assisted children born out of wedlock in establishing paternity and obtaining awards of support from putative fathers.

The law was originally viewed with skepticism by those who feared federal control in family affairs, but it has won wider acceptance as more people realize the social and ethical implicaitons of parents' neglect of child support obligations.

To help states establish their own programs, the federal legislation provided for a national Office of Child Support Enforcement within the Department of Health, Education and Welfare. It also established a Parent Locator Service, which uses information obtained by other agencies such as the Social Security Administration and the Internal Revenue Service to find missing parents. Congress added clout to the legislation by providing rewards to states with effective programs —and penalties, in the form of reduced AFDC reimbursements, to states not in compliance with the law.

## How the Program Works

As a joint federal-state effort, child support enforcement requires cooperation among states to locate absent parents and collect funds. HEW's Office of Child Support Enforcement provides national leadership and direction, operates the federal Parent Locator Service, and pays 75 percent of the costs incurred by states in collecting child support money.

Federal interest in the program centers primarily on its potential for reducing AFDC costs and helping single-parent families stay off welfare. Accordingly, money received for children of AFDC families is used by the CSE program as an offset against federal AFDC costs. If support payments amount to enough to raise the family income above the poverty level, the welfare case is closed and payments are made directly to the family. Collections made on behalf of children in non-AFDC families are simply passed through to the families themselves; costs for recovery may be deducted if the state elects to do so to offset non-AFDC administrative costs.

A recent study showed that payments made for the children of non-AFDC families play an important part in helping the families stay off welfare. This benefit is computed as cost avoidance, which indirectly helps keep AFDC costs down.

## Revenue for States

The CSE money that comes into a state for AFDC families is split between the state and federal governments, according to the percentage each pays toward the state's AFDC program. In Utah, for example, 70 percent of CSE collections for AFDC families go to the federal government and 30 percent to the state. This split corresponds to the Utah-federal matching formula for AFDC costs.

Since the Utah program brought in almost $4.6 million in CSE collections in 1978, the 70/30 split meant that the state retained about $1.4 million. From this money it had to pay for 25 percent of the IV-D agency's operating expenses, with the federal government picking up 75 percent, as it does for all states. Utah's share of IV-D administrative expenses totaled almost $686,000, which left approximatley $687,500 to be retained by the state.

The federal government also pays incentives that amount to 15 percent of collections made by a state on behalf of other states. Adding these incentive payments to other money gained in IV-D efforts, Utah recouped over $1.1 million in 1978. States have considerable latitude in deciding how these funds are used; in Utah, the CSE money financed 10 percent of the state's AFDC costs.

## Effectiveness

There are several ways to measure the effectiveness of a child support enforcement program.

On the simplest level, effectiveness could be a matter of how much money is recovered from absent parents of AFDC families. But if this were the only criterion, agencies would be tempted to "cream" caseloads—to work only on cases in which collection will be relatively easy, and neglect difficult and troublesome cases, or those in which the child support obligation is small.

For that reason, evaluators often look at other measures: percentage of AFDC families served; ratio of dollars collected to dollars spent in the collection process; increases and AFDC collections; and percent of AFDC payments recovered by CSE workers. The Office of Child Support Enforcement recently compared states by a number of such indicators, and the results are shown in Table 1.

Inevitably, these ratings are affected by laws and conditions within each state. A IV-D agency needs cooperation from the police, courts, and district attorneys, and it needs laws to help rather than hinder legitimate collection efforts. (For example, some state laws impede the process of establishing paternity, which of course is essential to the CSE program.) Effectiveness also depends heavily on adequate resources, such as computer technology to tie into the federal Parent Locator System.

Combined AFDC and non-AFDC collections for all states totaled over $1 billion in 1978. Over $3.30 is currently being collected for each dollar spent to operate the program.

## Fairness

Beyond measures based on collections, however, each agency has a responsibility to the best interest of the children in whose name collections are made. Child support recovery and paternity proceedings involve both the parents and children in a complex web of legal relationships. In any case that involves an administrative or court hearing to establish a support order, the right of the parent to due process is paramount. Providing support sometimes involves paternity hearings, which involve the private lives of both parents. To enforce certain orders for support, a parent's property or wages may be attached.

Sensitivity to these human and legal issues is essential to the operation of a IV-D agency. Unlike any other welfare program, child support enforcement involves the dual role of *serving people i.. need* while *producing revenue* for the state and federal government. This combination places upon program administrators a dual responsibility for protecting the rights of children and of taxpayers.

Many states have developed legal services to protect the rights of everyone concerned. For instance, in the state of Washington, although the state assumes the legal battle for support of children of AFDC families, a nonprofit legal service has developed its own expertise in representing the parents. They may serve absent parents who are being sued for child support, or mothers involved in the sensitive proceedings to establish paternity. In all cases, their job is to preserve the process.

## How Legislators Can Help

Interested state legislators can play a decisive role in helping child support enforcement agencies reach their full potential, by helping to provide adequate funding and an appropriate legal framework.

**Funding.** A child support program can bring significant revenue to its state only if the program's own funding is sufficient. Adequate staff is a must in order to process cases in a timely manmner, which, in turn, yields money to offset AFDC expenditures.

**Laws.** From the standpoint of those involved in CSE progrms, the ideal statutory framework should:

- Enable the stte to be the recipient of support for families receiving public assistance;
- Empower the state to take all legal steps necessary to establish support orders and collect support;
- Establish the state's right of action in private cases, allowing it to contract with a custodial parent or requiring a state officer to represent the state upon request of the custodial parent or the court;
- Allow access to public records or private information that aid in locating a parent or in determining his or her private income or assest;
- Enable states to obtain enforceable paternity and support agreements, stipulated orders and temporary orders when court delays hamper collection of child support obligations;
- Provide for the development and publication of formulas for determining fair support obligations, based on objective cost-of-living standards;
- Remove existing legislative barriers. For example, one convenient way of tracking absent parents is through a credit bureau, which maintains financial records for most credit card users. In one state, however, state agencies were prohibited by law from joining a credit bureau. A simple revision in the law helped speed agency operations.

## Assistance to Legislators

The National Conference of State Legislatures operates a Child Support Enforcement project to help legislators learn more about CSE and become more involved in it. The project will provide information through its clearing-house service, conduct seminars, and offer individual technical assistance to help in the development of CSE legislation.

NCSL is sponsoring two regional seminars this fall to bring legislators together with experts from the CSE field for information sharing and discussion. Topics to be covered include general concepts underlying the CSE program, policy options, innovative state programs, model legislation, and impediments to effective programs.

The Western regional seminar is to be held in Denver on October 11-12. The Eastern regional seminar is scheduled for Hartford, Connecticut on October 22 and 23.

In addition, HEW's Office of Child Support Enforcement provides technical assistance and training to state legislators, the judiciary, and staffs of IV-D agencies. The recently established National Institute for Child Support Enforcement (NICSE) is one of OCSE's major resources for providing these services. NICSE will be offering technical assistance by peer experts to help state and local CSE programs set up effective enforcement and collection systems, manage their operations more efficiently, organize functional case management, and comply with federal audit and confidentiality requirements. It is also developing a series of training courses for delivery this fall and next spring.

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*Dennis C. Cooper, formerly the director of Utah's IV-D program, now heads the National Institute for Child Support Enforcement, administered under contract for the Office of Child Support Enforcement by the University Research Corporation.*
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# CHILD SUPPORT ENFORCEMENT SEMINARS

## REPORT ON PROCEEDINGS

CHILD SUPPORT ENFORCEMENT PROJECT
NATIONAL CONFERENCE OF STATE LEGISLATURES
DECEMBER, 1979

EDITED BY: DEBORAH E.S. BENNINGTON, PROJECT DIRECTOR
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The National Conference of State Legislatures is designed to help lawmakers and their staffs meet the challenge of today's complex federal system. Headquartered in Denver, Colorado, with an office of state-federal relations in Washington, D.C., NCSL is a non-partisan group serving the nation's state legislators and their staffs. It is funded by the states and governed by a forty-three member Executive Committee.

The NCSL has three basic objectives:

To improve the quality and effectiveness of state legislatures.

To assure states a strong, cohesive voice in the federal decision-making process.

To foster inter-state communication and cooperation.


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ACKNOWLEDGEMENTS

The staff of the NCSL Child Support Enforcement Project wish to thank the National Institute for Child Support Enforcement and the Office of Child Support Enforcement in the Department of Health, Education and Welfare for the opportunity to sponsor these seminars.

We extend very warm thanks to the moderators for our two programs, Representative Ronald H. Strahle of Colorado and Representative Irving J. Stolberg of Connecticut for their support and help in making the programs runs smoothly. We also thank the legislators who served as moderators for the concurrent sessions. Their help was crucial in making the discussions balanced and productive for the participants.

Very special appreciation goes to our plenary speakers and workshop resource people for their help and guidance to us in planning the seminars, and for the time and effort they devoted to participating in the programs. The participants' evaluations of the seminars confirmed our feelings that the expertise and helpfulness of the faculty were outstanding.

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# INTRODUCTION

Two Regional Child Support Enforcement Seminars were conducted in October for state legislators. They were sponsored by the Child Support Enforcement Project of the National Conference of State Legislatures, which is funded by the National Institute for Child Support Enforcement. This Report on Proceedings presents exerpts or summaries of the remarks of Plenary Speakers, the major points brought out in the Concurrent Sessions and the Closing Remarks from both seminars. Also included are the Agendas for both programs.

The Western Regional Seminar was held in Denver, Colorado on October 11-12 with participants from Alaska, American Samoa, Arizona, California, Colorado, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, Texas, Utah, Washington and Wyoming. Forty-nine people attended this seminar.

The Eastern Regional Seminar was held in Hartford, Connecticut on October 22-23 and drew participants from Alabama, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Dakota, Tennessee and Vermont. Sixty-nine people attended this seminar.

The seminars were planned to bring state legislators together with experts in the field to improve legislators' understanding of Child Support Enforcement. The same agenda (with some changes in speakers) was used for both programs. A national overview on federal, state and local government participation in the program was provided by several speakers during the first morning plenary sessions. The remaining time (the afternoon and following morning) was spent in concurrent workshops, where legislators worked on identifying problems and potential solutions for their state CSE programs. The workshops were moderated by legislators. Resource people from the field were present to answer questions and point out issues that may have been overlooked in the discussion.

PLENARY SPEAKERS

## Louis B. Hays, Deputy Director, OCSE

As Deputy Director of OCSE, Lou Hays oversees the Child Support Enforcement Program in all of the states. His office consists of headquarters in Maryland, ten regional offices, and 17 local audit offices.

### "A National Overview from the Federal Perspective"

Lou Hays was the keynote speaker for both seminars. His remarks to the legislators were focused on the need for child support enforcement and state/federal relations. The following excerpts from his keynote addresses provided an overview of the program for the participants.

My mission this morning is to attempt to provide a brief yet comprehensive overview of the Child Support Enforcement Program. Some of the things that I will address this morning include background on the program, discussion of how the program works, and what the federal role is in the program. I will also present our view of some of the benefits that the child support program can offer, some of the services available through the federal government, and a discussion of what we view as being the essential role of state legislators in this program.

The number of divorces in this country had grown from under 400,000 in 1960 to over 700,000 in 1970. By 1974, the number of out-of-wedlock births in this country reached almost ½ million. Each of these divorces in which a child is involved and each of these out-of-wedlock births represents a potential welfare case, case of Aid to Families with Dependent Children. What had begun as a relatively minor part of the Aid to Families with Dependent Children program, namely eligability because of the absense of a parent from the home, had become the overwhelming cause of AFDC dependency. Death or incapacity of a parent were originally the largest factors of AFDC eligability, but had become relatively insignificant.

The motives or the purpose and thrust of the Child Support Enforcement Program is to locate parents who have deserted their families, to establish the paternity of children when they were born out-of-wedlock, to establish a legal obligation on the part of the absent parent to support that child, and then to enforce that obligation. In other words, make sure that the absent parent pays child support. The program applies to all AFDC children who have a parent absent from the home. States are required to apply the child support program to those situations. The program is also available to families not receiving public assistance, but come in and apply for services through state or local government for help in obtaining child support payments from an absent parent. The primary responsibility for these functions of locating the absent parent, establishing paternity and collecting support falls upon the shoulders of state and local government. The federal law and the federal regulations provide a great deal of flexibility to state and local government.

I suppose that the most important role of the federal government in the eye of the state and localities is the fact that we provide 75% of the cost of administering the child support program. Basically, 75% of whatever is spent at the state and local level is matched by the federal government. We're also required, of course, to carry out the provisions of the Social Security Act through federal regulations. We also get more directly involved in some of the aspects of the program, for example, in helping to locate absent parents.

We operate something called the Federal Parent Locator Service, which makes available to state agencies information that is maintained in various federal record sources, such as the Internal Revenue Service and the Social Security Administration. We also have a large role of providing technical assistance to state and local governments, and we are further required by federal law to conduct audits of the various state child support programs.

First because it probably has gotten the most attention in this program, I'd like to address what we see as some of the financial benefits, particularly to state and local government. As I mentioned, we do provide 75% federal financial participation. So to state and local government it means that only 25% of their costs are actually carried by the taxpayers of the particular jurisdictions. A further financial benefit of the program to state and local government is the fact that most of the child support that is collected on behalf of the children receiving welfare benefits is used to reimburse the federal, state, and local costs of providing those welfare benefits to children. In those cases in which the child support collected from the absent parent is sufficient to take the family off of public assistance, of course, then the state or locality also benefits by reduction in their welfare roles.

Another unique provision of this program is what we refer to as the incentive payment. When county government, such as the District Attorney's Office, does the actual collection and enforcement of child support in an AFDC case, the county receives the so-called incentive payment amounting to about 15% of the child support collection. This incentive payment may be used for whatever purpose the political subdivision chooses.

The final financial benefits of the program are what we consider to be the indirect benefits of the non-welfare part of the program. This program is available to those families who are not on public assistance, who would like to apply for and make use of the services. There's no doubt, based on the information that is available, and the experience of state and local child support programs, that a substantial number of families who receive child support collections through this program are able to maintain their financial independence as a result and do not have to go on to public assistance. A recent study that we had performed for us under contract suggests that the annual savings by avoiding additional costs, AFDC, Medicaid, and food stamps, for these families runs into several millions of dollars a year.

In the final analysis, the primary importance of this program will be its social impact. Divorce and desertion frequently leave women and children in a serious economic plight. Many mothers who have been engaged in homemaking have few marketable skills and little if any recent job experience. Faced with the departure of the prinicpal wage earner, today's middle or even upper-middle income woman may have little alternative but to turn to public assistance if she is deserted. With the changing roles of men and women in our society, we are no longer dealing soley with deserting fathers. The departure of a working mother can also present a serious problem. The bottom line, however, remains the same. The loss of support from either parent can be devastating for the children.

Children born out-of-wedlock face an even more serious problem. In the absense of the legal establishment of paternity they may lose other benefits. Not only will they lose support, direct financial support from the parent, but they may lose other benefits that are predicated upon legal paternity, such as Social Security, Workers Compensation, inheritance, and Veteran's Benefits. Establishing paternity for a child born out-of-wedlock establishes or secures at least one important right that I believe every child deserves - the right to know one's identity. As a result of the IV-D program, thousands of children

are obtaining this right for the first time. In fiscal year 1978, for example, the states reported establishing the paternity of over 110,000 children under the child support program. I would also like to stress the premium that we place on maintaining due process of law in this program. We feel it is essential that the rights of all parties - mother, father, and especially the child - be protected and preserved.

Let me briefly address the type of services that are available from the federal government in this program and something of the philosophy and approach that we try to use in administering the child support program. In my opinion, all too many federal programs get so hung up on issues of compliance and technicalities and making sure that every "t" is crossed and every "i" is dotted. They tend to lose sight of the results and the performance and the bottom line of the program. Obviously, we do have a responsibility to see that federal law is carried out and complied with, but our primary interest lies in performance and results. And we like to try to do everything possible to facilitate state and local efficient administration so that the program can be effective. We are trying to encourage the transfer of effective techniques and procedures that have proven themselves in one or more states or jurisdictions to other places so that jurisdictions don't have to keep reinventing the wheel every time they come up to a new problem.

Basically, we are encouraging the development of state of the art techniques that will make the program more efficient at a lower cost. Much of our activity is aimed at attempting to do that. I would like to briefly mention two or three of the more significant ones. First of all we do have our National Insititute for Child Support Enforcement. In fact, this conference is being held under the auspices of the Institute with the National Conference of State Legislatures. Through our National Institute, we are striving to do two basic things. 1) To provide effective training courses for state and local child support personnel to make them more effective managers and supervisors and child support workers. 2) We are trying to facilitate that kind of technology transfer that I referred to a moment ago. We are financing the cost of sending state and local experts from one jurisdiction, who have solved the particular problem in their area, to another state or locality who is encountering the difficulty in their area of expertise. So instead of always having the federal government come in and try to solve the problem, we are encouraging the use of peer experts as well.

We also have what we call our National Child Support Enforcement Reference Center, which is basically a clearinghouse of information where we try to maintain as much current and up-to-date literature and information about the program as possible. We also publish through our Reference Center a monthly newsletter about the Child support program highlighting activities at the state and local level that may be helpful to other state and local programs.

Finally, we develop, promote, and actually install "model" computer systems to help states and localities manage their programs more effectively. CSE is a very complicated program involving many financial transactions, many functional activities with respect to location and paternity and collection to operate a CSE program without the support of a computerized information system is virtually impossible. So we are hoping to stimulate more effective and more inexpensive use of computer systems.

Finally, I would like to address myself to what I view as being the very important role of state legislatures in the child support program. As I see it, there are at least three vital functions that you perform. First, without the adequate budget resources to administer child support program, it's vitual, impossible to have sufficient personnel at the state and local level and sufficient funds to carry out the program. State legislatures can play

a vital role in appropriating proper funds for CSE. Secondly, and perhaps equally important, you provide the tools to the child support administators that can make their jobs simpler, by providing efficient and up-to-date legislative procedures to help out in many areas of the progam. And finally, I think that you can perform a valuable oversight and evaluation role by taking a look from time to time at how the child support program in your state is doing by overseeing the executive branch, by making evaluations and recommendations as to how your state program can be improved. We are, of course, attempting to help you in that effort.

I think that all too often the federal government tends to overlook or ignore state legislatures and deals exclusively with state executive branches. We feel we have a responsibility to provide you with information that may help you in carrying out your responsibilities and any kind of assistance that might make your tasks simpler. For example, we can provide you with data results of the program on a regional or national basis, that can help you evaluate your state and compare it with national performance. We can provide you with information about effective legislative tools that have proved successful in other states. We can, and have on a number of occasions when asked to do so, provide testimony in hearings. So we would like to think that in this program, unlike others, we can foster a greater amount of communication and cooperation among the executive and legislative branches because that is essential to the success of the program. In conclusion, I would like to say that we are attempting to develop a partnership in this program, a partnership in federal, state and local government. Obviously, each branch has its separate roles and responsibilities, but I think we can all have a common purpose in carrying out those roles and responsibilities; namely, improving the child support program and most importantly, serving the children of our nation.

Questions following Mr. Hay's address in Denver began with the Program Moderator, Ron Strahle. He wanted to know about the distinction between welfare intake workers and the child support enforcement staff. Mr. Hays answered by saying that his office has encouraged the two staffs to cooperate, which increases the intake workers awareness of child support enforcement.

He also addressed a question regarding the cost effectiveness of non-AFDC support enforcement. He responded by saying that non-AFDC clients are usually just making a living and are forced onto AFDC without the support payments. An HEW study shows it to be cost effective through cost avoidance.

In response to questions about federal legislation on child support issues Hays reported on the status of several bills. He focused on the bill concerning funding for Non-AFDC cases.

There were no questions following Lou Hay's address in Hartford.

## Judith H. Cassetty, Ph.D., University of Texas

Dr. Cassetty is an Assistant Professor at the University of Texas at Austin in the School of Social Work. Her research is in the area of child support. She has recently published a book Child Support and Public Policy.

## "Putting Faces to Names and Numbers: Scope of the Problem"

Judith Cassetty addressed both seminars. The following is the transcript of her address to both seminars.

I would like to talk to you today about some of the broader child support enforcement issues — both political and economic — and what can be done to resolve them.

It has been estimated that with today's divorce rate running close to 50% and illegitimacy rates (especially among whites and adolescents) rapidly increasing, close to half of all children born today will spend several years before they reach eighteen in a female-headed household. Furthermore, the years spent in such households will, most likely, be years in which they receive no support at all from the parent who resides elsewhere. It has been observed that during the past decades, this country has virtually eliminated poverty among the aged, blind, and disabled, and substantially reduced the earnings gap between white and minority males. The price tag on this progress has been high, however. The aged, who constitute only about 20% of all household heads, receive fully 50% of all public transfers. Because of our success in moving these adult categories from the ranks of the poor, and our relative success in providing market opportunities for minority males — progress we can certainly be proud of — it has been noted that our poor and near-poor population in this country, presently, are disproportionately found to be members of female-headed families. Some have said that because women can earn only sixty percent of what men earn with equivalent levels of educational attainment, the surest route to poverty is for a household to lose its male head. Similarly, the quickest way out of poverty for these families is the acquisition of a male head. Lest you conclude that decisions regarding a marriage commitment are beyond the manipulation of public policy, I hasten to add that the likelihood of remarriage increases with the reliability of the child support and earnings received by the female head of a family.

I must also stress that the severe earnings differentials between men and women is the consequence of bias which is so firmly rooted in our social, educational, and economic institutions that progress in narrowing that differential, while certainly a worthy social goal, is realistically one with a long-time horizon. On the other hand, increased private sector transfers through the child support enforcement system is, in every sense, a possible and necessary means of immediately narrowing the enormous gap in economic well-being between the children who must live in female-headed households and the father who no longer lives with them.

Which brings us quickly to the topic of ability-to-pay. Until recently, professionals and the public alike were unaware of the severity of the problem of non-support. It was generally assumed that anyone who wanted child support had the legal tools available to get it, and not receiving any was a function either of the inability of the absent parent to pay it, or the unwillingness of the custodial parent to pursue it. Nothing could be further from the truth. In general, the payment (or non-payment) of support by an absent parent has been found to be, in large measure, a voluntary phenomenon and one which cuts across income classes. Again, generally speaking, the money is there. It is not being receiving by over half of the children in female-headed families because the absent parent doesn't want to pay it, because most of these women cannot afford the cost and time-consuming effort necessary to pursue it through the courts, and because the enforcement tools are inadequate and support laws vague and archaic.

It is your business, as state legislators, to protect the interest of your constituents and to uphold the fundamental right of the children in your states to be supported by both parents to the greatest extent possible. It is clear from data, that the mothers who head families and the public have borne a disproportionate share of the economic and personal burden of these families.

My own research, and that of others, has shown that, in order of magnitude, women's earnings are the primary source of income in a female-headed family. Following this is: public transfers, and running a poor third, is child support from absent parents and other relatives. That this observation could have occured, speaks very poorly of our commitment to fostering a sense of individual responsibility on the part of the fathers of our children.

The tasks before you are clear:

- State Family codes and other laws effecting the enforcement of the child support obligation must be updated, overhauled, and given some teeth;
- Public child support enforcement efforts must be supported with dollars - dollars which couldn't be spent in a worthier pursuit;
- Subsidized enforcement services must be expanded for the non-affluent who are not on AFDC, but whose incomes are too low to pay for legal services in the private sector. This is necessary lest we foster a dual system of support enforcement - one which subjects the poor to a different set of opportunities and constraints than that available to the non-poor;
- Child support payment standards must be adopted to ensure equal treatment of absent parents on the basis of their ability to pay. Assurance that they are being treated equitably vis-a-vis other absent parents is bound to enhance payment performance.

Already there is talk among academics and legal professionals about removing the child support function from the private legal/judicial sector altogether and making it part of the federal tax collection system. I am aware of at least two serious proposals which would call for mandatory registration of parentage of each child at birth and a sur-tax on the income of absent parents. The arguments which favor this strategy gain strenth every day as the scope of the problem of non-support becomes more apparent and state governments remain unresponsive to pleas for reform.

Clearly, there is a substantial constituency for these reforms. Few could deny that reforming the child support laws and system falls within the proper purview of the states. Child support enforcement may be the only public service that makes money. It is the business of government to foster individual responsibility, and children -- the adult citizens of tomorrow -- are the biggest winners with an effective support system.

In Denver and again in Hartford, legislators were interested in learning more about the normative standards and system of surtax for support payments that Dr. Cassetty discussed in her address. She responded by providing figures demonstrating the low rate of payments being made nationally. Her point was that while the returns quoted by IV-D agencies sound positive, the actual dollar amount is much lower than could be collected.

She also reiterated that most absent parents are not paying and that the surtax is a positive method of collecting support payments. Her emphasis was on showing the dramatic improvements that could be made in the IV-D program. With the focus on the social impact of non-support, Dr. Cassetty cautioned against believing that a good collection record solves the problem.

In Hartford, Dr. Cassetty was asked whether she thought that the legislatures should be setting standards rather than the courts. Her response was that she thought that the court's prerogative to settle support disputes is only a matter of tradition. She also pointed out that individual adjudication is a more costly process.

## Anthony W. Mitchell, Ph.D., Executive Director, Utah State Department of Social Services

Dr. Mitchell's responsibilities as Director of Social Services include overseeing the Office of Recovery Services which includes child support enforcement. Utah's IV-D agency ranks in the top ten, nationally.

### "An Executive Branch Perspective on Child Support Enforcement"

Dr. Mitchell spoke at the Western Regional Seminar. The following exerpts from his address discuss the benefits of a strong CSE program.

Can you imagine a legislature in a state as conservative as Utah, that in the last three or four years has an agency which has almost tripled the number of employees, almost doubled, more than doubled the budget, and allowed them to go from three offices throughout the state to ten offices throughout the state? That's the kind of support that your fellow legislators in the State of Utah have given to Utah's Child Support Enforcement Program. We have gone from 1976, where we had somewhere around 80 employees, up to around 210. We have gone from a budget of around 2 million in 1977 to 5 million. And we have opened offices in many areas throught the state so that we can expand the functions of the Child Support Enforcement office.

I guess the question is, why would the legislators allow that kind of expansion during a time of general cutbacks and constraints? There were three major reasons why they've given that kind of support. First, because the Child Support Enforcement Program adds credibility and acceptability to the whole of the welfare program. Second, because on a very practical level, it generates additional revenues. Third, and probably most importantly, on a philisophical level it reinforces the personal responsibility of each individual - and it is the just thing to do.

Let me take the first of these reasons, the fact that it gives credibility and acceptability to the Public Assistance Program. How does it do that? First of all, it has an impact on holding down increases in welfare roles and the public assistance burden on the state. Most people do not want to be on welfare. Many of them find their way there because of the husband leaving the children, leaving the family. Over 80% of all of our cases in the State of Utah are that kind of a case where the husband has left the family and in almost all of those cases, there is a duty of support obligation owing. Often, there is no collection at all because the people, in many cases, will not voluntarily pay it. The CSE program helps to break the welfare cycle because the job that we have as we deal with people who need public assistance is to gradually help them get off of public assistance. We move them into training, into jobs. They get into a job and we start paying them smaller assistance grants as they earn more money. And when we're able to get the payment of the child support enforcement money on a regular basis, it creates a situation where the support that they're receiving from both their job and the child support payment is enough to allow them to move completely off of public assistance. So that's one way in which the Child Support Enforcement Program has credibility and acceptability. It helps to decrease and hold down the cases that we have in public assistance.

Child support enforcement adds credibility also because it helps us to detect welfare fraud. In the State of Utah, we don't have that much welfare fraud. Our rates are relatively low. I think it's 1-2% of the caseload, if that, where there's any intent to defraud. But there are those cases and they normally come under the rubric of the man in the house situation, where a couple divorces or separates, she goes on welfare and then they get back together again, he moves back in, but she fails to declare the fact that he's now living at the house again. Normally, that kind of a case can go on for a

long time before anything would be done about it. But because she assistance and because there's an effective child support enforcement agency operating, the Parent Locator System goes into affect. We find out where he's living and then take action to either close the case, or recover fraudulent payments. CSE helps us add credibility to the welfare system because it helps us to detect fraud. And the avoidance principle is in effect there as well. If people know of others that have been caught in similar situations, they refrain from getting into the same problems.

I think another way CSE adds credibility, is that the public feels better if the person, who in some measure created or helped to create the welfare burden, is paying their share of the costs that are needed to help resolve it. Nationally, as I understand it, about 5.5% of the assistance payments funds or welfare funds come from the recoupment of child support enforcement payments. It was mentioned today by one of the previous speakers that in his state it was around 9%. This past year, Utah was at 11.2% and led the nation in the percentage of welfare payments that were recouped from child support enforcement.

There's also a cost avoidance in staff. I mentioned to you that we had nearly tripled the staff in the Child Support Enforcement Agency, but over that same period of time, we have not added one staff person to the assistance payments unit, and the welfare eligability determination unit has not had any staff increases because we have been able to hold down the public assistance population. Now there are obviously a lot of other factors that go into place such as the economy, employment and unemployment pictures and so on, but I do suggest that a strong child support enforcement program is a part of the reason that we have been able to hold down the public assistance burden within the State of Utah.

The second reason I mentioned for the support that both the Executive Branch, the Legislative Branch have given to the child support enforcement program is that it generates additional revenues. I've already mentioned a portion of the revenues that go to the AFDC program. In addition to that, this year Utah passed through to the 29 counties ½ million dollars of unrestricted revenues, which is their share of the incentive program. We have, of course, passed through all of the costs of the counties being involved in the child support enforcement program.

In Utah, child support enforcement is a part of what we call the Office of Recovery Services. As that office has developed staff with expertise and background in collections, we have given them greater responsibilities For exampl,e they do the collections for the medical fraud and abuse and for any other welfare fraud and abuse. They do the collections for court awards in foster care cases and we will be starting this year to have them become the collection agency at our State Mental Hospital, to collect the fees, the Title XIX reimbursements, SSI payments and so forth.

The reason this program has the support and credibility of the people in the State of Utah is that it reinforces personal responsibility. We have a problem in this society with a lack of wanting to be held accountable for our actions. In this program, the government is not saying, if you fail to meet your obligations the government will pick them up. What it is saying, is that you have an obligation and we're going to help make sure that you meet that obligation. It reinforces the responsibility of parents to support their children. In those families that separate or divorce, the man must know that he cannot simply walk out on that obligation. Where we have the young people, with the real problem of teenage pregnancies, these young 16-17-18 year old boys must be aware that they cannot be socially and sexually irresponsible.

There are certain kinds of obligations that they will incur. We have to reinforce that sense of personal responsibility and I think this program helps to do that. But not only does it reinforce and stress parental responsibility, it also reinforces the rights of children - the rights of children to have their fathers support them and care for them.

We have found many cases where, as a man starts paying, pays off his past debts and starts making his payments regularly, he resumes contact with the children. It creates a linkage again because he realizes he is paying for part of their keep and that he does have some responsibility to also share part of his life with them. And for those others, the children have a right to know who their father is, to have their paternity established, and to have the rights of inheritance and all the other rights that they ought to be able to share.

Those are three reasons then why I think this program has received support from the legislature in the State of Utah. It does provide great credibility for the welfare program, and it does generate revenues that are greatly needed and it does reinforce personal responsibility.

About a year and a half ago Dennis Cooper, who is now the Director of the National Institute for Child Support Enforcement and who used to be the Director of Utah's program, gave his presentation to the legislature. At the end, one of the senior senators said to him, "Well, what can we do to help you?" One of the things they did to help us was to give us a flexible budget. We fund that program entirely out of income and as long as we have a collections ratio that is acceptable, we have some latitude to expand that staff.

And I suppose that's why all of you as legislators are here, because you want to also know what you can best do to help make sure this program succeeds in your state. Obviously, during the conference you'll be studying some model legislation and discussing things you can do within your legislature.

Let me also suggest, secondly, that you look at providing greater budgetary flexibility for this office. I suggest you not treat it the way you do all other offices, because it performs a very different function. As long as they have a collections ratio that is acceptable, and as long as they are not being too lose with their monies and spending them responsibly, I think that you allow them greater flexibility to expand so that they can get greater penetration into their caseloads. Instead of affecting only 20% of those people who owe a duty of paying support, they can raise that level. And I think the third thing you can do as legislators is to continue to exert your influence to lend strong public support to the Child Support Enforcement Program.

## Lavon D. Loynd, Technical Assistance Coordinator, National Institute for Child Support Enforcement

Mr. Loynd is responsible for providing technical assistance to people administering the child support programs in the states. He is also the former Director of the child support agency in Idaho.

### "Program Basics and Major Variations Among the States"

The following speech exerpts give Loynd's description of the steps involved in handling a child support enforcement case and the points where major problems occur which could be addressed by legislation.

I am going to talk to you today about the very basics of child support enforcement. I want to cover the trail of a case from its initiation into the system to where it is ultimately successful or is put into a dead file. There are variations in agency structure and in state laws that make the handling of cases different from place to place. While dealing with these, I want to take particular pains in pointing out problem areas in the support enforcement field. This is fitting with this audience because most of the problems may be solved or greatly affected by legislative action in each state.

Child support units across the nation are normally set up under an umbrella agency, usually the social service agency. The reason for this is that when the IV-D law was enacted, most everyone at the state level interpreted it as being a foster child of the welfare eligibility unit. A few states placed the child support unit in a department of revenue and taxation or in a department of justice or even split it up between agencies. This may be the first problem in the support enforcement process. Is the support unit in your state located where it can be most effective in collecting child support? If the unit is stifled where it is, then maybe a change should be made.

The first step is for cases to come into the child support agency. Cases may come from two sources. In the case of mothers who are on welfare, the case will automatically be referred by the welfare agency.

There are several times as many non-welfare cases that need services as there are welfare cases, and they pose particular problems. One is that emphasis in most of the states has been to recover the welfare dollar. It is easy to see that there is an immediate offset of welfare funds to the benefit of the state and federal governments. However, there appears to be little doubt that an active non-welfare support program can also enable mothers to stay off welfare. Failure of such a program to serve non-welfare cases either places a burden upon the welfare mother, who is too proud to ask for public assistance, or forces her to give up and go on welfare. Her case is then automatically referred to us anyway. This is a problem. Are non-welfare mothers helped in your state?

The next step is for the child support case worker to locate the absent parent. Major legislative consideration in the IV-D Act was to increase the absent parent location success nationwide. It was quickly noted that if we could look to the government records and into the doings of state agencies, our location frequency would increase greatly. The federal Parent Locator Service was created. They are trying to develop computerized retrieval, by state agencies, of information as to the whereabouts of absent parents. The states can key into the system by CRT units, which is a computerized process, and get information out fairly rapidly, or be sending in the proper paperwork, which amounts to a location application form. That takes a long time. Some states have not bothered to give their IV-D agency the ability to locate these parents. The whereabouts of up to 60% of the absent parents, in some areas, may not be known. This is the front end. There is no need in worrying about what follows, if emphasis is not put here.

Many absent parents are within the same city, county, or state as the mother but cannot be located. Many states have legislation that commands all agencies to cooperate with the child support enforcement unit for the location of absent parents. In the states that do have it, most of the agencies try to ignore requests anyway unless they are forced or unless the law is very clear. For instance, the employment agency, the state tax commission, and the motor vehicle division could help a great deal. Some states have no provisions at all for the utilization of other agency records. You can imagine what the location success is in those places. A state needs adequate location tools. States and agencies should cooperate with each other in the location of absent parents. The law should be very clear.

Contrary to popular belief, the cases that come to the worker are not just divorce cases where the father has failed to pay. In fact, divorce cases seldom comprise more than 50% of the caseload. Many are separation cases where the father or the mother have just picked up and left. There is no order for support. There is no definite amount that should be paid. But, in most states, there is an obligation to support children. In these, the state must establish paternity before any collection can be made in court. Paternity cases occupy an alarming high percentage of the total caseload. The lowest percentage in any state appears to be in the neighborhood of 25%. There are a couple of states where the paternity cases amount to over 65% of the total caseload. These figures are important in understanding the work load in a IV-D agency.

The next job for the CSE worker is to make every attempt to persuade the absent parent to begin paying child support. If the support officer is unable to persuade the father to pay willingly, there is only one answer left, and that is court in most cases. Each case requires a different effort. Some need a paternity determination. Separations need a court order. Others with court orders may be ready for the actual collection. How is it done? This is another problem. Caseworkers are normally not attorneys and only attorneys can appear in most court systems. Who in your state are these atrorneys? Do they cooperate with the caseworkers, or put them off, as has happened in Idaho for years? A few attorneys will conscientiously do a good job. However, most consider support enforcement work to be the pits. Support work will take a back seat in any case where an attorney has other things to do. Establishing a system where child support cases are a priority to attorneys is important to an efficient operation.

For a child support system to work, under the normal court system, there must be legal counsel who will pursue cases aggressively, preferably be co-located with the child support unit and do only child support work. Idaho is trying something new. They have passed legislation that allows the unit to work with private attorneys. With private attorneys, there is the profit motive that has made America the powerful and industrial nation that it is. These attorneys will pursue child support as if their paycheck depended on it, and it does. It will be interesting to see how this program works out. How is your state's legal counsel situation?

In those cases where it is needed, the establishment of paternity can be a mind boggler. Very few states have decent paternity legislation. There is a new and fine uniform act called The Uniform Parentage Act that incorporates all the advantages that modern science has to offer as well as being fair to all parties. Unfortunately, at my last count, only six Western states and none of the Eastern states have adopted it. Most of the states have been trying to shore up their old paternity acts to meet present day requirements. Some have done well. Others have simply backed off from pursuing paternity cases through court until they can get better legislation. When the paternity caseload amounts to from 25% to 65% of the total cases that can be pursued, it is obvious that something should be done legislatively. Does your state have this act or enough amendments to the old one that will allow it to be an effective tool? Are blood tests admissible as evidence?

The next step in the process is to petition the court for a support order. The procedure is to file a petition or a complaint claiming that the person is the father of the children who have been abandoned and who need support

in a reasonable amount, or in the case of welfare children, the claim could be for third party recovery of monies expended by the state to support his children. In response to the claim, the judge may issue a summons for the father to appear in court and answer the complaint. If he fails to appear, judgment will be made against him. If the father secures an attorney, there can be a great deal of time pushing and shoving, sparring and knocking. In the meantime, the mother, with the children, could be having a very difficult time making a go of it unless she resorts to public assistance.

Finally, we may get the case to court. There may result (we hope) an order for support. Now the officer has his work cut out for him. An order does not mean that we have money. In fact, the hardest work comes now. How do we turn a court order for support into money? It is true that a few cases will pay as soon as an order is handed down by the judge. However, most need to be forced. We'll also assume that in this support order, the judge set an amount for arrearages owed to the state or to the mother.

Prior to entering court or as soon as possible thereafter, it may be advisable, if the location of assets are known, to tie the assets up so that when a court order is given, there will still be something around to satisfy the judgment. Attachment is the proper tool. The way the attachment works is that a prayer is made to the judge that the defendant will probably hide, secure, sell or otherwise dispose of collateral, land or money during the proceedings in court and that the mother, or the state, will be unable to collect after getting an order. If a proper pleading is made on a good attachment law, the court will normally issue a writ of attachment that merely tells the debtor that he shall not, under pain of contempt, dispose, secret, hide or sell or otherwise deal with this property until the conclusion of the case that is before the court. After winning the order, the state should immediately apply for a writ of execution upon that property.

The process of forcing payment is called execution. Contrary to popular beliefs, a sheriff does not just go out and take everything he can find and bring it back to the plaintiff. He will take only what he is ordered in writing to take. This means the support officer must determine what the debtor has that can be executed upon. Where is his job? How much does he make? Does he have a snowmobile, a four-wheel drive pickup, a couple of expensive hunting dogs? Most important, does he have real estate?

It does the support officer no good to find out these things if your state does not have effective execution remedies. Does your state have adequate execution laws? Is your garnishment act workable? Wage assignments are a must in some cases to assure that payments are given to the children before they are given to the bartender. To be effective, wage assignments must follow the employment of the father without the necessity of going back to court each time he changes jobs.

Lien laws are important too. The state of Iowa has, what I call, a strong abstract law. In effect, the child support owed acts as a lien on any property that the debtor may have or acquire. For instance, if he were to try to sell a house, the title insurance company would show a lien for child support. He would be required to pay it to finish the sale. Few states have strong lien laws such as this. But they are certainly worth their weight in gold.

It is very cost-effective to have support officers cajole, worry, harrass or encourage absent parents to pay support. This is especially true if they can get the absent parents' attention. There is nothing quite so attention-getting as the sheriff taking a paycheck, a process known as garnishment. We have found in 100% of the cases where we take the paycheck that the father calls within eight hours. At that point, he is usually ready to negotiate, especially with the new wife on his case. There are other attention-getters that can be included in laws. Most of them revolve around the judge's willingness to act. Jail time, fines, probation are examples.

An undiscussed problem is that the absent parent may be outside of the state. State borders form quite a barrier. A number of years ago, the law enforcement officials of many states determined that interstate enforcement of support was enough of a problem that states should enact reciprocal laws and help each other out. As a result, the National Conference of Commissioners on Uniform State Laws pioneered the Uniform Reciprocal Enforcement of Support Act for this purpose. All 50 states have enacted such a law. However, the only thing uniform about them is their non-uniformity.

Some provide for establishment of paternity through URESA and others do not. Some provide for the collection of support arrearages, others do not. There are many differences in the URESA Act, but there are even more interpretations of it by different counties, localities, and judges.

Possibly the greatest distinction is that the state enforcing the URESA law is taking one of its own good citizen's money to send away to a stranger in another state. As a result, enforcement has always been carried out in an unenthusiastic, if not downright apologetic manner. Hopefully, the effort that is going into coordination of interstate cooperation will convince the states that if they enforce orders for other states, they can expect something back in return. The net result could be significant. Maybe there is some legislation that might help.

There is one other possible answer to out-of-state enforcement of support. Many states have the Registration of Foreign Judgment Act, which is also a uniform law. This provides that one state can send a judgment with proper papers to another state who will register it, and then the second state will treat that judgment as its own.

The accounting unit for child support enforcement does many things. It seems that cases pay for a while, then drop off, and it is very important that the support officer be notified immediately because the cases most likely to pay are those that have recently paid. The distribution section must have a system whereby they can determine when a case has failed to pay and notify the lineworker as soon as possible. Where the average case pays approximately $100.00 each month and if the state is collecting three million dollars each year (and that is what most of the very low population states should be collecting, or more), then the distribution unit must take in 30,000 payments per year. Each payment may require numerous steps. In addition, there is the non-welfare money coming in that must be returned to the mother in a speedy fashion, due to the fact that she needs it now to stay off welfare. Believe it or not, some states are still trying to do this accounting manually. Even those who have a computer system are realizing that designing and installing such a system does take time and it must be tailored to the job.

There are variations in the enforcement of support other than through the standard court system. Two noteworthy ones are the Administrative Hearings Procedure and the Master Referee System. Michigan has been in the enforcement field for many years. They do a very find job using what they call a Friend of the Court system. A Friend of the Court is nothing more than a master or referee that has been appointed by the curcuit judge to hear, investigate, and determine what should be done in support enforcement cases and then to make a recommendation to the judge. As a result, the judge normally finds that the recommendation is correct and issues an order in keeping with the referee's findings.

Maybe you wonder "why do you need a friend of the court when we have judges." The answer is that the judges' courts are normally overloaded anyway, and in child support enforcement overloaded dockets have proved to be a bottleneck through which the cases do not flow readily. It is, after all, traditional for courts to hire young attorneys to brief cases and otherwise to help them to save the court time. It is far cheaper than hiring more

judges because the attorneys come to work at a much more reasonable salary.. Referees are the same. They can do a great deal of work for less money. The friend of the Court in the Michigan system does this as a vocation, not a sideline. The beauty of the system is that the recommendation of the referee is then adopted by the court as its own ruling and the support unit has a full fledged court order to work with. It was done quickly and efficiently.

The other variation on the enforcement system is the Administrative Hearings Procedure. Washington, Alaska, Utah, Maine, Oregon and a few other states have a version. It is similar to the Administrative Hearings Procedures that have been set up in so many state and federal agencies. The cases can be funneled through the system quickly and fairly. In Utah, the debtor then has 20 days within which time he can appeal. The appeal, however, must be based upon fact or error such as failure in due process. The reviewing court must find error before the case can be reversed. Even if the judge would find differently from the fact, the case will not be disturbed if there is sufficient evidence from which the hearings officer could arrive at the conclusion he did, without evidence of arbitrary and capricious decision making. If there is no appeal in 20 days, the Utah court also adopts the order as its own. From that point on, the execution process that I described before can be carried out as it would be on a regular court order.

The Administrative Hearings Procedures should be considered in each state as a possible alternative to pure court. Now many states have a tie-up in court to where it takes a great deal of time for a case to be heard.

Setoff laws could be a money maker for the state. The problem is that each year the state income tax people compute returns for thousands of taxpayers, many of whom are absent parents who owe money to the state. It does not make much sense for one agency of the state to return money to the taxpayer while another agency is trying to collect money that it owes the state. There are very few states that have a setoff law where computers would match up names of absent parents with returns; but if there were, the return (nationally) would be in the millions.

Last year Idaho tried, on a manual basis, to match up names of absent parents with return lists and then issue garnishments in those cases. They hoped that they might collect $10,000 the first year. Within the first couple of weeks of the tax season, they had identified and put into motion the papers to collect $30,000. It went up from there.

This system required the state to fill ut papers for garnishment in each and every case. That was no simple matter. It required a motion, affidavits, and the writ itself, which as served on the tax commission after the check was made out to the individual taxpayer. The money was then taken back into the state system and redeposited. In most states, it takes $20 or so just to cut a check. Think how wasteful this situation is over a pure computer matchup that makes a paper transfer of the money from one account to the other. It sounds like good business to me. It would be an easy piece of legislation.

## "THE BENEFITS OF EFFECTIVE STATE CHILD SUPPORT ENFORCEMENT PROGRAMS"

### William T. Smith, State Senator, New York

Senator Smith is the chairman of the New York State Temporary Commission to Revise the Social Services Laws. His interest in child support enforcement is a result of his work on that commission.

"New York State's Big City Problem"

Senator Smith addressed the NCSL Eastern Regional Child Support Enforcement Seminar. The following excerpts from his address focus on the problems of New York City.

The obligation of parents to provide financial support for their children has always been an integral part of our public assistance laws but it took passage of the Title IV-D legislation by Congress (in 1975) to put "teeth" into the program. Our State of New York, encouraged on one hand by the large commitment of federal funds and on the other hand by the threat of fiscal penalty for noncompliance, enthusiastically established the Child Support Enforcement Program in 1976.

I will provide an assessment of New York's progress in implementing this program, along with some recommendations for directions in the future.

From the very start of the IV-D program in New York State, the legislature was fully involved. This legislative commitment to the program has continued to date, and I'm sure this has been a major factor in keeping pressure on the involved bureaucracies to improve their performance. We have had numerous meetings with state, federal and local officials. We've held conferences with Family Court judges across the state. And every year we've enacted a package of bills to remedy any new problems which seem to impede program performance. Some of the requirements in our state statutes include:

-Centralizing responsibility for collecting support payments for both AFDC and non-AFDC cases in the local social services departments;
-Automatically assigning the absent parents' wages if three consecutive support payments are missed;
-Serving summonses and petitions by mail in support proceedings, (rather than leaving these matters to the general discretion of the courts);
-Prohibiting the court from cancelling or reducing arrears in child support payments unless good cause is shown;
-Mandating an absent father who has health insurance available as an employment benefit to make such coverage available to his dependent family;
-Establishing a Wage Reporting System which requires the State Department of Taxation and Finance to maintain a file on wages and employer information for all individuals subject to income tax withholding. Such data is made available to the State Department of Social Services for various purposes, including location of absent parents, verification of their income, and establishment of support obligation.

One of the most important pieces of IV-D legislation passed in 1977 provided for a Statewide Child Support Collection goal to be established each year in the local assistance budget. This goal was initially set at $60 million; by this fiscal year (1979-80) it has increased to $75 million.

A portion of the statewide goal is allocated to each of New York State's 58 Social Services Districts, and a financial penalty is assessed to any district not meeting its goal. A district not meeting its goal is denied reimbursement of AFDC program expenditures. The formula for this is equal to the difference between 1) how much in non-federal funds the district is required to repay to the state out of the collections actually made and 2) the amount of non-federal funds the district would have been required to repay to the state had it met its collection goal.

Last year, New York assessed penalties of $5.78 million on 12 social services districts. Of that, $5 million was assessed to New York City. Upstate districts in the aggregate exceeded their goals by more than 5.0% ($1.4 million) but New York City caused the state as a whole to miss its goal by approximately 29% ($17.2 million).

I consider this IV-D goal legislation one of the most important pieces of legislation passed in our state. It illustrates that the legislature means business and expects performance.

In addition to these statutory efforts taken by New York to strenghthen the program, HEW has provided us with valuable assistance in funding various special programs. As one example, HEW is fully funding the development of a computerized IV-D case-tracking system in our state as part of the Model Child Support Enforcement Program. This tracking system will provide a quick trace of each case in which a parent owes child support to ensure that a series of enforcement steps are taken expeditiously. The computerized tracking system will monitor each child support case from the time the absent parent is located through receipt of monthly support payments. Should payments lapse, the system sends dunning notices. If the notices are ignored, the system will alert state child support enforcement staff to the need for violation orders through Family Court. If an absent parent in arrears of child support payments leaves the state, the system will refer the case to the Federal Internal Revenue Service for collection of arrears through whatever means necessary.

The State Department of Social Services is developing, on its own, a parallel computerized accounting system ASCU (Automatic Support Collection Unit) to keep track of the amounts of child support payments that have been made by the parents to ensure the proper distribution of funds. This system will also have the capability to issue regular billing notices to the absent parents, reminding them of their on-going responsibility to support their dependent children.

In spite of all these and other measures, New York State still has a long way to go. According to the latest federal data available, our state is among the 17 states in the nation where the AFDC IV-D is not cost effective. In other words, the amount of money needed to administer the program exceeds the amount of child support collection received from absent parents.

As one would expect, New York City again brings our state down to a level of a negative cost/benefit. Statewide, we're collecting only 83 cents for every dollar spent in administrative costs. If we extract New York City's performance (70 cents per dollar spent), the program in upstate districts is effective, returning $1.42 for every dollar spent. I should give credit here to the State of Massachusetts which ranks first in the nation in IV-D performance, returning $5.12 for each dollar spent in administering its program.

Let me digress just a moment to comment on the "numbers games" being played with IV-D cost/benefit ratios. This year in a Report to the Governor and the Legislature, our State Social Services Department informed us that New York state was making progress "at somewhat of a reduced level". The Department pointed out that IV-D collections now exceeded program expenditures, returning $1.05 for every dollar spent. After a closer review of the data, I discovered that the expenditure data included not only support payments received in the cited 12-month period, but also more than $5 million received in prior years, (This information, of course, was omitted in the report). Obviously, you can't charge administrative costs of one period against collections received in another period. In correcting the "numbers", we find New York state does not have a positive cost/benefit ratio, as we were told by the Department of Social Services, but has instead a negative position.

The point I'm making is not how smart legislators are, but rather the importance of maintaining a level of legislative expertise to allow independent assessment of publicly sponsored programs. No one - least of all public administrators - likes to admit that the programs they are administering are not successful. And as we have seen in New York State with the IV-D program, many of the needed remedies were the result of the agressiveness, expertise, and stick-to-itiveness of the members of the state legislature.

Lastly, I'd like to comment on some of the problems which prevent the state from achieving the full potential the IV-D program affords us. The most serious problems are clearly centered in New York City, although they are not soley New York City problems. Obviously, some of the problems are management-oriented, resting with the purview of the state and local social services departments. These difficulties, I'm sure, are faced by most of the larger urbanized states. Once these management systems are debugged and operating statewide, performance should be increased substantially.

On the other hand, many other problems rest outside social services within the judiciary and law enforcement systems. These problems are more pervasive and can't be solved by simply implementing new technical management systems. They include:

-The Failure to Enforce Established Support Obligations

Not surprisingly the problem is most severe in New York City. It's not bad enough that a court ordered or voluntary support agreement exists for less than 8% of the ADC-IV-D caseload, but only slightly more than a third (37%) of these cases are paying. I do not need to tell you that men who have been ordered to pay child support learn all too quickly and easily that non-payment is likely to be ignored by both the courts and by law enforcement authorities. The arrearages alone for these cases run about $28 million and are growing month by month.

An HEW-funded demonstration project in the city which funded city police officers to execute arrest warrants has not proved cost effective, although the deterrant effect has yet to be examined. Data suggests that more fathers are surrendering voluntarily in demonstration areas. Presumably, this occurs when the word has gotten out that police officers are actively pursuing arrest of fathers who are delinquent in making support payments.

-Delays in Processing Court Cases

Even if an absent father can be located, it often takes 3 months in New York City before a court hearing can be scheduled. Even if an order is issued immediately, substantial opportunity for collecting support has already been lost. Moreover, long delays between service of notice to appear and the actual hearing date probably contribute to the high rate of non-appearance among respondents in support cases which further "backlogs" the calendar.

It was in response to this problem that the state legislature authorized the establishment of the referee system. In 1977, the law "permitted" the establishment of a panel of hearing officers; in 1978, we amended the law to "require" the court to take such action for referral of support and paternity proceeding. Since the effective date of the legislation was January 1, 1979, it's a little early to assess its impact.

Another major barrier to increasing the effectiveness of the IV-D program which rests with the judiciary is in the area of court-ordered support payments. Although the state legislature passed legislation which required judges to take account of the Department of Social Service's support formula, many judges are still establishing child support obligations, without regard to the financial assessment made by the department. Some feel that such independent court-ordered obligations are unreasonably low.

New York City's child support enforcement is particularly affected by this problem. First of all, nearly 50% of the cases in the city brought to Family Court are dismissed outright. Of the remaining cases, the average support payment is only $122, although the state formula would have required an average of $200.

We are currently awaiting HEW approval for a demonstration project for funds to allow the city to hire attorneys to appeal these "adverse" Family Court decisions. It's hard to believe that no appeals have been made on adjudicated IV-D cases since the inception of the program. The results of this demonstration should prove interesting.

Another example which is reflective of the problems presented by the judiciary is the suit recently initiated in New York City by Family Court judges challenging the legislation mandating the automatic placement of wage assignments on parents who are in default. Pending the outcome of this action, automatic placement of wage assignment, for all intents and purposes is enjoined in the city.

Obviously, state legislators are going to have to look more closely at the role the court plays in implementing the IV-D program. We should expect the courts to maintain a position of neutrality in a proceeding that is, in a sense, adversarial between the social services agency and the respondent. But it appears to some of us that the courts often lean too far "on the side" of the deserting parent. I presume some judges feel that, since the financial needs of the dependent family will be taken care of by welfare anyway, ordering support payments adds nothing to the family income and only present "an undue hardship" for the absent father. If this attitude persists to the detriment of the IV-D objectives, it may be that legislative involvement will be necessary in order to protect the taxpayer who, in the end, is called upon to "foot the bill".

Although the progress made in New York State in implementing the Child Support Enforcement Program isn't as substantial as I would like, it's a big step in the right direction. Support collections in the state jumped 70% over the level preceding the initiation of the program. However, since the administrative costs seem inordinately high, it is the responsibility of state legislators and our colleagues on the hill, to make sure the program, or I should say, the fathers pay off.

## Thomas Fruechtenicht, State Representative, Indiana

Representative Tom Fruechtenicht is an attorney and member of the Indiana Legislative Advisory Committee which oversees the IV-D program. His committee works with the CSE agency on all legislation presented to the legislature.

## "Indiana's CSE Legislative Advisory Committee"

Representative Fruechtenicht addressed the Eastern Regional Seminar. The following excerpts of his address focus on the Legislative Advisory Committee.

It is my pleasure to meet briefly with you and tell you about Indiana's history of child support enforcement and also our current situation. I think it's excellent that we can get together and share ideas when we're all working on the same type of problems and maybe approaching it from slightly different procedures. Through the sharing of these ideans I think we can all come away with some new concepts and possibly new legislative type situations to implement our program to make them more effective.

One of the most helpful procedures we have in Indiana is a committee called the Child Support Advisory Committee and I would suggest that each of you think about such a committee for your state. This was established in 1976 when we implemented the program and it's composed of ten members, three House, three Senate, one Governor's representative, one state budget representative, and one State Department of Public Welfare person and one Prosecutor's Association representative. The committee meets four times a year and receives reports from the State Department of Public Welfare regarding the IV-D performance. It was created initially, I think, as kind of a watch dog. Certain members of the General Assembly were fearful that the IV-D program would enter into agreements and contacts that the legislature should be aware of, and they wanted some control over the IV-D program.

I think what has happened, is that it has given the legislature and the IV-D administration a direct contact for communication and deliberation to implement necessary legislation and has made the program more effective. I think this has been a great benefit to Indiana in its performance, with three House and three Senate members on the committee. It's been our task (as one of the members myself) to sponsor the legislation necessary to modify our existing statute, that was created back in 1966. One of the problems that we ran into is that the legislature generally does not have a great deal of interest in IV-D or a knowledge of its workings. The Advisory Committee creates a credibility situation where you have members of both houses who are familiar with the operation of IV-D who can sponsor legislation, answer questions in an intelligent fashion and make rapid legislative changes as they are necessary.

As an example of what this committee has implemented in the last two years we have passed the access information regarding the tax return for parent locator implementation. Indiana recently passed a new criminal code and juvenile code and had some things cross-wise with the IV-D section, so we had to make some quick changes to comply with those new statutes. We implemented a reciprocal support statute with four jurisdictions because we found we had some parents in Canada and some servicemen in West Germany. We had no statutory basis for entering into agreements with those foreign countries to establish reciprocal support agreements so we passed that statute. We also had a couple prosecuting attorneys who were reluctant to contract and do their job, under IV-D and we passed or threatened to pass legislation to authorize the hiring of private counsel in certain counties and all of a sudden the prosecutor decided to cooperate. So we did not need to pass that bill, but we have full cooperation among our prosecuting attorneys.

I think overall, we've had a very good experience with that type of relationship and I would highly recommend that you think about that simple type statute and that cooperation between your agency operator and your IV-D program. Indiana, of course, is not as big as some states in population on welfare problems, but we did have a return ranking us very high in the nation, getting $2.46 back for every dollar we spent in the program, which placed us probably in the top ten somewhere.

The benefits of the program are, of course, to the children receiving this support. To show you the impact that we've had in our collection program since 1966 - we've had a reduction in AFDC cases in Indiana from 60,000 in October of '76, to 50,000 this current year. So that's a reduction of over 17% in our AFDC caseload, which I think is due largely to the IV-D program. And I think when you can make that become an impact on your AFDC caseload, you're certainly doing something in the right direction. We also located 22,000 absent parents in less than three years. 15,000 of those were out of state. We are just now starting to see the benefits of the court ordered support and paternity which really came in line about 1977, but it's now really starting to reduce the caseload in a very rapid fashion.

We've also had a marked increase in non-AFDC cases in the last year and I had a question of our director, why did it take so long to start seeing some rapid increase in non-AFDC cases. Well, first of all, I think we've had a very poor publicity and you may check your own state situation and see how much is being used in non-AFDC caseload. I think the mothers who were not on welfare did not know about the program available to them through the prosecuting attorneys office in the local county. In our state, we charge a fee of $20.00 for a non-AFDC case. That covers the basic costs of the interview, the application and the initiation of the pursuit. Also it gives them access to the Parent Locator Service and this can be used by their attorneys and as far as the purpose for finding support. I think as more and more people are aware of this program, it certainly is much more cost effective to go through that situation than it is to hire private counsel and go through regular contempt procedings.

I think also our prosecuting attorneys were reluctant to publicize the non-AFDC type cases. I think that they had enough work to do already so we had to set up a program to guarantee 100% reimbursement for their costs and time in handling non-AFDC caseloads. Again, they are coming along now and I think we will have a very dramatic increase in our collections for non-AFDC cases. The other problem, which I don't know how to solve, is the slowness of which some of these procedures work. And when a mother is without funds to support her children, and reluctant to go on welfare, she's dismayed when she applies for services on the non-AFDC side to find out that it may take 3-4 months to find the absent parent. Even with our fancy nation-wide network of computers and tracers, it sometimes takes that long to locate the person. And I think, at least I hope, the federal government may be improving their speed in cooperation of location and Indiana is now like Connecticut, implemeting a fairly funded computer service, which will greatly improve our capabilities.

I believe that child support enforcement is an extremely important issue for all state legislators. Those of you who have been familiar with child support in the court system know the agony and grief that sometimes is caused by the non-payment of support. Ithink that whatever we might share today and narrow to improve our state systems would be of great benefit to this country.

## Herman M. Holloway, State Senator, Delaware

Senator Holloway has been an active advocate of custodial parents seeking support from absent parents in Delaware. He has worked to streamline the procedures for establishing and monitoring child support obligations. Senator Holloway is chairman of the Health and Social Services Committee.

## "How Delaware Has Tackled Its CSE Problems"

The following is an abreviated transcript of Senator Holloway's address to the NCSL Eastern Regional Seminar.

My assignment here today is to discuss the benefits of an effective child support collection and enforcement program. The benefits are so obvious and the previous speaker has so clearly outlined them, that I would like to deviate a bit and describe for you some of the problems and successes, we in Delaware have had during our attempts to realize some of these benefits.

Delaware is a small state, about the size of a county or two in some of your states. Because we are small, we can address many of our problems on a state-wide basis. And because we are small, our successes and our failures are often magnified. For while a good program is readily disearnable, in a state where almost everyone is on a first name basis with the Governor, the citizens can readily recognize when a program isn't working and producing the benefits promised or expected. Until recently, I'm afraid our Child Support Enforcement Program was one of those programs which promised much and produced little. I am, however, happy to report we have turned the corner and very shortly should be reaping the benefits we expected.

Now as a father and as a legislator, I am unable to understand why a parent would refuse to support his blood offspring. But I recognize that thousands of parents do, and there is an imperative need for a mechanism to determine the amount of support a child needs, the amount that a parent is able to contribute, and a mechanism for making sure the parent makes that contribution regularly.

Under Delaware law prior to 1974, the father had the sole responsibility to support a minor child, whether or not he was the custodial parent and this generated inumerable injustices. Such as a poor father supporting his child while living with a wealthy mother. There were separate family courts in Delaware in each of our counties, three counties and child support orders often bore no relationship to either the father's ability to pay or the legitimate needs of the child. Often, support orders were used as a means to attempt to force parents back together. Often the court orders were inequitable. With one father making a thousand dollars per month, paying the same amount of support as a father making two hundred a month. Often two fathers with the same income would be ordered support of widely differing amounts, for the same number of children. In other words, the system bread injustice, and tended either to drive fathers out of the state or fill our jails with them.

In July 1974, the Delaware General Assembly changed the law to read as follows and I quote "The father and mother are joint natural custodians of their minor child and are equally charged with their childs support, care, nurture, welfare and education. Each has equal powers and duties with respect to the child and neither has any right for presumption of right or fitness superior to the right of the other conserning such child's custody or any other matter affecting the child." The adoption of this law has forced a complete change in the way Delaware's Family Court, which three years earlier had become a state-wide court, establishes and enforces support orders against absent parents from broken homes. It also created a problem of equitably assessing support responsibilities of both parents, enforcing and collecting the support orders, and getting the support funds to the custodial parent. That became evident early after the enactment of the new definition of support responsibility. The Family Court had to be relieved of its responsibility of actually collecting support payments if it was to fulfill its judicial function in other areas, rather than to become bogged down in what was essentially an administrative function.

Thanks to the Federal Social Services Amendment of 1974, Delaware's Bureau of Child Support and Paternity was established within the State Department of Health and Social Services, to take over from the Family Court a function of collecting child support payments from the Family Court orders. Now I have been a frequent critic of the bureau since that time. My criticism has been a reflection of wide spread dissatisfaction on the part of mothers in the State of Delaware as it relates to having the support order honored by the supporting

parent and at some time, reasonably soon, having that check passed on to the parent. I've not only critisized the Bureau of Child Support, I've invited them to tell me, when they appear before the Joint Finance Committee, their needs in terms of staffing to get the job done. I've taken the Senate floor on many occasions to insist that this agency do the job with which it was intrusted and mandated under the law, collecting funds and promptly dispersing them to the custodial parents to whom they belong and locating absent parents not fulfilling their obligations.

I've had constituents complain that their support checks from the bureau were received eight weeks after the absent parent had made the support payment. I have railed at the Family Court for not enforcing its orders only to find that the absent parent had met his support order, but the check had not yet been dispersed by the bureau. Absent parents have been hailed and called into our court and threatened with jail for not making support payments, only to produce canceled checks showing that the payments had been made to the bureau, but not dispersed. A period of getting the new agency into gear was truly a dramatic one. One time the judges, administrators and other personnel of the Family Court unanimously branded the bureau the worst in the state. But I'm happy today to report that we have finally turned the corner.

As of this year, the bureau began to pay its own way. The bureau's collections from absent parents of AFDC families were $190,000. In addition to these AFDC collections, the bureau collected $468,000 due in the month of August from non-public assistant parents. And the importance of these collections cannot be overstated, because non-assistance cases quickly become public assistance cases and the responsiblity of every taxpayer if support collections are not assured. The Bureau of Child Support Enforcement in Delaware, in August, showed a substantial reduction in administrative costs and the effectiveness of the bureau has increased remarkably. The agency collected about $2.04 from absent parents in AFDC families for each dollar spent. Total collections in August were $607,000. In other words, the agency collected $35.70 for every administrative dollar spent by the state. They have located missing parents in hundreds of cases and reduced state expenditures significantly in AFDC cases. In August, the bureau returned $452,000 to the Delaware General Fund for use in other programs.

Now the agency is cracking down on delinquencies which previously plagued the system. An enforcement program was launched in March of this year, concentrating on parents who had not met their support order responsibilities for a year or more. To date, this effort has resulted in 366 parents resuming payments either through wage attachments or Family Court actions. These payments amounted to $20,000 per month. The agency has also initiated property searches in cases referred to the bureau's legal staff for presentation to Family Court as delinquents. For a $5 filing fee, the bureau recently recaptured $3,000 in arrearage in a single case by locating a property transferred by the delinquent. With the addition of three legal officers, the bureau is now ready to extend its crack down to cases delinquent less than a year old. It anticipates a dramatic increase in collections from absent parents of AFDC familes.

In August, the agency also initiated a data processing capability through the state Central Data Processing Unit. This step is expected to reduce the processing time for non-public assistance checks from 3-6 weeks to a maximum of ten days. This alone will greatly reduce criticism of the agency. And very recently, the bureau awarded a contract to a private detective agency to help in its location efforts in specific cases. The present goals are to reduce non-public assistant check turnaround time to 72 hours, initiate a service charge to make the system self supporting with respect to non-welfare cases, and refine the parent location effort by cranking into the data files of other agencies, such as the Internal Revenue Services project 4-19, the state Division of Revenue and the State Labor Department.

## John Clawson, State Representative, Minnesota

Representative Clawson became involved in child support issues during a controversy over a paternity questionnaire that included questions about the mother's sexuality. The dispute was resolved without legislation and Representative Clawson was instrumental in having a new standard questionnaire developed for interview purposes.

### "The Minnesota CSE Program"

Representative Clawson addressed five major areas of concern to legislators in Minnesota. He outlined the history of Minnesota's program from its inception in 1975 and included the projected collections for 1980.

Clawson presented an overview of how a state supervised, county administered program works. State administration has been discussed as a method of improving efficiency. Because a variety of approaches used by the counties, the IV-D program would become more standardized by state administration, according to Clawson.

The judicial participation in the child support program was discussed by Clawson. He mentioned the differences between courts but emphasized that most courts follow through on their rulings. The court procedures have been streamlined, which has resulted in an increase in the number of cases that are heard.

One of the problems facing the Minnesota program is inadequate information sharing. Representative Clawson cited inter-agency difficulties as well as interstate. He offered his support to any interstate cooperation that could improve the system.

Representative Clawson also discussed a difficulty that has been resolved by Minnesota concerning paternity cases. The problem arose over a questionnaire given to the mother involved in paternity suits. The questionnaire was considered to be an invasion of privacy and was replaced by a standard form now used in all of the counties.

He closed by outlining legislation that will be considered this session in the Minnesota Legislature. The bill calls for a review board to develop state-wide standards for the county administration of the IV-D program.

## Ellen Crowley, State Representative, Wyoming

Representative Crowley is an attorney in private practice and is active in child support cases.

### "The Legal Base for Wyoming's Child Support Program"

Representative Crowley began by outlining all of the Wyoming laws that pertain to children and child support enforcement. Included was a description of her state's Uniform Parentage Act, the Child Abandonment law, the Domestic Relations laws pertaining to divorce, child custody and support, the Desertion and Non-Support Act, and the Public Assistance and Social Services Act.

Representative Crowley shared with participants details of some recent frustrations she's had in getting help obtaining child support for some of her non-welfare constituents. A specific situation involved a county attorney, who refused to process cases under URESA for non-welfare people. Quoting Wyoming law that states, "It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance." Crowley noted that the breakdown in efficiency of a child support program can be a case of the enforcers not properly following the law.

She also pointed to a problem with Wyoming's attachment laws that require a plaintiff to post a bond equal to twice the amount of his or her claim in order to pay the defendant all possible damages if the support order proves to be wrongfully obtained.

Crowley concluded the address by referencing one Wyoming Supreme Court decision pertaining to honoring but revising a foreign state's decrees for alimony and child support, another emphasizing the state's moral obligation to establish paternity, and a District Court's rule that child support payments be made to the Clerk of the Court with cash, certified check or money order.

## CONCURRENT SESSIONS

Seminar participants, who were split into two groups for the Concurrent Sessions, were provided with a background paper on "Guidelines for Discussion Groups." It began with general suggestions for discussing policy options to be considered when examining a state CSE program. Included were suggestions that participants identify issues that might arise as a result of proposing each option, consider whether the rights of all parties involved are protected, what other state experiences have been, whether options should be combined to maximize effectiveness, and whether an individual state's judicial or legal system would preclude using any option. The bulk of the paper was then devoted to defining all of the policy options which were presented for discussion under Topics A, B and C.

Resource people present for Concurrent Sessions at the Western Regional Seminar were the following:

Dennis C. Cooper, Institute Manager,
National Institute for Child Support Enforcement
Sherwood Zink, Legal Counsel,
Wisconsin Bureau of Child Support
Robert E. Keith, Assistant Attorney General, Iowa
R. James Lore, Former Associate Attorney General,
North Carolina
Lawrence R. Young, Assistant Attorney General, Oregon
Daniels W. McLean, Family Court Referee,
Hennepin County District Court, Minnesota
Lavon Loynd, Technical Assistance Coordinator,
National Institute for Child Support Enforcement
Kenneth Muroya, State IV-V Director, Colorado

Resource people present for Concurrent Sessions at the Eastern Regional Seminar were the following:

Dennis C. Cooper, Institute Manager, National Institute for Child Support Enforcement
Sherwood Zink, Legal Counsel, Wisconsin Bureau of Child Support
Robert E. Keith, Assistant Attorney General, Iowa
Daniels W. McLean, Family Court Referee, Hennepin County District Court, Minnesota
Lavon Loynd, Technical Assistance Coordinator,
National Institute for Child Support Enforcement
Representative Thomas E. Fruechtenicht, Indiana
R. James Lore, Former Associate Attorney General,
North Carolina

Topic A: Establishment Legislation

The policy options to be covered were:

Enabling Legislation
Legislative Advisory Committees
Court Representation
Disclosure
Interest Charges on Arrearages
Debt Set Off Collections

The resource people at each seminar split between the two groups to discuss these options.

In Denver the discussions did not follow closely the policy options as laid out for Topic A. Questions on Oregon's administrative procedures were addressed by Larry Young. He particularly focused on the appeals process, provisions for handling contested, agreed and default cases, and the ability to establish paternity. He cautioned against trying to establish paternity by just assuming the power under administrative procedure as one state had tried. He pointed out that Oregon's administrative costs are not as low as HEW's Annual Report indicates. Daniels McLean described and recommended Minnesota's Referee System for handling CSE cases.

Formulas for setting support order amounts were discussed. The consensus was that no single formula can or should exist to serve all states. Consent orders, which are legal in all states, were cited as common in AFDC cases. Bob Keith stressed the key to obtaining consent orders from absent parents is personal contact.

Lavon Loynd urged legislators to make enabling legislation for CSE as broad as possible. Court representation restrictions can cause severe time lag problems if legislation limits the legal counsel that can represent the state (e.g. Idaho only allowed the State Attorney General to represent the state).

Nevada's disclosure law was briefly discussed as well as a recent change in federal law that permits arrearages to be discharged under bankruptcy. Resource people pointed out the importance of not mixing up establishing visitation rights with obligations and payments for support. They are separate issues calling for separate determinations.

Oregon's debt set off program was briefly described. Participants were interested in learning that the Oregon tax department compares names of absent parents owing support with those people receiving a state income tax return. In cases where names match, the department channels the tax return to the CSE unit.

Problems of state supervised, county administered programs were described by Ken Muroya. Participants discussed a response of combining support enforcement personnel to work for a group of counties.

In Hartford, discussions of court representation focused on paternity. Legislators were very interested in finding out about evidence and testimony in paternity cases. The discussion centered around forcing either parent's cooperation in paternity case. James Lore explained that it is constitutional to take evidence by force. Civil contempt was presented as a method for forcing compliance. It is a father's privilege to bring suit to be recognized as a legal parent.

Family courts were discussed. Representative Fruechtenicht stated that the success varies with the population and they are more successful in larger urban areas than rural areas. Senator Holloway explained how family courts work in Delaware.

Statutes of limitation on paternity cases was another topic that interested legislators. James Lore explained some of the constitutional inequities involved in barring action for legitimate children at a different time than for illegitimate children. With current blood testing procedures, evidence can be gathered and used years after a child's birth.

Debt set off was presented by James Lore, who explained North Carolina's experience in that area. He explained how the procedure works and the success North Carolina had with their first experimental match. Contested cases are referred to administrative hearings.

Wage assignments were also discussed as a method of collecting support obligations on a regular basis. It was pointed out that wage assignments increase the collection ratio and the cost effectiveness of support enforcement. Representative Fruechtenicht commented that wage assignments can take pressure off of crowded court dockets.

Topic B: Enhancement Legislation I

The policy options to be covered were:

- Public Support of Children
- Post Judgment Remedies
  - Attachment
  - Judgment Lien
  - Garnishment
  - Wage Assignment
  - Order to Withhold and Deliver
- Budgeting
- Paternity

In Denver, the resource people for Topic B were Sherwood Zink, Bob Keith, Larry Young and Dennis Cooper. The bulk of the discussions focused on wage assignment, garnishment and paternity. There was also some brief exchange on debt set off collections and budgeting.

Participants in one group spent time discussing the difference between garnishment and wage assignments. Resource people felt that wage assignments were the most effective mechanism for collecting child support. It is less pejorative, and better for both employees and employers than a one time garnishment action. The importance of personal contact with the employer was stressed by Bob Keith. The value of placing some liability on the employer who does not cooperate, and a caution to make sure the state as an employer is bound by wage assignments was also brought up. The difference between the Wisconsin, Oregon, California and Iowa laws was discussed.

Sherwood Zink suggested making "income assignments" that would cover a broader range of income sources than just salary. These could cover unemployment compensation, workers compensation, disability benefits and so forth. When writing wage assignment legislation, Bob Keith urged participants to restrict the process only to child support cases to make passage into law easier. The fact that states may already allow wage assignments, but that the power is not specified in the child support laws was also brought up.

In reference to garnishments and liens, Bob Keith suggested that state-wide registries be established for keeping track of property. Then any orders for child support could quickly be put into an automatic lien on that property of the absent parent.

Dennis Cooper briefly described the flexible budgeting process in Utah and stressed that it had been a key factor in allowing the Utah program to attain such success. Sherwood Zink described the flexible budgeting capabilities that Wisconsin gives to its counties.

Legislators were also very interested in paternity issues. Bob Keith gave the background on how blood testing to determine paternity became a part of the IV-D program. He explained the difference between HLA and red cell blood testing and discussed specific types of legislation to allow blood test evidence to be used in paternity issues.

The expense of blood testing versus court costs was discussed. It was pointed out that at the cost of blood tests seems expensive until it is compared with court costs. The blood tests usually obviate the need for a court case. The relative certainty of prosecution with the help of the blood tests is the major benefit.

Jim Lore explained the concept of debt set off laws. He recounted the experience of the North Carolina Legislature in adopting the set off procedure. Legislators were interested in the success of the program and the relative ease with which a program can be established.

In Hartford, the resource people for Topic B were Sherwood Zink, Bob Keith, and Dennis Cooper. Paternity was the dominant topic of discussion. In response to a request for a listing of the highlights of paternity law, Bob Keith discussed first the problems with most state statutes of limitations. (The average limitation is now 3-4 years after birth for bringing a paternity action.) He suggested that ideally "illegitimate" children should have the same rights as "legitimate" children. In most states, the statute for legitimates begins tolling at the age of majority (18 mostly) plus a few years. In any case, a five year statute would be more reasonable. For equity's sake, a state could eliminate all limits, but forclose any right to collect arrears in support money. Sherwood Zink described Wisconsin legislation being drafted which would set the statute as six years for mothers bringing an action and the age of majority plus one year (19 years of age) for children bringing an action. This allows the opportunity to recover back support. He pointed out that a paternity action is separate from a recovery action.

The use of jury trials for paternity actions was discussed, with its benefits and detriments explained by various resource people and participants. Generally, it was felt that there are not, nor should there be, many jury trials to establish paternity. Discussion then focused on blood testing and empirical evidence. Again, the different types of blood testing were described. Various procedures for ordering and paying for blood tests were listed. Medicaid was mentioned as an option for AFDC clients.

There was a great deal of interest among legislators about long arm statutes. Establishing and enforcing the statutes, as well as the technicalities of long arm suits were discussed. Long arm statutes can be much more effective than URESA for paternity cases. Participants were directed to the Uniform Parentage Act for good examples of provisions to use in drafting blood testing, long arm and other statutes. States may only want to focus on concepts one or two at a time to ease passage. The importance of working with all branches of government in drafting and getting passage of laws was stressed. Sherwood Zink suggested that other states may want to follow Wisconsin's example and begin codifying common law concepts and putting them all in one place in their statutes to ease CSE work.

In a short discussion, wage assignments were again cited as the best (or least onerous) collection device. Setting up ongoing agreements with major companies to send one check equal to the total of support money owed by all affected employees, as has been done in Utah and Iowa, was recommended.

There were also brief discussions of normative standards for setting support orders, judgment liens, and interest charges on arrearages.

Topic C: Enhancement Legislation II

The policy options to be covered were:

Consent Orders
Alternative Court Systems
Criminal Enforcement
URESA
Extradition
Uniform Registration of Foreign Judgments

Resource people for Topic C in Denver were Jim Lore, Daniels McLean and Lavon Loynd. James Lore introduced the topic of URESA by discussing the crucial parts of the statute that were added in the 1968 version. He explained the philosophy of URESA and the incentive for an absent parent to flee from his home state without reciprocal enforcement. He also discussed areas of the uniform law that are not particularly strong and need to either be strengthened or have other laws passed to replace them, e.g. interstate paternity cases. Further points raised by Lore focused on criminal enforcement. He stated that the new URESA remedies for criminal enforcement preempt the need for foreign judgments. (Since all states have provisions for criminal enforcement there was minimal discussion on this.)

The variety of uses for computers in child support cases was discussed. Legislators showed particular interest in the discussion of the accounting and locating functions of computers. A discussion of their cost effectiveness followed.

A question was asked about enforcement for non-AFDC clients in terms of what states are doing in this area and any studies on its cost effectiveness. Several resource people addressed the issue, stressing that non-AFDC services can lead to cost avoidance where the custodial parent does not have to turn to AFDC when support payments are received regularly. Cost recovery for non-AFDC was suggested as a method to offset the cost for service to non-AFDC clients. The bill to reinstate federal participation was discussed.

Contempt, extradition, and criminal enforcement were discussed. James Lore made a presentation on long arm statutes that may be used to prosecute paternity cases based on the act of sexual intercourse within a state even though the putative father has left the state.

Other topics discussed included consent orders and alternative court systems. Court Referee, Daniels McLean, explained how the referee system works in Minnesota. He talked about his experiences and how cases differ when they are heard in a family court versus a district court. The need for a speedier court process through adding more judges or another alternative was cited as the primary reason for adopting a referee on administrative procedures system. Opinions were expressed that either system just added one more step in the appeals process. On the other hand, greater speed and less expense in handling most cases were cited as benefits.

Resource people for Topic C in Hartford were the same. The discussion was also very similar to the focus in Denver. There was, however, more time devoted to the idea of making other family members — grandparents, brothers, sisters, etc., responsible for support of children. Daniels McLean described Minnesota's Relative Responsibility Act.

Normative standards were also discussed, with recommendations from resource people that the standards not be tied to hard numbers. Demographic data showing the drastic change in our social structure - increase in women workers, family income levels, etc. - was emphasized as having a major impact on the philosophical basis for setting support levels. McLean offered the Minnesota philosophy which begins with the premise that both parents have a duty to support based on their education and experience. That duty takes precedence over all other duties except requirements for self-sustenance (clearly defined) for either parent. Finally, parents have an obligation to try to find work based on their education and experience.

Paternity discussions concluded with Jim Lore restating the three major laws he felt were most needed: long arm statutes, provisions for HLA blood testing, and changing statutes of limitation.

## CLOSING REMARKS

### "Observations on the Seminar - What Are the Benefits of the CSE Program"

### Ronald H. Strahle, State Representative, Colorado

Representative Strahle is Chairman of the Judiciary Committee of the Colorado House of Representatives and has a history of interest in child support legislation.

### "A Colorado Perspective"

Representative Strahle was Program Moderator and the Summation Speaker for the Western Regional Seminar. In the following exerpts from his remarks he shares some of his thoughts on the program.

Speaking for myself, I've seen this conference from two vantage points. One as a lawyer in general practice, the other as a legislator. I might say paranthetically, a lawyer who is pondering much of the time whether he is a full time lawyer and a part time legislator or a full time legislator and a part time lawyer. One of the tough human problems has been the wife, generally, who is left by a fade away father. She doesn't qualify for welfare because she is desperately doing what she can, out of pride and the willingness to consume her own energies, to somehow keep that family afloat, without charity and with no help from this father that either can't be located or is in a sheltered position because of the deficiencies in our laws.

I applaud the effort that is being made on the national level and the successful efforts that appear to be at least starting in many states. I applaud because of what this program can do both for all of us as guardians of the state treasuries, and for those of us who have the kind of interest we should have in the non-welfare mother. This mother works herself into an early old age, in some cases, trying to hold that family together and make enough money to make it go, and doesn't get as much as she should or perhaps any help from that missing father. All of us know, of course, that it is a continuing and worsening problem, particularly in the area of illegitimacy.

I was not surprised at the figures that were quoted in this conference about the awsome rise in the race of illegitimacies. It seems to me that one of our problems is not only the teenager or even sub-teenager who gets pregnant and has an illegitamate child as a result. This problem is not just one of ignorance. We're inclined to say, here is a child who needs to be counseled about contraceptives and given access, if she is sexually active, to contraceptives. Of course I can't argue with that. But, I see as many as three generations who have been involved in this situation and have come to look at the receipt of welfare benefits as a kind of profession, much as one of the tradition vocations might be. Although it seems incredible to me when I look at t dollars we give our mothers under the AFDC program, still I know of some cases and I'm sure if I know of some there are many more, where young girls whose mothers and grandmothers have reared their families under this program they simply take for granted the fact that as they get to be old enough, they will start a family by whatever means and get on welfare. It has become a way of life for some folks. I think we would eliminate a great deal of that if our programs for locating and pressing runaway fathers could be expanded and made more efficient.

I was, for several years, a member of the National Conference of Commissioners on Uniform State Laws, and I can tell you that they have been and are still very interested in working out uniform laws in areas where states are having difficulty, or where, if there is a vacuum, the feds will move in. We're getting a lot of federal help in this program. I'm certainly the last to be ungrateful to the federal government for the help it is giving us under IV-D. But I would recommend to you, if you are not familiar with them, the Uniform Acts as they deal with this subject. As someone said, they get to be pretty ununiform. Most state legislatures will not accept them without some changes, some substantive and some procedural. The commissioners have been very concerned about this field because they have felt, as I have heard some of you say, that there has been a vacuum here. It is a vacuum which may some day be filled by the federal government, hence putting us in a position of receiving more help from the feds than we think we need. The Uniform Acts were the first place that the child support effort really got started on an interstate basis because the Commissioners drafted the Uniform Reciprocal Enforcement Act.

We have an interesting situation on garnishment in Colorado. The federal government has put restrictions on usual wage garnishments which essentially say that you cannot take more than 75% of an employees wages when you garnish.

In the last couple of years, the feds have increased the limitation so that garnishments for child support can take more money than can normal garnishments. The problem is that most of the states amended their laws when the feds first put in the 25% limitation to conform to the federal law. Then when the situation was eased on the federal level, many of us simply didn't know about it or didn't hear about it, and our laws stayed at that level. This last year we conformed our garnishment law as it related to child support with the federal act. Hence we have a more generous garnishment situation for mothers and child support claimants than we've had in the past.

In our state we also have fought the battle of continuing garnishment a number of times. To the best of my knowledge, the bill has always died in committee. It has not so much been sponsored in our state by persons who are interested in the enforcement of child support orders and similar child support matters, but rather by collection agencies and people who are in the collections business. Obviously they don't like to have to garnish every week or every two weeks or every month, depending on what the pay period is. There are, however, some problems that I ought to bring to your attention about continuing garnishments. The one that has been most vocally and effectively voiced in our legislature is that continuing garnishment results in a race to the employer. The first person to get there with his continuing garnishment has it. If you happen to be the second person, you probably can't collect anything under that garnishment until the first writ of garnishment has been satisfied completely, which may be a matter of months or years. So although it helps the first creditor to get there, it really can create some problems for the second and third creditor who gets there.

We've had some amendments attempted to ameliorate that situation, but the bill has never passed here. To be perfectly honest, even though I understand its utility in many situations, I have not been one who's supported the bill here.

We've been concerned too in our judiciary committees about the problems of the very zealous persons in this field (and I don't think those problems have been posed so much by our Department of Social Services as they have by some of the attorneys in the various District Attorney's offices around the state) who sometimes are so anxious to do a good job and feel so strongly about this situation that they propose legislation which, I think to some degree, does not take into account that the fade away father, even though he may be reprehensible, is still a citizen. We have to move slowly in making our

collections too automatic or so stringent as to get away from what we have traditionally thought of as something approaching due process of law. I'm talking now about some of the proposals that have been made for administrative rather than judicial entry orders.

I remember one young assistant District Attorney who came in with a proposed bill and got someone to carry it. We had it in the Judiciary Committee. It involved a very long administrative process and an appeal process. Then when you finally have exhausted your administrative remedies you could go into the courts. But that too was made as difficult and as complex as possible and he was quite candid in saying that he'd drawn the bill so that we'd have as few appeals as possible from the administrative master's or administrative referee's decision. Obviously, we need to be more evenhanded than that. Obviously, we need to be careful when we get into that area.

I'm not unenthusiastic, and don't intend to be, about the efficient operation of the kinds of programs we've heard today. I think it's important to all of us, I think it's important to our citizens. In Colorado, and I suspect we share this position with the rest of the United States, I feel that a myth has grown up, or a series of myths have grown up about welfare. People hear these stories, none of which seem to hold up when they're traced down, about the welfare recipient who drives up in a Cadillac to get the check, and they have the impression that AFDC is a real gravy train and that people have some means of getting well-to-do on it. I think all those are myths. But I do think that legislators, who are always interested in their image with their people - certinaly those in Colorado are - can find no better way to improve their image than to do whatever reasonable and workable things can be done to demonstrate to the citizenry that welfare is not a gravy train, that although we intend to take the best care we can afford of those people who need it, but we don't intend to subsidize persons who are really not in need or qualified for welfare. This program, it seems to me, is one of the best ways of doing it.

Finally, the thing that has impressed me the most about this meeting has been that more than at any other of these meetings that I've attended, we have not been subjected to just the glittering generalities and philisophical truths. We have received the kind of intensive how-to-do-it training that will enable us all to go back to our state and be able to introduce and carry those bills which we think will really ehlp us do the job, to do it well and do it efficiently. I feel that any of us who have really listened in this conference have come away with tools that will not solve, but certainly take the edge of a problem which is getting out of hand and which the citizen regards as being out of hand.

## Irving J. Stolberg, State Representative, Connecticut

Representative Stolberg is House Chairman of the Joint Finance Committee of the Connecticut Legislature. He has a long standing interest in child support enforcement.

### "A Connecticut Perspective"

Representative Stolberg was the Program Moderator and Summation Speaker for the Eastern Regional Seminar. The following exerpts from his address stress the strengths of the program.

On behalf of the conference, I would like to thank all of you who participated - certainly the speakers, the faculty, the legislators who came from a variety of states. People from the Office of Child Support Enforcement and the people from the institute and the academicians, balanced, I think, very nicely in the working sessions of this conference. And that rubbing of minds, as Governor Grasso put it, has hopefully kindled a number of sparks that will result in legislative introductions in individual states and also in some movement on behalf of the public that we all work to represent.

I'd like to refer to for a minute, if you'll permit me, a moment of parochialism about the IV-D program in Connecticut. In the few years that the program has been in existence, our collections have doubled. That would not certainly have happened without the incentives, obviously without the kind of information and effort that has gone into the agency people that we have seen here this weekend at a conference for legislators and legislative staff. The figures in Connecticut are quite telling. In fiscal '78, our AFDC collections were 9.3 million dollars, in '79 over 11 million dollars. Non-AFDC collections had almost a similar increase - '78, 9.9 million dollars and in '79, 11.3 million dollars. And even though the level of increase after the first few years looks like it's going to level off, we think it's going to retain an increase level of about 20% for the next two or three years. Let me suggest that when you have any revenue producer in state government that exceeds the rate of inflation, that's an accomplishment, particularly for legislators who have to put together a budget. The problem is that so many of the other sources of revenue are having a rough time matching the inflation rate.

I'd like to just summarize for a moment my opinion of what the benefits of what a IV-D program are. For four years I chaired the Human Service Committee in the state legislature. Social service programs, welfare programs in particular, are under fire in Connecticut. I can't think of many states where our job is not essentially a defensive one. Most people have no image what the real AFDC payments are and how difficult it is to maintain a family on those level of payments. I come from a state with one of the hightest levels of payments in the United States and it is inadequate. Over the last decade it has gone up at about half the rate of inflation. I presume that the same challenge faces the poor in all of our states. In that context, having a cost efficient program related to welfare is extremely important. I would suggest as you go home, one of the groups to make aware of it are your colleagues, because that's where the key votes will be on some of the important bills to meet needs of the coming years.

Last year we had a legislative election. (I happen to be a democrat.) I sent to every democrat a breakdown of our IV-D program, because the State of Connecticut recouped over 10 million dollars of which we retained 5 million dollars through better collections. I think some of that would have happened anyway, but a good half of it is a result of the increased effort in this program. From our Governor Grasso's point of view, and most of our legislative points of view, that recoupment is important with our colleagues and is certainly crucial to the public.

I was very pleased to see on the front page of the Hartford Current today, a story playing up the IV-D program as a result of this conference. Even though I got one call from an irate father who feels he's been over charged and wanted to come and address the Conference today (it might have been an interesting addition to the panel). Most of the public is very pleased to see that some of the tax burden is being lifted from their shoulders. And that fiscal fact about the IV-D program is what gave rise to it in the first place and one of the things that should sustain it and increase the various nuances of its effectiveness.

Many of my democratic colleagues, by the way, did use the fiscal facts of the IV-D program in their campaign and in their answers to the charges that welfare is just miserable through and through, and is not really meeting the needs of the public as tax payers. Certainly another fiscal aspect to bear in mind is the federal willingness to absorb 3/4 and in some cases, depending on the kinds of programs and interstate relationships, more than 3/4 of the cost of operating the program. This has reduced the fiscal burden on the states and has enabled us to reduce backlogs. In the past year the backlog of collection cases in Connecticut has gone from about 17,000 to about 11,000.

Let me move from the fiscal for a moment and summarize what I think are concomitantly important aspects of the IV-D program. This has been touched on in the discussions, but I think in this summary, they're also important to underline. This is the year of the child. The White House is doing all kinds of things for families today. One might suggest that in a family that is either broken or a family that has never been together in the first place (even though a short range liaison did produce children), there's nothing really to retain. Certainly just by causing the father to pay a little bit more money, or establishing who the father is, you're not doing very much for families. I'm not sure that in depth, this cursory analysis stands up. I would suggest that even though you might have had to bring it about through state intervention, when you establish a financial responsibility on the part of the parent, there are other levels of responsibility that accrue from that. The benefit can be to the parent, in terms of recognizing the rewards of being a parent. And even more importantly, the benefit is to the child. That tie with a father, rather than with a local welfare office is important. Even if the child continues on welfare, even if just the state payments are reduced, retaining any semblance of family relationships in these cases is an extremely important contribution. For some of us in academic life, it would be worthwhile really examining the psychological impact on children that do have this recaptured parent. What happens in the relationship, first fiscal and then human, with the parent.

I have found this conference very useful. Having participated in virtually the entire session, having worked with IV-D for a number of years, I learned some new things. With the degree of expertise that we brought here, I think virtually all of us, even panelists and people from the insititute, picked up some new things. One suggestion I would make is that you might want to examine the relationship between the federal and state government for refinement in the future.

Connecticut is not unique in being one of 7 or 8 other states that does not have an income tax. So that avenue of income tax recoupment doesn't exist for us. But we've had some exchange between our department and the IRS in terms of the Federal Income Tax. I would think that in today's world with equity built in, there can be some recapture of funds through the Federal Income Tax returns. That is something that I would guess will be looked into much more closely in the coming years.

The scope of the problem, both in finar ial terms, the drain on AFDC and the concomitant Medicaid and other skyrocketing costs are great. I am very pleased that my Speaker Ernie Abate referred yesterday to the central focus which I hope we will leave with; that is, the children themselves, and the quality of lives that we're affecting.

Deborah E.S. Bennington, Director
NCSL Child Support Enforcement Project

"Where Can You Get Help - Description of the NCSL Child Support Enforcement Project"

Deborah Bennington described the assistance available to state legislators and staff to help them better understand their state's CSE program. The assistance is available in a variety of forms including an information clearinghouse service, these regional seminars, technical assistance through individual state workshops, and in "A Legislator's Guide to Child Support Enforcement" to be published in early 1980.

She concluded by thanking the faculty resource people and attendees for participating in the program.

NATIONAL CONFERENCE OF STATE LEGISLATURES
CHILD SUPPORT ENFORCEMENT SEMINAR

Denver, Colorado
October 11 - 12, 1979

AGENDA

THURSDAY, OCTOBER 11

8:00-9:00 a.m.
(Old Supreme Court Chamber
Second Floor, State Capitol-
OSCC)

REGISTRATION

9:00-9:15 a.m.
(OSCC)

WELCOME
Program Moderator: Representative Ronald H. Strahle, Colorado
Fred E. Anderson, Senate President, Colorado

9:15-10:00 a.m.
(OSCC)

KEYNOTE ADDRESS
"Overview of Child Support Enforcement"

Louis B. Hays, Deputy Director, Office of Child Support Enforcement, U.S. Department of Health, Education and Welfare

10:00-10:45 a.m.
(OSCC)

"Putting Faces to Names and Numbers — Scope of the Problem"

Judith B. Cassetty, Ph. D., Assistant Professor, School of Social Work, University of Texas at Austin

10:45-11:00 a.m.
(Ground Floor, State Capitol)

COFFEE BREAK

11:00 a.m.-12:15 p.m.

"The Benefits of Effective State Child Support Enforcement Programs"

Representative John Clawson, Minnesota
Representative Ellen Crowley, Wyoming

12:30-2:00 p.m.
(Radisson Hotel
Colorado Room 4,
Second Floor)

LUNCHEON
"An Executive Branch Perspective on Child Support Enforcement"

Anthony W. Mitchell, Ph. D., Executive Director, Department of Social Services, Utah

2:00-2:30 p.m.
(Radisson Hotel,
Colorado Room 4)

"Program Basics and Major Variations Among the States"

Lavon Loynd, Technical Assistance Coordinator, National Institute for Child Support Enforcement

2:30-3:00 p.m.
(Radisson Hotel, Colorado Room 4)

"What a State CSE Program Might Need from a State Legislature: Introduction to Concurrent Session Discussions?

Panel Moderator:
Dennis C. Cooper, Institute Manager, National Institute for Child Support Enforcement

Panel:
Topic A: Sherwood Zink, Legal Counsel, Wisconsin Bureau of Child Support Enforcement
Topic B: Robert E. Keith, Assistant Attorney General, Iowa
Topic C: R. James Lore, Former Associate Attorney General, North Carolina

3:15-5:00 p.m.
(State Capitol)

CONCURRENT SESSIONS
(Attendees will break into two groups (I & II) to discuss Topic A simultaneously)
Topic A: Establishment Legislation
Enabling Legislation
Legislative Advisory Committees
Court Representation
Disclosure
Interest Charges on Arrearages
Debt Set Off Collections

(House Committee Room F, Ground Floor)

Group I
Moderator:
Representative Irving Newhouse, Washington
*Resource People:
Robert E. Keith
Lawrence R. Young
Lavon Loynd
Kenneth Muroya

(House Committee Room C, Ground Floor)

Group II
Moderator:
Representative Wint Winter, Kansas
*Resource People:
Sherwood Zink
R. James Lore
Dennis C. Cooper

6:00-7:30 p.m.
(Brown Palace Hotel, Central City Room, Mezzanine Level)

CASH BAR RECEPTION

FRIDAY, OCTOBER 12

8:30-10:15 a.m.
(State Capitol)

CONCURRENT SESSIONS

*Affiliations of Resource People Listed at end of Agenda.

(House Committee Room F, Ground Floor)

Group I
Topic B: Enhancement Legislation I
Public Support of Children
Post Judgment Remedies
Attachment
Judgment Lien
Garnishment
Wage Assignment
Order to Withhold and Deliver
Budgeting
Paternity

Moderator:
Representative Gretchen Kafoury, Oregon
*Resource People:
Sherwood Zink
Robert E. Keith
Lawrence R. Young
Dennis C. Cooper

(House Committee Room C, Ground Floor)

Group II
Topic C: Enhancement Legislation II
Consent Orders
Alternative Court Systems
Criminal Enforcement
URESA
Extradition
Uniform Registration of Foreign Judgments

Moderator:
Representative Charles Parr, Alaska
*Resource People:
R. James Lore
Daniels McLean
Lavon Loynd

10:15-10:30 a.m. (Ground Floor, State Capitol)

COFFEE BREAK

10:30 a.m.-12:15 p.m.

CONCURRENT SESSIONS
Topic B and C will be repeated. Groups stay in same rooms. Resource people switch rooms.

(House Committee Room F, Ground Floor)

Group I
Topic C: Enhancement Legislation II

Moderator:
Representative Ann Mary Dussault, Montana
*Resource People:
R. James Lore
Daniels McLean
Lavon Loynd

(House Committee Room C, Ground Floor)

Group II
Topic B: Enhancement Legislation I

*Affiliations of Resource People listed at end of Agenda.

Moderator:
Dorothy K. Witherspoon, Colorado
*Resource People:
Sherwood Zink
R. James Lore
Dennis C. Cooper

12:30-2:00 p.m.
(Brown Palace, Onyx Room, Mezzanine Level)

LUNCHEON

LUNCHEON ADDRESS
"Observations on the Seminar — What are the Benefits of the Child Support Enforcement Program"

Representative Ronald H. Strahle, Colorado

"Where Can You Get Help — Description of the NCSL Child Support Enforcement Project"
Deborah Pennington, NCSL Project Director

WORKSHOP RESOURCE PEOPLE

Dennis C. Cooper, Institute Manager,
National Institute for Child Support Enforcement

Sherwood Zink, Legal Counsel,
Wisconsin Bureau of Child Support

Robert E. Keith, Assistant Attorney General, Iowa

R. James Lore, Former Associate Attorney General,
North Carolina

Lawrence R. Young, Assistant Attorney General, Oregon

Daniels W. McLean, Family Court Referee,
Hennepin County District Court, Minnesota

Lavon Loynd, Technical Assistance Coordinator,
National Institute for Child Support Enforcement

Kenneth Muroya, State IV-D Director, Colorado

NATIONAL CONFERENCE OF STATE LEGISLATURES
CHILD SUPPORT ENFORCEMENT SEMINAR

Hartford, Connecticut
October 22-23, 1979

AGENDA

A seminar for state legislators and legislative staff.

Monday, October 22

| | |
|---|---|
| 8:00-9:00 a.m.<br>(Outside the Senate Chamber, 3rd Floor, State Capitol) | REGISTRATION |
| 9:00-9:15 a.m. | WELCOME<br><br>Program Moderator: Representative Irving J. Stolberg, CT<br><br>Governor Ella T. Grasso, Connecticut<br>Speaker Ernest N. Abate, Connecticut<br>Senate President Pro Tem Joseph J. Fauliso, Connecticut |
| 9:15-10:00 a.m.<br>(Senate Chamber, Third Floor, Capitol) | KEYNOTE ADDRESS<br>"Overview of Child Support Enforcement"<br><br>Louis B. Hays, Deputy Director, Office of Child Support Enforcement, U.S. Department of Health, Education & Welfare |
| 10:00-10:45 a.m.<br>(Senate Chamber) | "Putting Faces to Names and Numbers -- Scope of the Problem"<br><br>Judith B. Cassetty, Ph.D., Assistant Professor, School of Social Work, University of Texas at Austin |
| 10:45-11:00 a.m. | COFFEE BREAK |
| 11:00 a.m.-12:15 p.m.<br>(Senate Chamber) | "The Benfits of Effective State Child Support Enforcement Programs"<br><br>Representative Thomas E. Fruechtenicht, Indiana<br>Senator Herman M. Holloway, Sr., Delaware<br>Senator William T. Smith, II, New York |
| 12:30-1:30 p.m.<br>(The Terrace Room, Mezzanine Level, The Hilton) | LUNCHEON |

1:30-2:00 p.m.
(The Terrace Room,
The Hilton)

"Program Basics and Major Variations Among the States"

Lavon Loynd, Technical Assistance Coordinator, National Institute for Child Support Enforcement

2:00-2:30 p.m.
(The Terrace Room)

"What a State CSE Program Might Need from a State Legislature: Introduction to Concurrent Session Discussions"

Panel Moderator:
Dennis C. Cooper, Institute Manager, National Institute for Child Support Enforcement

Panel:
Topic A: Sherwood Zink, Legal Counsel, Wisconsin Bureau of Child Support Enforcement
Topic B: Robert E. Keith, Assistant Attorney General, Iowa
Topic C: R. James Lore, Former Associate Attorney General, North Carolina

2:45-4:45 p.m.

CONCURRENT SESSIONS
(Attendees will break into two groups (I & II) to discuss Topic A simultaneously)
Topic A: Establishment Legislation
Enabling Legislation
Legislative Advisory Committees
Court Representation
Disclosure
Interest Charges on Arrearages
Debt Set Off Collections

(Room 408/412,
The Hilton)

Group I
Moderator:
Senator William T. Smith, II, New York
*Resource People:
Robert E. Keith
Sherwood Zink
Daniels W. McLean
Dennis C. Cooper

(Room 416/420,
The Hilton)

Group II
Moderator:
Representative Dick J. Batchelor, Florida
*Resource People:
R. James Lore
Representative Thomas Fruechtenicht
Lavon Loynd

5:30-7:00 p.m.
(Room 436/440,
The Hilton)

CASH BAR RECEPTION

*Affiliations of Resource People listed at end of Agenda.

Tuesday, October 23

8:30-10:15 a.m. — CONCURRENT SESSIONS

(Rooms 408/412, The Hilton)

Group I

Topic B: Enhancement Legislation I

- Public Support of Children
- Post Judgment Remedies
  - Attachment
  - Judgment Lien
  - Garnishment
  - Wage Assignment
  - Order to Withhold and Deliver
- Budgeting
- Paternity

Moderator:
Senator William E. Nichol, Nebraska

*Resource People:
Sherwood Zink
Robert E. Keith
Dennis C. Cooper

(Rooms 416/420, The Hilton)

Group II

Topic C: Enhancement Legislation II

- Consent Orders
- Alternative Court Systems
- Criminal Enforcement
- URESA (Uniform Reciprocal Enforcement of Support Act)
- Extradition
- Uniform Registration of Foreign Judgments

Moderator:
Senator Rachel G. Gray, North Carolina

*Resource People:
R. James Lore
Lavon Loynd
Daniels W. McLean

10:15-10:30 a.m. — COFFEE BREAK

10:30a.m.-12:15 p.m. — CONCURRENT SESSIONS

Topics B and C will be repeated. Groups stay in same rooms. Resource People switch rooms.

(Room 408/412, The Hilton)

Group I

Topic C: Enhancement Legislation II

- Consent Orders
- Alternative Court Systems
- Criminal Enforcement
- URESA (Uniform Reciprocal Enforcement of Support Act)
- Extradition
- Uniform Registration of Foreign Judgments

Moderator:
Representative Wayne Snow, Jr., Georgia

*Affiliations of Resource People listed at end of Agenda.

*Resource People:
R. James Lore
Lavon Loynd
Daniels W. McLean

(Room 416/420, The Hilton)

Group II
Topic B: Enhancement Legislation II
Public Support of Children
Post Judgment Remedies
Attachment
Judgment Lien
Garnishment
Wage Assignment
Order to Withhold and Deliver
Budgeting
Paternity

Moderator:
Representative Susan H. Webb, Vermont
*Resource People:
Sherwood Zink
Robert E. Keith
Dennis C. Cooper

12:30-2:00 p.m. (Buffalo, New York, Washington Room, The Hilton)

LUNCHEON

Luncheon Address -- "Observations on the Seminar -- What are the Benefits of the Child Support Enforcement Program"

Representative Irving J. Stolberg, Connecticut

"Where Can You Get Help -- Description of the NCSL Child Support Enforcement Project"

Deborah Bennington, NCSL Project Director

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Daniels W. McLean, Family Court Referee, Hennepin County District Court, Minnesota

Lavon Loynd, Technical Assistance Coordinator, National Institute for Child Support Enforcement

Representative Thomas E. Fruechtenicht, Indiana

R. James Lore, Former Associate Attorney General, North Carolina

# CHILD SUPPORT ENFORCEMENT

## Third Annual Report to the Congress for the Period Ending September 30, 1978

U.S. DEPARTMENT OF HEALTH, EDUCATION, and WELFARE
OFFICE OF CHILD SUPPORT ENFORCEMENT
December 31, 1978

News-Miner March 28, 1978

## *Lawmakers angered by 'daddy grabbers'*

# Paternity questionnaire may hurt agency funding

JUNEAU—Angry House lawmakers vowed Monday to slash funding for a state agency which has been demanding intimate details of the sexual lives of unmarried women who file for aid to dependent children payments.

The furor erupted following the disclosure of details of a "paternity questionnaire" adopted by the state's Child Support Enforcement Agency in its goal of helping unwed mothers chase down the fathers of their children.

But legislators said they were incredulous that the questionnaire also has been made mandatory for unmarried women who file for state assistance.

"What they are doing is requiring women to cooperate with the Child Support Enforcement Agency in filling out this form and filing suit against the fathers as a condition to receiving help," said Rep. Russ Meekins, D-Anchorage, and chairman of a Finance Committee subcommittee on Health and Social Services spending.

Meekins told a budget review meeting of the House Democratic caucus that he would ask the Finance Committee to strip any funding from the Child Enforcement Agency's budget that "has anything to do with establishing paternity."

Finance Chairman Steve Cowper, D-Fairbanks, also said he would support "defunding" the agency, which is commonly known as the "daddy grabbers."

The form includes the following questions:

—Were you living together with the child's father during the 10-month period prior to the birth of the child? If so, where?

—The estimated number of nights you spent together at the above listed address(es)?

—Number of times you had sexual intercourse together at the above listed address(es)?

—Number of times you had sexual intercourse with the child's father within the 10-month period prior to the birth of the child?

—During which incident do you believe the child was conceived? (Give date and place.)

—Did you have sexual intercourse with any other person during this 10-month period? If so for each person state: (a) The name and address of the person. (b) The dates on which intercourse occurred. (c) The addresses and description of the place at which the intercourse occurred.

National Conference of State Legislatures

CHILD SUPPORT ENFORCEMENT SEMINAR

October 11-12, 1979
Denver, Colorado

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# NATIONAL CONFERENCE OF STATE LEGISLATURES
# CHILD SUPPORT ENFORCEMENT SEMINAR

October 11-12, 1979
Denver, Colorado

## FACULTY LIST

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# Designation of Participants into Groups for Workshops

| Group I | Group II |
|---|---|
| Ahl | Adams |
| Andujar | Allred |
| Bishop | Bellows |
| Brown | Bennett |
| Clawson | Bergman |
| Crowley | Callaghan |
| Dolan | Deejan |
| Dunning | Gray |
| Dussault | Halverson |
| I. Hansen | Hammond |
| Hill | M. Hansen |
| Jackson | Haugland |
| Kafoury | Henderson |
| Kolbe | Henry |
| Leroux | Hokanson |
| McCorkle | Horne |
| Muroya | Larson |
| Newhouse | Lobo |
| Sandness | McLean |
| Shepard | Parr |
| Singer | Peterson |
| Soliai | Shcafer |
| Steward | Scnmidt |
| Strahle | Soetter |
| Varro | W. Winter |
| B. Winters | Witherspoon |

# Technical Assistance Request Form

The National Conference of State Legislature's Child Support Enforcement Project is offering a number of services to legislators interested in playing a more active role in their state's program for child support enforcement. The ten-month effort will provide services to lawmakers through an information clearinghouse, regional seminars, technical assistance and a "Legislator's Guide to Child Support Enforcement."

After the seminars in October, the project is offering technical assistance to legislators for the purpose of assessing problems and identifying solutions to improve their state programs. State workshops designed to respond to the particular needs of the state are available through the Child Support Enforcement Project.

If you are interested in having a Child Support Enforcement Worksnop held in your state please fill out the following form and return it to:

Deborah E.S. Bennington
National Conference of State Legislatures
1405 Curtis Street, Suite 2300
Denver, Colorado 80202

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

NAME _____

TITLE _____ STATE _____

ADDRESS _____

TELEPHONE _____

Please specify the area in which you would like assistance (e.g. paternity, enforcement tools, legislative advisory committee, alternative court systems, etc.) in the space provided below.

DENVER

# NATIONAL CONFERENCE OF STATE LEGISLATURES
# CHILD SUPPORT ENFORCEMENT SEMINAR EVALUATION FORM
# OCTOBER, 1979

Please fill out at conclusion of seminar and turn in at luncheon on Friday, October 12 or before you leave.

## AFFILIATION

1. ☐ Legislator ☐ Federal CSE ☐ Other-please identify _____

☐ Legislative staff ☐ State CSE _____

## OVERALL REACTION

2. What did you hope to accomplish by attending the seminar? Were your expectations met?

3. Please rate the overall conference:

Excellent Very Good Average Poor

## SUBJECT MATTER

4. Was the subject matter of the seminar relevant to your needs and/or the needs of your legislature?

5. What suggestions do you have for making the program more valuable?

## FORMAT

6. Was the seminar format (the combination of plenary speakers and concurrent sessions) appropriate for the subject matter? What changes, if any, would you suggest?

7. How did you feel about the length of the seminar?

FACULTY

8. Please comment on the seminar faculty and their effectiveness as moderators, speakers and resource people.

MATERIALS

9. Did you find the conference materials helpful? Which were most useful, which least?

Packet Materials:
Guidelines for Discussion and Term Definintions

HEW Office of Child Support Enforcement Materials

List of Pending Federal Legislation

Demographic Factors in Child Support Enforcement

Discussion Papers

Background Articles

Uniform Laws

Display Table Materials

10. Are there particular materials you would like to receive in a post conference mailing?

LOGISTICS

11. Were your hotel accomodations satisfactory?

12. Which days of the week are most convenient for you to attend seminars?

FUTURE ACTION

13. Do you think you will take any action in the area of child support enforcement when you return to your state? If so, what?

National Conference of State Legislatures

Headquarters Office
(303) 623-6600

1405 Curtis Street
23rd Floor
Denver, Colorado
80202

President
George B. Roberts, Jr.
Speaker, New Hampshire House of Representatives

Executive Director
Earl S. Mackey

July 1979

# CHILD SUPPORT ENFORCEMENT PROJECT

In 1975 a new Federal program was established to assist States in making their Child Support Enforcement programs more effective. Program development has varied widely among the States since that time. While some States realize significant cost savings through enforcing the child support obligations of absent parents, many still lack adequate legislative tools to conduct an effective program. The Child Support Enforcement Project of the National Conference of State Legislatures is designed to help lawmakers both understand the Child Support Enforcement program and play a more active role in resolving the impediments to effective programs in their States.

The Project is being carried out under the auspices of The National Institute for Child Support Enforcement (which is funded through the Office of Child Support Enforcement of the U.S. Department of Health, Education and Welfare). The ten-month effort will provide services to legislators through an information clearinghouse, regional seminars, technical assistance and a "Legislator's Guide to Child Support Enforcement."

## Regional Seminars

Two regional seminars will bring legislators together with resource people from the field for information sharing and discussions. Topics to be covered include the general concepts underlying the Child Support Enforcement program, policy options, innovative state programs, model legislation and impediments to effective programs.

The Western Regional Seminar is scheduled for Denver, Colorado on October 11-12. The Eastern Regional Seminar is scheduled for Hartford, Connecticut on October 22-23. All interested legislators and staff are invited to attend the seminars. Assistance with airfare costs is available for a limited number of legislators per State (subject to designation by legislative leadership in each State.) A summary of the proceedings will be prepared and shared after each seminar with participants and others who are interested.

## Technical Assistance

The project will offer technical assistance to legislators geared towards the assessment of problems and identification of solutions to improve individual State programs. Assistance will be available in such areas as conducting policy research studies, preparing testimony, bill drafting, and a limited number of State workshops structured for the particular needs of the State.

## Information Clearinghouse

An information clearinghouse will be established and maintained to respond to requests from legislators and staff on Child Support Enforcement issues. Statutory abstracts, research reports, statistical information, significant court decisions, and names of resource people will be available.

Legislator's Guide to Child Support Enforcement

A legislator's guide to the issue will be published. Information shared in the seminars and State workshops and materials collected for the clearinghouse service will form the basis for the guide. Some of the topics to be included are case histories of innovative legislation, definition of policy questions and options, and descriptions of relevant research.

## A BRIEF INTRODUCTION TO CHILD SUPPORT ENFORCEMENT

Child Support Enforcement is a new approach to assisting dependent children. Federal law requires that each State establish a Child Support Enforcement program. The responsible State government unit is commonly referred to as the IV-D agency. Each program receives 75 percent of its funding from the Federal government.

The Child Support Enforcement Program was established in response to the changes taking place in the Aid to Families with Dependent Children Program (AFDC). AFDC was established in the 1930's to provide for children who did not have the benefits of support from both parents. Assistance is available to families in which a responsible parent is dead, absent, disabled, or in some cases, unemployed.

When the AFDC program was first established, death of the father was the major basis for eligibility. Currently, over 80 percent of the families receiving AFDC are eligible because a parent is absent from the home, while over 30 percent of the children are born of unmarried parents.

The State IV-D agency is responsible for locating absent parents, establishing paternity, establishing child support obligations, and collecting and monitoring child support payments. Federal law requires that these services be offered to AFDC and non-AFDC families.

The Child Support Enforcement Program has proven itself to be cost effective. According to figures from the U.S. Department of Health, Education and Welfare (HEW) welfare rolls have been reduced and savings have been realized as support payments from absent parents have been used to offset AFDC payments.

While the Child Support Enforcement program is located in the social services department in most states, it is unlike any other human service program. The program ensures support to children while reducing State and local welfare and related program expenditures.

HEW reported that for Fiscal Year 1978 one billion dollars was collected at a cost of $321 million dollars. Hence nationally, the program collected more than $3.00 for every $1.00 spent. Unfortunately there is a wide variance in the effectiveness of State programs. Seventeen States are still collecting less than what they spend to make their AFDC collections.

A variety of impediments contribute to this ineffectiveness. Included are budgetary and staffing limitations, curtailed access to information on absent parents' location and assets, crowded court dockets, absence of legal enforcement tools such as wage assignments and garnishment, and lack of cooperation between States on interstate cases. A number of these problems could be addressed through State legislation.

If you have any questions or desire further information, contact Deborah Bennington, Child Support Enforcement Project Director, NCSL, 1405 Curtis St., Suite 2300, Denver, Colorado 80202.

**PLEASE NOTE**

THE ORGINAL FILE CONTAINS ~~AN OVERSIZED~~ A BOUND DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.

# STATE OF ALASKA

## THE CHILD SUPPORT ENFORCEMENT ACT

THE

## UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

AND OTHER APPLICABLE STATUTORY PROVISIONS CONCERNING

## CHILD SUPPORT MATTERS

CORRECTIONS

Sec. 47.23.060(c) should read as follows:

(c) In a court proceeding where the support of a minor child is at issue, the court may order either or both parents to pay the amount necessary for support, maintenance, nurture and education of the child. Upon a showing of good cause the court may order the parents required to pay support to give reasonable security for payments. An order for prospective child support may be modified or revoked as the court considers necessary. (am sec. 21 ch 126 SLA 1977)

Sec. 47.23.070 should read as follows:

Sec. 47.23.070. ORDER TO ASSIGN WAGES FOR SUPPORT. (a) In a proceeding in which the court has ordered either or both parents to pay for the support of a minor child, the court may, on its own motion or motion of a party or the agency on behalf of a party, after notice and an opportunity for hearing, order either parent or both parents to assign to the custodian of the child that portion of salary or wages of either parent due them currently and in the future sufficient to pay the amount ordered by the court for the support, maintenance, nurture and education of the minor child.

(b) The order of assignment is binding upon an employer upon service of a copy of the order upon the employer and until further order of the court. The employer may, for each payment made under the order, deduct $1 from other wages or salary owed to the employee.

(c) The assignment made under an order has priority as against an attachment, execution, or other assignment unless otherwise ordered by the court.

(d) An employer may not terminate an employee's employment because his wages are subject to an order under this section. (am sec. 22 ch 126 SLA 1977)

*THE CHILD SUPPORT ENFORCEMENT ACT*

*the*

*UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT*

*and other applicable statutory provisions concerning*

*CHILD SUPPORT MATTERS*

*Chapter 126, Laws of Alaska 1977, Section*

*1 Purpose*

*Title 47, Chapter 23, Section*



*Title 25, Chapter 25, Section*

.120 Court Duty When Alaska Initiating State
.130 Costs and Fees
.140 Jurisdiction by Arrest
.150 State Information Agency
.160 Court Duty When Alaska Responding State
.170 Further Duty of Responding State
.171 Hearings and Continuances
.173 Rules of Evidence
.175 Paternity
.180 Order of Support
.190 Transmitting Orders to Initiating State
.200 Additional Powers of Court
.210 Additional Agency Duties When Alaska Responding State
.220 Additional Agency Duty When Alaska Initiating State
.230 Evidence of Husband and Wife
.240 Application of Payments
.250 Effect of Participation in Proceeding
.252 Proceedings Not To Be Stayed
.254 Registration of Foreign Support Orders
.256 Agency to Represent Obligee
.258 Effect of Registration; Enforcement Procedures
.260 Uniformity of Interpretation
.270 Short Title

Title 12, Chapter 62 CODE OF CRIMINAL PROCEDURES

Sec. 12.62.020 Collection and Storage

.070 Disclosure of Tax Returns and Reports

Title 43, Chapter 5 REVENUE AND TAXATION

Sec. 43.05.230 (a)

*Reference Chapter 126, Laws of Alaska, 1977 PURPOSE. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, district attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state which is required to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign power, declares that the common law and Alaska statutes pertaining to the establishment and enforcement of child support obligations shall be augmented by additional remedies in order to meet the needs of minor children. It is declared to be the public policy of this state that this Act be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently born by the general citizenry through welfare and welfare related programs.*

*Sec. 47.23.010. CREATION OF CHILD SUPPORT ENFORCEMENT AGENCY. There is created in the Department of Revenue the child support enforcement agency.*

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

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

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

*(A) schedules for determining the amount an obligor is liable to contribute toward the support of an obligee under this chapter and under Title IV-D, Social Security Act; and*

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

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

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

*(4) establish, enforce, and administer child support obligations administratively in accordance with this chapter; and*

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

*Sec. 47.23.030. ESTABLISHMENT OF FUND. There is established in the state general fund a continuing, revolving, reserve account to receive collections and make the authorized disbursements of the Agency.*

*Sec. 47.23.040. DETERMINATION OF PATERNITY. (a) The agency shall appear on behalf of minor children or their mother or legal custodian*

*or the state and initiate efforts to have the paternity of children born out of wedlock determined by the court on voluntary application by the mother or other legal custodian.*

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

*Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency may appear in an action seeking an award of support in behalf of a child owed a duty of support, and may also appear in an action seeking modification of a support order, decree or judgment already entered. Action under this section may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under sec. 120(a) or (b) of this chapter.*

*Sec. 47.23.050. LEGAL ASSISTANCE. The agency shall contract with the Department of Law to provide needed legal services.*

*Sec 47.23.060. ORDER OF SUPPORT. (a) An order of support establishes a relationship by which the custodian of the child is the administrator for the purposes of administering child support on behalf of the child. The court shall carefully consider the need for support, the ability of both parents to meet such support obligations, the extent to which the parents supported the child before divorce, and the economic ability of the parents to pay after separation and divorce. The court shall also consider the effect on the support obligation of a change in custodian. The need of the child for support shall be considered regardless of the sex of the parent awarded custody of the child.*

*(b) Repealed.*

*(c) In a court proceeding where the support of a minor child is at issue, the court may order either or both parents to pay the amount necessary for the support of a minor child, the court may, on its own motion or motion of a party or the agency on behalf of a party, after notice and an opportunity for hearing, order either parent or both parents to assign to the custodian of the child that portion of salary or wages of either parent due them currently and in the future sufficient to pay the amount ordered by the court for the support, maintenance, nurture and education of the minor child.*

*Sec. 47.23.070 (a) The order of assignment is binding upon an employer upon service of a copy of the order upon the employer and until further order of the court. The employer may, for each payment made under the order, deduct $1 from other wages or salary owed to the employee.*

*(b) The assignment made under court order has priority as against an attachment, execution or other assignment unless otherwise ordered by the court.*

*(c) An employer may not terminate an employee's employment because his wages are subject to an order under this section.*

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

*(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.*

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

*(d) No order of arrest may be issued in the enforcement of child support unless the court has reason to believe that the obligee [sic] may flee the jurisdiction or unless the obligee [sic] has been ordered to appear in the action and has failed to do so.*

*AS 47.23.090 is repealed.*

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

*Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall provide aid to any person due child support under the laws of this state upon application. If the obligee is indigent or otherwise unable to pay for these services, the agency shall act without charge to the obligee. If the agency determines that the obligee is financially able to pay, costs shall be assessed according to regulations adopted by the department and be paid into the fund established in sec. 30 of this chapter.*

*Sec 47.23.110. DEFINITIONS. In this chapter (1) "agency" means the child support enforcement agency;*

*(2) "department" means the Department of Revenue;*

*(3) "Duty of support" includes a duty of child support imposed or imposable by law, by a court order, decree or judgment, or by a finding or decision rendered under this chapter whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid;*

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

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

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

*Sec 47.23.120. OBLIGOR LIABLE FOR PUBLIC ASSISTANCE FURNISHED OBLIGEE. (a) An obligor is liable to the state in the amount of assistance granted under AS 47.25.310 - 47.25.420 to a child when the obligor*

owes a duty of support except that if a support order has been entered, the liability of the obligor may not exceed the amount of support provided for in the support order.

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

Sec. 47.23.130. SUBROGATION OF STATE. If the obligor is liable to the state under sec. 120 (a) or (b) of this chapter, the state is subrogated to the rights of the obligee to either bring an action seeking a support order or to proceed under secs. 160-270 of this chapter to establish and enforce a duty of support and further to enforce by execution, in accordance with secs. 230-270 of this chapter or otherwise, any support order already entered in favor of the obligee, up to the amount for which the obligor is liable to the state under secs. 120(a) and (b) of this chapter.

Sec 47.23.140 POWER OF AGENCY TO ADMINISTRATIVELY ESTABLISH AND ENFORCE SUPPORT OBLIGATION: PROCEDURES TO BE UTILIZED. (a) If no support order has been entered, the agency may establish a duty of support utilizing the procedures prescribed in secs. 160-220 of this chapter, and may enforce a duty of support utilizing the procedure prescribed in secs. 230-270 of this chapter. Action under this subsection may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under secs. 120(a) or (b) of this chapter.

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

Sec. 47.23.150. REQUIRED NOTICE IN ADMINISTRATIVE ENFORCEMENT OF SUPPORT ORDERS. (a) Action to enforce a support order adminstratively under secs. 230-270 of this chapter is initiated by the agency serving a notice on the obligor of his liability under the support order. Notice under this subsection shall be served personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice is directed or to the person authorized under federal regulation to receive that person's restricted delivery mail.

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

Sec. 47.23.160. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGATIONS: NOTICE AND FINDING OF FINANCIAL RESPONSIBILITY. (a) An action to establish a duty of support authorized under sec. 140(a) of this chapter is initiated by the agency serving on the alleged obligor a

*notice and finding of financial responsibility. The notice and finding served under this subsection shall be served personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice and finding is directed or to the person authorized under federal regulation to receive his restricted delivery mail.*

*(b) The notice and finding of financial responsibility served under (a) of this section shall state (1) the sum or periodic payments for which the alleged obligor is found to be responsible, calculated by taking into consideration the need of the alleged obligee, the alleged obligor's liability to the state under sec. 130 of this chapter if any, and his duty of support under the law;*

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

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

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

*Sec. 47.23.170. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGATIONS: HEARING. (a) A person served with a notice and finding of financial responsibility is entitled to a hearing if a request in writing for a hearing is served on the agency by registered mail, return receipt requested, within 30 days of the date of service of the notice of financial responsibility;*

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

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

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

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

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

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

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

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

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

*Sec. 47.23.180. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGATIONS: DECISION. (a) Within 20 days of the date of the hearing, the hearing officer shall promulgate findings and a decision determining whether a duty of support exists and, if a duty of support is found, the amount of periodic payments or sum for which the alleged obligor is found to be responsible.*

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

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

*Sec. 47.23.190. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGATIONS: MODIFICATION OF A FINDING OR DECISION OF RESPONSIBILITY. (a) Unless a support order has been entered, the obligor, or the obligee or his custodian, may petition the agency or its designee for a modification of the finding or decision of responsibility previously entered with regard to future periodic support payments.*

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

*(c) If a hearing is granted, the agency shall serve a notice of hearing together with a copy of the petition and affidavits submitted on the obligee or his custodian and the obligor personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice is directed or to the person authorized under federal regulation to receive his restricted delivery mail.*

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

*(e) Modification of future periodic support payments may be ordered upon a showing of good cause and material change in circumstances.*

*Sec. 47.23.200. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGATIONS: USE OF STANDARDS IN DETERMINATION OF SUPPORT PAYMENTS. (a) In making its findings under sec. 160 of this chapter, and in establishing and modifying amounts of periodic support payments under secs. 180 and 190 of this chapter, the agency shall consider the standards adopted by regulation under sec. 20 of this chapter and any standards for determination of support payments used by the superior court of the district of residence of the obligor.*

*Sec. 47.23.210. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGATIONS: OBTAINING JUDICIAL REVIEW. (a) Judicial review by the superior court of an agency decision establishing or modifying a duty of support or amounts of support due may be obtained by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. A notice of appeal shall be filed within 30 days of the decision.*

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

*(c) The complete record includes*

*(1) the notice and finding of financial responsibility;*

*(2) the request for a hearing;*

*(3) the decision of the hearing officer;*

*(4) the exhibits admitted or rejected;*

*(5) the written evidence;*

*(6) all other documents in the case.*

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

*(e) The superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully or unreasonably withheld, the superior court may compel the agency to initiate action.*

*Sec. 47.23.220. ADMINISTRATIVE ESTABLISHMENT OF SUPPORT OBLIGATIONS: PROCEDURE ON REVIEW. (a) An appeal shall be heard by the superior court sitting without a jury.*

*(b) Inquiry in an appeal extends to the following questions:*

*(1) whether the agency has proceeded without or in excess of jurisdiction;*

(2) whether there was a fair hearing; and

(3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

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

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

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

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

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

(1) the court enters judgment;

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

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

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

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

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

(b) No lien filed under this section has any effect against earnings, or bank deposits or balances, unless it states the amount of the obligor's liability under this chapter and unless the lien is served in accordance with sec. 240 of this chapter.

(c) The lien shall attach to all real and personal property of the

*obligor and be effective on the date of filing of the lien with the recorder of the recording district in which the property attached is located. A lien against earnings shall attach and be effective upon filing with the recorder of the recording district in which the employer does business or maintains an office or agent for the purpose of doing business.*

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

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

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

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

*(b) A lien filed under sec. 230 of this chapter shall be served upon a person, political subdivision, or department of the state personally or by registered, certified, or insured mail, return receipt requested.*

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

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

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

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

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

*(f) If any person, political subdivision, or department of the state upon whom service of an order to withhold and deliver has been made possesses property due, owing, or belonging to the obligor, that person, subdivision or department shall withhold the property immediately upon receipt of the order and shall deliver the property to the agency upon demand after the expiration of the 30-day period from the date of service of the order. The agency shall hold property delivered under this sub-section in trust for application against the liability of the obligor under sec. 130 of this chapter or for return, without interest, depending on final determination of liability or nonliability under this chapter. The agency may accept a good and sufficient bond conditioned upon final determination of liability in lieu of requiring delivering of property under this subsection.*

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

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

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

*Sec. 47.23.260 CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN ORDER OR LIEN. If any person, political subdivision, or department of the state (1) fails to make answer to an order to withhold and deliver within the time prescribed in sec. 250 of this chapter; (2) fails or refuses to deliver property in accordance with an order issued under sec. 250 of this chapter; (3) pays over, releases, sells, transfers, or conveys real property subject to a lien filed under sec. 230 of this chapter to or for the benefit of the obligor or any other person; (4) fails or refuses to surrender upon demand property attached; (5) fails or refuses to honor an assignment of wages presented by the agency, the person, political subdivision, or department of the state is liable to the agency in an amount equal to 100 per cent of the amount constituting the the basis of the lien, order to withhold and deliver, attachment, or assignment of wages, together with costs, interest, and reasonable attorney fees.*

*Sec. 47.23.270. JUDICIAL RELIEF FROM ADMINISTRATIVE EXECUTION. Any person against whose property a lien has been filed under sec. 230 of this chapter or an order to withhold and deliver served in accordance with sec. 250 of this chapter may apply for relief to the superior court.*

*Sec. 47.23.280. SEVERABILITY: ALTERNATIVE WHEN METHOD OF NOTIFICATION HELD INVALID. If any provision of this chapter or the application of it to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state for service of process in a civil action shall be substituted for the method held invalid.*

*Chapter 25. Uniform Reciprocal Enforcement of Support Act.*

*Sec. 25.25.010 DEFINITIONS As used in this chapter, unless the context otherwise requires,*

*(1) "state" includes the State of Alaska and a state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted;*

*(2) "initiating state" means a state in which a proceeding under this or a substantially similar reciprocal law is commenced;*

*(3) "responding state" means a state in which a proceeding under the proceeding in the initiating state is or may be commenced;*

*(4) "court" means and includes a court having jurisdiction to determine the liability of persons for the support of dependents in this state and a state having a substantially similar reciprocal law;*

*(5) "law" includes both common and statute law;*

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

*(7) "obligor" means a person owing a duty of support;*

*(8) "obligee" means a person to whom a duty of support is owed;*

*(9) "foreign support order" means any support order defined in (10) of this section issued by a court of competent jurisdiction in another state;*

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

*Sec. 25.25.020. ADDITIONAL REMEDIES. The remedies provided in this chapter are in addition to and not in substitution for any other remedies.*

*Sec. 25.25.030. EXTENT OF DUTIES OF SUPPORT Duties of support arising under the law of this state, when applicable under sec. 60 of this chapter, bind the obligor, present in this state, regardless of the presence or residence of the obligee.*

*Sec. 25 25.040. EXTRADITION. (a) The governor of this state may*

*(1) demand from the governor of another state the surrender of a person found in such other state who is charged in this state with the crime of failing to provide for the support of a person in this state, and*

*(2) surrender on demand by the governor of another state a person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in the other state.*

*(b) The provisions for extradition of criminals consistent with this chapter shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition under this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.*

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

*Sec. 25.25.060. CHOICE OF LAW Duties of support applicable under this law are those imposed or imposable under the laws of a state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.*

*Sec. 25.25.070 FURNISHING SUPPORT B. STATE OR POLITICAL SUBDIVISION When the state or a political subdivision of the state has furnished support to an obligee, it has the same right to invoke the provisions of this chapter as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.*

*Sec. 25.25.080 JURISDICTION AND ENFORCEMENT (a) Jurisdiction for all proceedings under this chapter is in the superior court.*

*(b) All duties of support, including the duty to pay arrears, are enforceable by a proceeding under this chapter, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.*

*Sec. 25.25.090. COMPLAINT FOR SUPPORT The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the addresses and circumstances of the defendant, his dependents for whom support is sought, and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.*

*Sec. 25.25.100. OFFICIALS TO REPRESENT PLAINTIFF The child support enforcement agency shall represent the plaintiff in a proceeding under this chapter.*

*Sec. 25.25.110 COMPLAINT FOR A MINOR A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.*

*Sec. 25.25.120 COURT DUTY WHEN ALASKA INITIATING STATE If the court of this state, acting as an initiating state, finds that the complaint sets out facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the complaint, (2) its certificate, and (3) this chapter, to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.*

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

*Sec. 25.25.140 JURISDICTION BY ARREST When the court of this state, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction, it may (1) as an initiating state, request in its certificate that the court of the*

*responding state obtain the body of the defendant by appropriate process if that is permissible under the law of the responding state; or (2) as a responding state, obtain the body of the defendant by appropriate process. If the court of this state, acting as a responding state, obtains the body of the defendant, it may then release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.*

*Sec. 25.25.150 STATE INFORMATION AND LOCATOR AGENCY The child support enforcement agency is designated as the state information and locator agency for all matters concerning the enforcement of support obligations under AS 47.23 and under this chapter, and it is its duty to:*

*(1) compile a list of the courts and their addresses in this state having jurisdiction under this chapter and the appropriate agency offices and their addresses and transmit it to the state information agency of every other state which has adopted this or a substantially similar statute;*

*(2) maintain a register of such lists received from other states;*

*(3) locate obligors by utilizing all sources of information and records available in the state, and in other states as appropriate; these sources include telephone directories, real property records, personal property records, vital statistics records, police records, records of appropriate federal agencies, records of employers who are willing to cooperate, and official records of the state including records of the state Departments of Public Safety, Health and Social Services, Revenue, and Labor; if state agencies or departments have information or records concerning the obligor which are made confidential by state statute, and they are not prohibited from doing so by federal statute or regulation, those agencies or departments shall coopetate with the child support enforcement agency at its request by supplying at least (A) the last known address of the obligor and (B) the name and address of the last known employer of the obligor, if that information is in their possession; this information shall be kept confidential by the child support enforcement agency and may be used by the agency only for purposes of child support enforcement.*

*Sec. 25.25.160 AGENCY DUTY WHEN ALASKA RESPONDING STATE When the child support enforcement agency of this state, acting as a responding state, receives from the court or child support enforcement agency of an initiating state the copies mentioned in sec. 120 of this chapter, it shall (1) attempt to locate the obligor, (2) present the cause to the court to docket and to set a time and place for hearing, if the obligor does not agree to entry of a voluntary order, and (3) take such action as is necessary in accordance with the laws of this state to obtain jurisdiction.*

*Sec. 25.25.170. FURTHER DUTY OF RESPONDING STATE If the obligor or his property is not found in this state and the child support enforcement agency discovers that the obligor or his property may be found in another state, it shall forward the documents received from the initiating state to the state information agency in the state in which the obligor is believed to be located. The agency shall inform the initiating state of its action immediately.*

*Sec. 25.25.171 HEARING AND CONTINUANCES If the oligee is not present at a hearing on the merits of the complaint and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.*

*Sec. 25.25.173 RULES OF EVIDENCE In a hearing for the enforcement of this chapter, the court is governed by the rules of evidence applicable in a civil suit in superior court. If the action is based upon a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. Any such order may be modified by the courts of this state.*

*Sec. 25.25.175 PATERNITY If the obligor asserts as a defense that he is not the father of the child for whom support is sought and the court finds that the defense is not frivolous, then if both of the parties are present at the hearing, or the court finds that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may continue the action until the paternity issue has been adjudicated. Nothing in this section is intended to diminish the standard of proof for establishing paternity.*

*Sec. 25.25.180 ORDER OF SUPPORT If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to the order.*

*Sec. 25.25.190 TRANSMITTING ORDERS TO INITIATING STATE The court of this state, when acting as a responding state, shall cause to be transmitted to the court of the initiating state a copy of all orders of support or orders for reimbursement therefor.*

*Sec. 25.25.200 ADDITIONAL POWERS OF COURT (a) The court of this state, when acting as the responding state, has the power to subject the defendant to such terms and conditions as the court may consider proper to assure compliance with its orders and in particular to*

*(1) require the defendant to furnish recognizance in the form of a cash deposit or bond of the character and in the amount which the court may consider proper to assure payment of the amount required to be paid by the defendant;*

*(2) require the defendant to make payments at specified intervals to the child support enforcement agency and to report personally to the agency at such times as may be considered necessary;*

*(3) punish the defendant who violates an order of the court to the same extent as is provided by law for contempt of court in any other suit or proceeding cognizable by the court.*

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

*Sec. 25.25.210 ADDITIONAL AGENCY DUTIES WHEN ALASKA RESPONDING STATE The child support enforcement agency of this state, when acting as a responding state has the following duties:*

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

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

*Sec. 25.25.220 ADDITIONAL AGENCY DUTY WHEN ALASKA INITIATING STATE The child support enforcement agency of this state, when acting as an initiating state, has the duty to receive and disburse in accordance with law or regulation all payments made by the defendant or transmitted by the court or child support enforcement agency of the responding state.*

*Sec. 25.25.230. EVIDENCE OF HUSBAND AND WIFE Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to a relevant matter, including marriage and parentage.*

*Sec. 25.25.240 APPLICATION OF PAYMENTS An order of support issued by a court of this state, when acting as a responding state, does not supersede a previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid under either order shall be credited against amounts accruing or accrued for the same period under both.*

*Sec. 25.25.250 EFFECT OF PARTICIPATION IN PROCEEDING Participation in a proceeding under this chapter does not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.*

*Sec. 25.25.252 PROCEEDINGS NOT TO BE STAYED Except as provided in sec. 258(c) of this chapter, a court of this state, when the state is a responding state, may not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, seperation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In the interest of a speedy resolution of the support issue, it may require the obligor to post a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment in the other proceeding provides for the support demanded in the complaint being heard, the court must conform*

the support order to the amount allowed in the other action or proceeding. After the court has conformed its support order to the amount in t s other action, it may not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

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

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

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

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

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

Sec 25.25.258 EFFECT OF REGISTRATION; ENFORCEMENT PROCEDURES. (a) Upon registration, the foreign support order shall be treated in the same manner as a support order issued by the superior court. It has the same effect and is subject to the same procedures, defenses, and proceedings for re-opening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

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

(c) At a hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay

enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated or otherwise modified, upon satisfactory proof that the obligor has furnished security for payment of the suppport ordered as required by the state in which the support order was issued. If he shows to the court any relevant ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

Sec. 25.25.260. UNIFORMITY OF INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 25.25.270. SHORT TITLE This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act.

Title 12, Chapter 62 CODE OF CRIMINAL PROCEDURES

AS 12.62.020 COLLECTION AND STORAGE OF INFORMATION

...

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

(1) AS 02, except chs. 20, 30 and 35;
(2) AS 03 - AS 04;
(3) AS 05, except chs. 20, 25, 30 and 35;
(4) AS 06 - AS 10;
(5) AS 13 - AS 15;
(6) AS 17;
(7) AS 18, except AS 18.60.120 - 18.60.175 and ch. 65;
(8) AS 19 - AS 24;
(9) AS 25, except ch. 25;
(10) AS 26 - AS 27;
(11) AS 29 - AS 32;
(12) AS 34 - AS 46; and
(13) AS 47, except chs. 10 and 23.

AS. 12.62.070 DISCLOSURE OF TAX RETURNS AND REPORTS

...

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

Title 43, Chapter 5 REVENUE AND TAXATION

Sec 43.05.230 (a) Except in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title, except in connection with official investigations or proceedings of the child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposable under AS 25 or AS 47, and except as otherwise provided in this section, it is unlawful for an officer, employee or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title.

**PLEASE NOTE**

THE ORGINAL FILE CONTAINS ~~AN OVERSIZED~~ A BOUND DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.

"CHILD SUPPORT ENFORCEMENT"

9/30/78

U.S. DEPT. OF H, E & W

# REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1968)

*Drafted by the*

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

*and by it*

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

*at its*

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-SEVENTH YEAR
AT PHILADELPHIA, PENNSYLVANIA
JULY 22—AUGUST 1 1968

WITH PREFATORY NOTES AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS
MEETING AT PHILADELPHIA, PENNSYLVANIA
AUGUST 7, 1968

see page 3, line 8
see page 14, secs 39 & 40

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Revised Uniform Reciprocal Enforcement of Support Act was as follows:

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Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from

NATIONAL CONFERENCE OF COMMISSIONERS ON
UNIFORM STATE LAWS
645 North Michigan Avenue
Chicago, Illinois 60611

# REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1968)

## PREFATORY NOTE

The above Act is the result of changes made in 1968 by the National Conference of Commissioners on Uniform State Laws in the Uniform Reciprocal Enforcement of Support Act (as amended in 1958). Five new sections have been added to the former Act (Sections 21, 23, 27, 34 and 38), substantial changes have been made in 12 others (Sections 2(m), 11(b), 12, 15, 16(2), 18, 20, 30, 38, 39 and 40) and lesser changes, to improve the style or clarify the meaning, have been made in others (Sections 2, 6, 9, 14, 24 and 33). For these reasons the Conference decided to add the word "Revised" to the title of the Act.

The original Act was first approved and recommended for enactment in 1950. That Act was amended in 1952 and again in 1958. By 1957 it (or a substantially similar act) had been passed in all States, the District of Columbia, the Commonwealth of Puerto Rico and most of the other areas subject to the jurisdiction of the United States such as the insular possessions.

The Act itself creates no duties of family support but leaves this to the legislatures of the several states. The Act is concerned solely with the enforcement of the already existing duties when the person to whom a duty is owed is in one state and the person owing the duty is in another state (or under the Act as it has been adopted in a few states is in a different county of the same state).

Over the years many thousands of cases have been brought under the Act and many millions of dollars have been recovered. As a result the duty of family support is placed where it belongs, on the shoulders of the one who, under state law, owes the duty. The state is thus relieved from keeping on its relief rolls those, often in destitute circumstances, to whom the duty is owed.

The amendments of 1968, like previous ones, are designed to plug loop holes and cure defects in the enforcement procedure. Machinery for enforcement in many states is efficient. In a few states it is less so. Sometimes local officials have not fulfilled their duties. The present Act seeks to create ways and means of filling this gap (Sections 12, 18 and 29). Improved machinery for finding the obligor has been written into the Act (Section 17). The new Act has guidelines for the conduct of the trial in the responding state (Sections 21 and 23), for

cases where paternity is in issue (Section 27) or where there has been interference with visitation rights (Section 23) or where it may be desirable to take an appeal (Section 34). The procedure for registering and enforcing out-of-state support orders has been simplified (Sections 39 and 40).

For purposes of reference the following is a concordance of the section numbers in the Acts of 1950, 1952, 1958 and the Revised Act of 1968.

| Act of 1950 | Act of 1952 | Act of 1958 | Act of 1968 |
|---|---|---|---|
| 10 | 10 | 11 | 11 |
| | 11 | 12 | 12 |
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| | | 36 | 39 |
| | | 38 | 40 |
| 21 | 31 | 41 | 41 |
| 22 | 32 | 42 | 42 |
| 20 | 29 | 39 | 43 |



# REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT
(1968)

## PART 1—*General Provisions*

SECTION 1. [*Purposes.*] The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support.

SECTION 2. [*Definitions.*]

(a) "Court" means the [here insert name] court of this State and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

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

(c) "Governor" includes any person performing the functions of Governor or the executive authority of any state covered by this Act.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "Register" means to [record] [file] in the Registry of Foreign Support Orders.

(j) "Registering court" means any court of this State in which a support order of a rendering state is registered.

(k) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(l) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(m) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

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

SECTION 3. [*Remedies Additional to Those Now Existing.*] The remedies herein provided are in addition to and not in substitution for any other remedies.

SECTION 4. [*Extent of Duties of Support.*] Duties of support arising under the law of this State, when applicable under section 7, bind the obligor present in this State regardless of the presence or residence of the obligee.

## PART II—*Criminal Enforcement*

SECTION 5. [*Interstate Rendition.*] The Governor of this State may

(1) demand of the Governor of another state the surrender of a person found in that state who is charged criminally in this State with failing to provide for the support of any person; or

(2) surrender on demand by the Governor of another state a person found in this State who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled



from justice or at the time of the commission of the crime was in the demanding state.

SECTION 6. [*Conditions of Interstate Rendition.*]

(a) Before making the demand upon the Governor of another state for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least [60] days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

(b) If, under a substantially similar Act, the Governor of another state makes a demand upon the Governor of this State for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

## PART III—*Civil Enforcement*

SECTION 7. [*Choice of Law.*] Duties of support applicable under this Act are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

SECTION 8. [*Remedies of State or Political Subdivision Furnishing Support.*] If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

SECTION 9. [*How Duties of Support Enforced.*] All duties of support, including the duty to pay arrearages, are enforceable by

a proceeding under this Act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

SECTION 10. [*Jurisdiction.*] Jurisdiction of any proceeding under this Act is vested in the [here insert title of court desired].

SECTION 11. [*Contents and Filing of [Petition] for Support; Venue.*]

(a) The [petition] shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the [petition] any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The [petition] may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the [petition] on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

COMMENT

Wherever in this Act the word "petition" appears the word may be changed to "complaint" or "declaration" or the like and the word "petitioner" may be changed to "complainant" to conform to local usage.

SECTION 12. [*Officials to Represent Obligee.*] If this State is acting as an initiating state the prosecuting attorney upon the request of the court [a state department of welfare, a county commissioner, an overseer of the poor, or other local welfare officer] shall represent the obligee in any proceeding under this Act. [If the prosecuting attorney neglects or refuses to represent the obligee the [Attorney General] may order him to comply with the request of the court or may undertake the representation.] [If the prosecuting attorney neglects or refuses to represent the obligee, the [Attorney General] [State Director of Public Welfare] may undertake the representation.]



COMMENT

The first bracketed sentence is to be used in states where the Attorney General has supervisory powers over the prosecuting attorney; whereas, the second bracketed sentence is to be used if he does not have such powers.

SECTION 13. [*Petition for a Minor.*] A [petition] on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

SECTION 14. [*Duty of Initiating Court.*] If the initiating court finds that the [petition] sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the [petition] and its certificate and one copy of this Act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

SECTION 15. [*Costs and Fees.*] An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the [state or political subdivision thereof]. These costs or fees do not have priority over amounts due to the obligee.

SECTION 16. [*Jurisdiction by Arrest.*] If the court of this State believes that the obligor may flee it may

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by

appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

SECTION 17. [*State Information Agency.*]

(a) The [Attorney General's Office, State Attorney's Office, Welfare Department or other Information Agency] is designated as the state information agency under this Act, it shall

(1) compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the state information agency of every other state which has adopted this or a substantially similar Act. Upon the adjournment of each session of the [legislature] the agency shall distribute copies of any amendments to the Act and a statement of their effective date to all other state information agencies;

(2) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this Act; and

(3) forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates, and copies of the Act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended

(c) After the deposit of 3 copies of the [petition] and certificate and one copy of the Act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the [Attorney General] [State Director of Public Welfare] who may undertake the representation.

SECTION 18. [*Duty of the Court and Officials of This State as Responding State.*]

(a) After the responding court receives copies of the [petition], certificate, and Act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court [clerk of the court] to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) [If the prosecuting attorney neglects or refuses to represent the obligee the [Attorney General] may order him to comply with the request of the court or may undertake the representation.] [If the prosecuting attorney neglects or refuses to represent the obligee, the [Attorney General] [State Director of Public Welfare] may undertake the representation.]

COMMENT

The first bracketed sentence is to be used in states where the Attorney General has supervisory powers over the prosecuting attorney; whereas, the second bracketed sentence is to be used if he does not have such powers.

SECTION 19. [*Further Duties of Court and Officials in the Responding State.*]

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the [petition] or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended [petition] from the initiating court.

(b) If the obligor or his property is not found in the [county], and the prosecuting attorney discovers that the obligor or his property may be found in another [county] of this State or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other [county] or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

SECTION 20. [*Hearing and Continuance.*] If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

SECTION 21. [*Immunity from Criminal Prosecution.*] If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

SECTION 22. [*Evidence of Husband and Wife.*] Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses [and may be compelled] to testify to any relevant matter, including marriage and parentage.

SECTION 23. [*Rules of Evidence.*] In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the ———— Court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (Section 27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

SECTION 24. [*Order of Support.*] If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act shall require that payments be made to the [clerk] [bureau] [probation department] of the court of the responding state. [The court and prosecuting attorney of any [county] in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the [county] in which it was first issued. If enforcement is impossible or cannot be completed in the [county] in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any [county] in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.]

SECTION 25. [*Responding Court to Transmit Copies to Initiating Court.*] The responding court shall cause a copy of all support orders to be sent to the initiating court.

SECTION 26. [*Additional Powers of Responding Court.*] In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the [clerk] [bureau] [probation department] of the court; and

(3) punish under the power of contempt the obligor who violates any order of the court.

SECTION 27. [*Paternity.*] If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

SECTION 28. [*Additional Duties of Responding Court.*] A responding court has the following duties which may be carried out through the [clerk, [bureau] [probation department] of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

SECTION 29. [*Additional Duty of Initiating Court.*] An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the [clerk] [bureau] [probation department] of the court.

SECTION 30. [*Proceedings Not to be Stayed.*] A responding court shall not stay the proceeding or refuse a hearing under this Act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the [petition] being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

SECTION 31. [*Application of Payments.*] A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

[SECTION 32. [*Effect of Participation in Proceedings.*] Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.]

[SECTION 33. [*Intrastate Application.*] This Act applies if both the obligee and the obligor are in this State but in different [counties]. If the court of the [county] in which the [petition] is filed finds that the [petition] sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another [county] in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the [petition] and a certification of the findings to the court of the [county] in which the obligor or his property is found. The clerk of the court of the [county] receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the [county] to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding state.]

SECTION 34. [*Appeals.*] If the [Attorney General] [State Director of Public Welfare] is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public intertest, he may

(a) perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(b) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

## PART IV-*Registration of Foreign Support Orders*

SECTION 35. [*Additional Remedies.*] If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

### COMMENT

The language of the last sentence is permissive and so does not preclude other arrangements for the payment of the expenses of appeal. If it is thought desirable to spell out particular methods of payment this may be done.

SECTION 36. [*Registration.*] The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

SECTION 37. [*Registry of Foreign Support Orders.*] The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall [file] foreign support orders.

SECTION 38. [*Official to Represent Obligee.*] If this State is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court [a state department of welfare, a county commissioner, an overseer of the poor, or other local welfare official] shall represent the obligee in proceedings under this Part.

[If the prosecuting attorney neglects or refuses to represent the obligee, the [Attorney General] may order him to comply with the request of the court or may undertake the representation.] [If the prosecuting attorney neglects or refuses to represent the obligee, the[Attorney General] [State Director of Public Welfare] may undertake the representation.]

COMMENT

The first bracketed sentence is to be used in states where the Attorney General has supervisory powers over the prosecuting attorney; whereas, the second bracketed sentence is to be used if he does not have such powers.

SECTION 39. [*Registration Procedure; Notice.*]

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modification thereof, (2) one copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this Act.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

SECTION 40. [*Effect of Registration; Enforcement Procedure.*]

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has [20] days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

SECTION 41. [*Uniformity of Interpretation.*] This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 42. [*Short Title.*] This Act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

SECTION 43. [*Severability.*] 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 without the invalid provision or application, and to this end the provisions of this Act are severable.

# UNIFORM CHILD CUSTODY JURISDICTION ACT

*Drafted by the*

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

*and by it*

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

*at its*

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-SEVENTH YEAR
AT PHILADELPHIA, PENNSYLVANIA
JULY 22-AUGUST 1, 1968

WITH
PREFATORY NOTE AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS
MEETING AT PHILADELPHIA, PENNSYLVANIA
August 7, 1968

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Child Custody Jurisdiction Act was as follows:


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## UNIFORM CHILD CUSTODY JURISDICTION ACT

### PREFATORY NOTE

There is growing public concern over the fact that thousands of children are shifted from state to state and from one family to another every year while their parents or other persons battle over their custody in the courts of several states. Children of separated parents may live with their mother, for example, but one day the father snatches them and brings them to another state where he petitions a court to award him custody while the mother starts custody proceedings in her state; or in the case of illness of the mother the children may be cared for by grandparents in a third state, and all three parties may fight over the right to keep the children in several states. These and many similar situations constantly arise in our mobile society where family members often are scattered all over the United States and at times over other countries. A young child may have been moved to another state repeatedly before the case goes to court. When a decree has been rendered awarding custody to one of the parties, this is by no means the end of the child's migrations. It is well known that those who lose a court battle over custody are often unwilling to accept the judgment of the court. They will remove the child in an unguarded moment or fail to return him after a visit and will seek their luck in the court of a distant state where they hope to find—and often do find—a more sympathetic ear for their plea for custody. The party deprived of the child may then resort to similar tactics to recover the child and this "game" may continue for years, with the child thrown back and forth from state to state, never coming to rest in one single home and in one community.

The harm done to children by these experiences can hardly be overestimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

This unfortunate state of affairs has been aided and facilitated rather than discouraged by the law. There is no statutory law in this area and the judicial law is so unsettled that it seems to offer nothing but a "quicksand foundation" to stand on. See Leflar, American Conflicts

Law 585 (1968). See also Clark, Domestic Relations 320 (1968). There is no certainty as to which state has jurisdiction when persons seeking custody of a child approach the courts of several states simultaneously or successively. There is no certainty as to whether a custody decree rendered in one state is entitled to recognition and enforcement in another; nor as to when one state may alter a custody decree of a sister state.

The judicial trend has been toward permitting custody claimants to sue in the courts of almost any state, no matter how fleeting the contact of the child and family was with the particular state, with little regard to any conflict of law rules. See Leflar, American Conflicts Law 585-6 (1968) and Leflar, 1967 Annual Survey of American Law, Conflict of Laws 20 (1968). Also, since the United States Supreme Court has never settled the question whether the full faith and credit clause of the Constitution applies to custody decrees, many states have felt free to modify custody decrees of sister states almost at random although the theory usually is that there has been a change of circumstances requiring a custody award to a different person. Compare *People ex rel. Halvey v. Halvey*, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947); and see Comment, Ford v. Ford: Full Faith and Credit To Child Custody Decrees? 73 Yale L. J. 134 (1963). Generally speaking, there has been a tendency to over-emphasize the need for fluidity and modifiability of custody decrees at the expense of the equal (if not greater) need, from the standpoint of the child, for stability of custody decisions once made. Compare Clark, Domestic Relations 326 (1968).

Under this state of the law the courts of the various states have acted in isolation and at times in competition with each other; often with disastrous consequences. A court of one state may have awarded custody to the mother while another state decreed simultaneously that the child must go to the father. See *Stout v. Pate*, 209 Ga. 786, 75 S.E. 2d 748 (1953) and *Stout v. Pate*, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953), cert. denied in both cases 347 U.S. 968, 74 S. Ct. 744, 776, 98 L. Ed. 1109, 1110 (1954); *Monis v. Monis*, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956); and *Sharpe v. Sharpe*, 77 Ill. App. 2d 295, 222 N.E. 2d 310 (1966). In situations like this the litigants do not know which court to obey. They may face punishment for contempt of court and perhaps criminal charges for child stealing in one state when complying with the decree of the other. Also, a custody decree made in one state one year is often overturned in another jurisdiction the next year or some years later and the child is handed over to another family, to be repeated as long as the feud continues. See *Com. ex rel. Thomas v. Gillard*, 203 Pa. Super. 95, 198 A 2d 377 (1964); *In Re Guardianship of Rodgers*, 100 Ariz. 269, 413 P. 2d 774 (1966); *Berlin v. Berlin*, 239 Md. 52, 210 A. 2d 389 (1965); *Berlin v. Berlin*, 21 N.Y. 2d 371, 235 N.E.



2d 109 (1967), cert. denied 37 L.W. 3123 (1968); and *Batchelor v. Fulcher*, 415 S.W. 2d 828 (Ky. 1967).

In this confused legal situation the person who has possession of the child has an enormous tactical advantage. Physical presence of the child opens the doors of many courts to the petitions and often assures him of a decision in his favor. It is not surprising then that custody claimants tend to take the law into their own hands, that they resort to self-help in the form of child stealing, kidnapping, or various other schemes to gain possession of the child. The irony is that persons who are good, law-abiding citizens are often driven into these tactics against their inclinations; and that lawyers who are reluctant to advise the use of maneuver of doubtful legality may place their clients at a decided disadvantage.

To remedy this intolerable state of affairs where self-help and the rule of "seize-and-run" prevail rather than the orderly processes of the law, uniform legislation has been urged in recent years to bring about a fair measure of interstate stability in custody awards. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795 (1964); Ratner, Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S. Cal. L. Rev. 183 (1965); and Ehrenzweig, The Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings, 64 Mich. L. Rev. 1 (1965). In drafting this Act, the National Conference of Commissioners has drawn heavily on the work of these authors and has consulted with other leading authorities in the field. The American Bar Association has taken an active part in furthering the project.

The Act is designed to bring some semblence of order into the existing chaos. It limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family. See Section 3. It provides for the recognition and enforcement of out-of-state custody decrees in many instances. See Sections 13 and 15. Jurisdiction to modify decrees of other states is limited by giving a jurisdictional preference to the prior court under certain conditions. See Section 14. Access to a court may be denied to petitioners who have engaged in child snatching or similar practices. See Section 8. Also, the Act opens up direct lines of communication between courts of different states to prevent jurisdictional conflict and bring about interstate judicial assistance in custody cases.

The Act stresses the importance of the personal appearance before the court of non-residents who claim custody, and of the child himself, and provides for the payment of travel expenses for this purpose. See Section 11. Further provisions insure that the judge receives necessary out-of-state information with the assistance of courts in other states. See Sections 17 through 22.

Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important *which* court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future.

The Act is not a reciprocal law. It can be put into full operation by each individual state regardless of enactment of other states. But its full benefits will not be reaped until a large number of states have enacted it, and until the courts, perhaps aided by regional or national conferences, have come to develop a new, truly "inter-state" approach to child custody litigation. The general policies of the Act and some of its specific provisions apply to international custody cases.



## Uniform Child Custody Jurisdiction Act

Section 1. [*Purposes of Act; Construction of Provisions.*]

(a) The general purposes of this Act are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This Act shall be construed to promote the general purposes stated in this section.

### Comment

Because this uniform law breaks new ground not previously covered by legislation, its purposes are stated in some detail. Each section must be read and applied with these purposes in mind.

SECTION 2. [*Definitions.*] As used in this Act:

(1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

COMMENT

Subsection (3) indicates that "custody proceeding" is to be understood in a broad sense. The term covers habeas corpus actions, guardianship petitions, and other proceedings available under general state law to determine custody. See Clark, Domestic Relations 570-582 (1968).

Other definitions are explained, if necessary, in the comments to the sections which use the terms defined.



SECTION 3. [*Jurisdiction.*]

(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]; or

(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

COMMENT

Paragraphs (1) and (2) of subsection (a) establish the two major bases for jurisdiction. In the first place, a court in the child's home state has jurisdiction, and secondly, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction. If this alternative test produces concurrent jurisdiction in more than one state, the mechanisms provided in sections 6 and 7 are used to assure that only one state makes the custody decision.

"Home state" is defined in section 2(5). A 6-month period has been selected in order to have a definite and certain test which is at the same time based on a

reasonable assumption of fact. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 818 (1964) who explains:

> "Most American children are integrated into an American community after living there six months; consequently this period of residence would seem to provide a reasonable criterion for identifying the established home."

Subparagraph (ii) of paragraph (1) extends the home state rule for an additional six-month period in order to permit suit in the home state after the child's departure. The main objective is to protect a parent who has been left by his spouse taking the child along. The provision makes clear that the stay-at-home parent, if he acts promptly, may start proceedings in his own state if he desires, without the necessity of attempting to base jurisdiction on paragraph (2). This changes the law in those states which required presence of the child as a condition for jurisdiction and consequently forced the person left behind to follow the departed person to another state, perhaps to several states in succession. See also subsection (c).

Paragraph (2) comes into play either when the home state test cannot be met or as an alternative to that test. The first situation arises, for example, when a family has moved frequently and there is no state where the child has lived for 6 months prior to suit, or if the child has recently been removed from his home state and the person who was left behind has also moved away. See paragraph (1), last clause. A typical example of alternative jurisdiction is the case in which the stay-at-home parent chooses to follow the departed spouse to state 2 (where the child has lived for several months with the other parent) and starts proceedings there. Whether the departed parent also has access to a court in state 2, depends on the strength of the family ties in that state and on the applicability of the clean hands provision of section 8. If state 2, for example, was the state of the matrimonial home where the entire family lived for two years before moving to the "home state" for 6 months, and the wife returned to state 2 with the child with the consent of the husband, state 2 might well have jurisdiction upon petition of the wife. The same may be true if the wife returned to her parents in her former home state where the child had spent several months every year before. Compare Willmore v. Willmore, 273, Minn. 537, 143 N.W. 2d 630 (1966), cert. denied 385 U.S. 898 (1966). While jurisdiction may exist in two states in these instances, it will not be *exercised* in both states. See sections 6 and 7.

Paragraph (2) of subsection (a) is supplemented by subsection (b) which is designed to discourage unilateral removal of children to other states and to guard generally against too liberal an interpretation of paragraph (2). Short-term presence in the state is not enough even though there may be an intent to stay longer, perhaps an intent to establish a technical "domicile" for divorce or other purposes.

Paragraph (2) perhaps more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes expressed in section 1. The paragraph was phrased in general terms in order to be flexible enough to cover many fact situations too diverse to lend themselves to exact description. But its purpose is to limit jurisdiction rather than to proliferate it. The first clause of the paragraph is important: jurisdiction exists only if it is in the *child's* interest, not merely the interest or convenience of the feuding parties, to determine custody in a particular state. The interest of the child is served when the forum has optimum access to relevant evidence about the child and family. There must be maximum rather than minimum contact with the state. The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state. Divorce jurisdiction does not necessarily include custody jurisdiction. See Clark, Domestic Relations 578 (1968).



Paragraph (3) of subsection (a) retains and reaffirms *parens patriae* jurisdiction, usually exercised by a juvenile court, which a state must assume when a child is in a situation requiring immediate protection. This jurisdiction exists when a child has been abandoned and in emergency cases of child neglect. Presence of the child in the state is the only prerequisite. This extraordinary jurisdiction is reserved for extraordinary circumstances. See Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S. 2d 703 (1959). When there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph.

Paragraph (4) of subsection (a) provides a final basis for jurisdiction which is subsidiary in nature. It is to be resorted to only if no other state could, or would, assume jurisdiction under the other criteria of this section.

Subsection (c) makes it clear that presence of the child is not a jurisdictional requirement. Subsequent sections are designed to assure the appearance of the child before the court.

This section governs jurisdiction to make an initial decree as well as a modification decree. Both terms are defined in section 2. Jurisdiction to modify an initial or modification decree of another state is subject to additional restrictions contained in sections 8(b) and 14(a).

SECTION 4. [*Notice and Opportunity to be Heard.*] Before making a decree under this Act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this State, notice and opportunity to be heard shall be given pursuant to section 5.

COMMENT

This section lists the persons who must be notified and given an opportunity to be heard to satisfy due process requirements. As to persons in the forum state, the general law of the state applies; others are notified in accordance with section 5. Strict compliance with sections 4 and 5 is essential for the validity of a custody decree within the state and its recognition and enforcement in other states under sections 12, 13, and 15. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft sec. 69 (1967); and compare Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

SECTION 5. [*Notice to Persons Outside this State; Submission to Jurisdiction.*]

(a) Notice required for the exercise of jurisdiction over a person outside this State shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this State in the manner prescribed for service of process within this State;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the court [including publication, if other means of notification are ineffective].

(b) Notice under this section shall be served, mailed, or delivered, [or last published] at least [10, 20] days before any hearing in this State.

(c) Proof of service outside this State may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this State, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

COMMENT

Section 201 of the Uniform Interstate and International Procedure Act has been followed to a large extent. See 9B U.L.A. 315 (1966). If at all possible, actual notice should be received by the affected persons; but efforts to impart notice in a manner reasonably calculated to give actual notice are sufficient when a person who may perhaps conceal his whereabouts, cannot be reached. See Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950) and Schroeder v. City of New York, 371 U.S. 208, 83 S. Ct. 279, 9 L. Ed. 2d 255 (1962).

Notice by publication in lieu of other means of notification is not included because of its doubtful constitutionality. See Mullane v. Central Hanover Bank and Trust Co., *supra;* and see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Rev. 241, 277, 286-87. Paragraph (4) of subsection (a) lists notice by publication in brackets for the benefit of those states which desire to use published notices *in addition to* the modes of notification provided in this section when these modes prove ineffective to impart actual notice.

The provisions of this section, and paragraphs (2) and (4) of subsection (a) in particular, are subject to the caveat that notice and opportunity to be heard must always meet due process requirements as they exist at the time of the proceeding.

SECTION 6. [*Simultaneous Proceedings in Other States.*]

(a) A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this Act, unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under section 9 and shall consult the child custody registry



established under section 16 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 19 through 22. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

COMMENT

Because of the havoc wreaked by simultaneous and competitive jurisdiction which has been described in the Prefatory Note, this section seeks to avoid jurisdictional conflict with all feasible means, including novel methods. Courts are expected to take an active part under this section in seeking out information about custody proceedings concerning the same child pending in other states. In a proper case jurisdiction is yielded to the other state either under this section or under section 7. Both sections must be read together.

When the courts of more than one state have jurisdiction under sections 3 or 14, priority in time determines which court will proceed with the action, but the application of the inconvenient forum principle of section 7 may result in the handling of the case by the other court.

While jurisdiction need not be yielded under subsection (a) if the other court would not have jurisdiction under the criteria of this Act, the policy against simultaneous custody proceedings is so strong that it might in a particular situation be appropriate to leave the case to the other court even under such circumstances. See subsection (3) and section 7.

Once a custody decree has been rendered in one state, jurisdiction is determined by sections 8 and 14.

SECTION 7. [*Inconvenient Forum.*]

(a) A court which has jurisdiction under this Act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the

court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1.

(d) Before determing whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this Act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this State, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this State shall inform the original court of this fact.



COMMENT

The purpose of this provision is to encourage judicial restraint in exercising jurisdiction whenever another state appears to be in a better position to determine custody of a child. It serves as a second check on jurisdiction once the test of sections 3 or 14 has been met.

The section is a particular application of the inconvenient forum principle, recognized in most states by judicial law, adapted to the special needs of child custody cases. The terminology used follows section 84 of the Restatement of the Law Second, Conflict of Laws, Proposed Official Draft (1967). Judicial restrictions or exceptions to the inconvenient forum rule made in some states do not apply to this statutory scheme which is limited to child custody cases.

Like section 6, this section stresses interstate judicial communication and cooperation. When there is doubt as to which is the more appropriate forum, the question may be resolved by consultation and cooperation among the courts involved.

Paragraphs (1) through (5) of subsection (c) specify some, but not all, considerations which enter into a court determination of inconvenient forum. Factors customarily listed for purposes of the general principle of the inconvenient forum (such as convenience of the parties and hardship to the defendant) are also pertinent, but may under the circumstances be of secondary importance because the child who is not a party is the central figure in the proceedings.

Part of subsection (c) is derived from Wis. Stat. Ann., sec. 262.19 (1).

Subsection (f) makes it clear that a court may divide a case, that is, dismiss part of it and retain the rest. See section 1.05 of the Uniform Interstate and International Procedure Act. When the custody issue comes up in a divorce proceeding, courts may have frequent occasion to decline jurisdiction as to that issue (assuming that custody jurisdiction exists under sections 3 or 14).

Subsection (g) is an adaptation of Wis. Stat. Ann., sec. 262.20. Its purpose is to serve as a deterrent against "frivolous jurisdiction claims," as G.W. Foster states in the Revision Notes to the Wisconsin provision. It applies when the forum chosen is seriously inappropriate considering the jurisdictional requirements of the Act.

SECTION 8. [*Jurisdiction Declined by Reason of Conduct.*]

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to

custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

COMMENT

This section incorporates the "clean hands doctrine," so named by Ehrenzweig, Interstate Recognition of Custody Decrees, 51 Mich. L. Rev. 345 (1953). Under this doctrine courts refuse to assume jurisdiction to reexamine an out-of-state custody decree when the petitioner has abducted the child or has engaged in some other objectionable scheme to gain or retain physical custody of the child in violation of the decree. See Fain, Custody of Children, The California Family Lawyer 1, 539, 546 (1961); Ex Parte Mullins, 20 Wash. 2d 419, 174 P. 2d 790 (1946); Crocker v. Crocker, 122 Colo. 49, 219 P. 2d 311 (1950); and Leathers v. Leathers, 162 Cal. App. 2d 768, 328 P. 2d 853 (1958). But when adherence to this rule would lead to punishment of the parent at the expense of the wellbeing of the child, it is often not applied. See Smith v. Smith, 135 Cal. App. 2d 100, 286 P. 2d 1009 (1955) and In re Guardianship of Rodgers, 100 Ariz. 269, 413 P. 2d 744 (1966).

Subsection (a) extends the clean hands principle to cases in which a custody decree has not yet been rendered in any state. For example, if upon a de facto separation the wife returned to her own home with the children without objection by her husband and lived there for two years without hearing from him, and the husband without warning forcibly removes the children one night and brings them to another state, a court in that state although it has jurisdiction after 6 months may decline to hear the husband's custody petition. "Wrongfully" taking under this subsection does not mean that a "right" has been violated-both husband and wife as a rule have a right to custody until a court determination is made-but that one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction.

Subsection (b) does not come into operation unless the court has power under section 14 to modify the custody decree of another state. It is a codification of the clean hands rule, except that it differentiates between (1) a taking or retention of the child and (2) other violations of custody decrees. In the case of illegal removal or retention refusal of jurisdiction is mandatory unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct. Compare Smith v. Smith and In Re Guardianship of Rodgers, *supra*; and see In Re Walter, 228 Cal. App. 2d 217, 39 Cal. Rptr. 243 (1964) where the court assumed jurisdiction after both parents had been guilty of misconduct. The qualifying word "improperly" is added to exclude cases in which a child is withheld because of illness or other emergency or in which there are other special justifying circumstances.

The most common violation of the second category is the removal of the child from the state by the parent who has the right to custody, thereby frustrating the exercise of visitation rights of the other parent. The second sentence of subsection (b) makes refusal of jurisdiction entirely discretionary in this situation because it depends on the circumstances whether non-compliance with the court order is serious enough to warrant the drastic sanction of denial of jurisdiction.

Subsection (c) adds a financial deterrent to child stealing and similar reprehensible conduct.



SECTION 9. [*Information under Oath to be Submitted to the Court.*]

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

COMMENT

It is important for the court to receive the information listed and other pertinent facts as early as possible for purposes of determining its jurisdiction, the joinder of additional parties, and the identification of courts in other states which are to be contacted under various provisions of the Act. Information as to custody litigation and other pertinent facts occurring in other countries may also be elicited under this section in combination with section 23.

SECTION 10. [*Additional Parties.*] If the court learns from information furnished by the parties pursuant to section 9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or

visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this State he shall be served with process or otherwise notified in accordance with section 5.

COMMENT

The purpose of this section is to prevent re-litigations of the custody issue when these would be for the benefit of third claimants rather than the child. If the immediate controversy, for example, is between the parents, but relatives inside or outside the state also claim custody or have physical custody which may lead to a future claim to the child, they must be brought into the proceedings. The courts are given an active role here as under other sections of the Act to seek out the necessary information from formal or informal sources.

SECTION 11. [*Appearance of Parties and the Child.*]

[(a) The court may order any party to the proceeding who is in this State to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.]

(b) If a party to the proceeding whose presence is desired by the court is outside this State with or without the child the court may order that the notice given under section 5 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

COMMENT

Since a custody proceeding is concerned with the past and future care of the child by one of the parties, it is of vital importance in most cases that the judge has an opportunity to see and hear the contestants and the child. Subsection (a) authorises the court to order the appearance of these persons if they are in the state. It is placed in brackets because states which have such a provision—not only in their juvenile court laws—may wish to omit it. Subsection (b) relates to the appearance of persons who are outside the state and provides one method of bringing them before the court; sections 19(b) and 20(b) provide another. Subsection (c) helps to finance travel to the court which may be close to one of the parties and distant from another; it may be used to equalize the expense if this is appropriate under the circumstances.



SECTION 12. [*Binding Force and Res Judicata Effect of Custody Decree.*] A custody decree rendered by a court of this State which had jurisdiction under section 3 binds all parties who have been served in this State or notified in accordance with section 5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act.

COMMENT

This section deals with the intra-state validity of custody decrees which provides the basis for their interstate recognition and enforcement. The two prerequisites are (1) jurisdiction under section 3 of this Act and (2) strict compliance with due process mandates of notice and opportunity to be heard. There is no requirement for technical personal jurisdiction, on the traditional theory that custody determinations, as distinguished from support actions (see section 2(2) *supra*), are proceedings in rem or proceedings affecting status. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, sections 69 and 79 (1967); and James, Civil Procedure 613 (1965). For a different theory reaching the same result, see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Review 241. The section is not at variance with May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953), which relates to interstate recognition rather than in-state validity of custody decrees. See Ehrenzweig and Louisell, Jurisdiction in a Nutshell 76 (2d ed. 1968); and compare Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L. Rev. 183, 195 (1957). On May v. Anderson, *supra*, see comment to section 13.

Since a custody decree is normally subject to modification in the interest of the child, it does not have absolute finality, but as long as it has not been modified, it is as binding as a final judgment. Compare Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967).

SECTION 13. [*Recognition of Out-of-State Custody Decrees.*] The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this Act.

COMMENT

This section and sections 14 and 15 are the key provisions which guarantee a great measure of security and stability of environment to the "interstate child" by discouraging relitigations in other states. See Section 1, and see Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 823 (1964).

Although the full faith and credit clause may perhaps not require the recognition of out-of-state custody decrees, the states are free to recognize and enforce them. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967), and see the Prefatory Note, *supra*. This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced. Recognition and enforcement is mandatory if the state in which the prior decree was rendered 1) has adopted this Act, 2) has statutory jurisdictional requirements substantially like this Act, or 3) would have had jurisdiction under the facts of the case if this Act had been the law in the state. Compare Comment, Ford v. Ford: Full Faith and Credit to Child Custody Decrees? 73 Yale L.J. 134, 148 (1963).

"Jurisdiction" or "jurisdictional standards" under this section refers to the requirements of section 3 in the case of initial decrees and to the requirements of sections 3 and 14 in the case of modification decrees. The section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance. For the recognition of custody decrees of other nations, see section 23.

Recognition is accorded to a decree which is valid and binding under section 12. This means, for example, that a court in the state where the father resides will recognize and enforce a custody decree rendered in the home state where the child lives with the mother if the father was duly notified and given enough time to appear in the proceedings. Personal jurisdiction over the father is not required. See comment to section 12. This is in accord with a common interpretation of the inconclusive decision in May v. Anderson, 345 U.S. 528, 73 S. Ct. 840, 97 L. Ed. 1221 (1953). See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 70 and comment thereto, p. 208 (1967). Under this interpretation a state is permitted to recognize a custody decree of another state regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met. See Justice Frankfurter's concurring opinion in May v. Anderson; and compare Clark, Domestic Relations 323-26 (1968), Goodrich, Conflict of Laws 274 (4th ed. by Scoles, 1964); Stumberg, Principles of Conflict of Laws 325 (3rd ed. 1963); and Comment, The Puzzle of Jurisdiction in Child Custody Actions, 38 U. Colo. L. Rev. 541 (1966). The Act emphasizes the need for the personal appearance of the contestants rather than any technical requirement for personal jurisdiction.

The mandate of this section could cause problems if the prior decree is a punitive or disciplinary measure. See Ehrenzweig, Inter-state Recognition of Custody Decrees, 51 Mich. L. Rev. 345, 370 (1953). If, for example, a court grants custody to the mother and after 5 years' of continuous life with the mother the child is awarded to the father by the same court for the sole reason that the mother who had moved to another state upon remarriage had not lived up to the visitation requirements of the decree, courts in other states may be reluctant to recognize the changed decree. See Berlin v. Berlin 21 N.Y. 2d 371, 235 N.E. 2d 100 (1967); and Stout v. Pate, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953); Compare Monis v. Monis, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956). Disciplinary decrees of this type can be avoided under this Act by enforcing the visitation provisions of the decree directly in another state. See Section 15. If the original plan for visitation does not fit the new conditions, a petition for modification of the visiting arrangements would be filed in a court which has jurisdiction, that is, in many cases the original court. See section 14.

SECTION 14. [*Modification of Custody Decree of Another State.*]

(a) If a court of another state has made a custody decree, a court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Act or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.

(b) If a court of this State is authorized under subsection (a) and section 8 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section 22.

COMMENT

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. See People ex rel. Halvey v. Halvey, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947). In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere. Compare Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 821-2(1964).

For example, if custody was awarded to the father in state 1 where he continued to live with the children for two years and thereafter his wife kept the children in state 2 for 6-1/2 months (3-1/2 months beyond her visitation privileges) with or without permission of the husband, state 1 has preferred jurisdiction to modify the decree despite the fact that state 2 has in the meantime become the "home state" of the child. If, however, the father also moved away from state 1, that state loses modification jurisdiction interstate, whether or not its jurisdiction continues under local law. See Clark, Domestic Relations 322-23 (1968). Also, if the father in the same case continued to live in state 1, but let his wife keep the children for several years without asserting his custody rights and without visits of the children in state 1, modification jurisdiction of state 1 would cease. Compare Brengle v. Hurst, 408 S. W. 2d 418 (Ky. 1966). The situation would be different if the children had been abducted and their whereabouts could not be discovered by the legal custodian for several years. The abductor would be denied access to the court of another state under section 8(b) and state 1 would have modification jurisdiction in any event under section 3(a) (4). Compare Crocker v. Crocker, 122 Colo. 49, 219 P. 2d 311 (1950).

The prior court has jurisdiction to modify under this section even though its original assumption of jurisdiction did not meet the standards of this Act, as long as it would have jurisdiction *now*, that is, at the time of the petition for modification.

If the state of the prior decree declines to assume jurisdiction to modify the

decree, another state with jurisdiction under section 3 can proceed with the case. That is not so if the prior court dismissed the petition on its merits.

Respect for the continuing jurisdiction of another state under this section will serve the purposes of this Act only if the prior court will assume a corresponding obligation to make no changes in the existing custody arrangement which are not required for the good of the child. If the court overturns its own decree in order to discipline a mother or father, with whom the child had lived for years, for failure to comply with an order of the court, the objective of greater stability of custody decrees is not achieved. See Comment to section 13 last paragraph, and cases there cited. See also Sharpe v. Sharpe, 77 Ill. App. 205, 222 N.E. 2d 340 (1966). Under section 15 of this Act an order of a court contained in a custody decree can be directly enforced in another state.

Under subsection (b) transcripts of prior proceedings if received under section 22 are to be considered by the modifying court. The purpose is to give the judge the opportunity to be as fully informed as possible before making a custody decision. "One court will seldom have so much of the story that another's inquiry is unimportant" says Paulsen, Appointment of a Guardian in the Conflict of Laws, 45 Iowa L. Rev. 212, 226 (1960). See also Ehrenzweig, the Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings, 64 Mich. L. Rev. 1, 6-7 (1965); and Ratner, Legislative Resolution of the Interstate Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act, 38 S. Cal. L. Rev. 183, 202 (1965). How much consideration is "due" this transcript, whether or under what conditions it is received in evidence, are matters of local, internal law which are not affected by this interstate act.

SECTION 15. [*Filing and Enforcement of Custody Decree of Another State.*]

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any [District Court, Family Court] of this State. The clerk shall treat the decree in the same manner as a custody decree of the [District Court, Family Court] of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

COMMENT

Out-of-state custody decrees which are required to be recognised are enforced by other states. See section 13. Subsection (a) provides a simplified and speedy method of enforcement. It is derived from section 2 of the Uniform Enforcement of Foreign Judgments Act of 1964, 9A U.L.A. 486 (1965). A certified copy of the decree is filed in the appropriate court, and the decree thereupon becomes in effect a decree of the state of filing and is enforceable by any method of enforcement available under the law of that state.

The authority to enforce an out-of-state decree does not include the power to



modify it. If modification is desired, the petition must be directed to the court which has jurisdiction to modify under section 14. This does not mean that the state of enforcement may not in an emergency stay enforcement if there is danger of serious mistreatment of the child. See Ratner, Child Custody in a Federal System, 62 Mich. L. Rev. 795, 832-33 (1964).

The right to custody for periods of visitation and other provisions of a custody decree are enforceable in other states in the same manner as the primary right to custody. If visitation privileges provided in the decree have become impractical upon moving to another state, the remedy against automatic enforcement in another state is a petition in the proper court to modify visitation arrangements to fit the new conditions.

Subsection (b) makes it clear that the financial burden of enforcement of a custody decree may be shifted to the wrongdoer. Compare 2 Armstrong, California Family Law 328 (1966 Suppl.), and *Crocker v. Crocker*, 195 F. 2d 236 (1952).

SECTION 16. [*Registry of Out-of-State Custody Decrees and Proceedings.*] The clerk of each [District Court, Family Court] shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding.

COMMENT

The purpose of this section is to gather all information concerning out-of-state custody cases which reaches a court in one designated place. The term "registry" is derived from section 35 of the Uniform Reciprocal Enforcement of Support Act of 1958, 9C U.L.A. 61 (1967 Suppl.) Another term may be used if desired without affecting the uniformity of the Act. The information in the registry is usually incomplete since it contains only those documents which have been specifically requested or which have otherwise found their way to the state. It is therefore necessary in most cases for the court to seek additional information elsewhere.

SECTION 17. [*Certified Copies of Custody Decree.*] The Clerk of the [District Court, Family Court] of this State, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

SECTION 18. [*Taking Testimony in Another State.*] In addition to other procedural devices available to a party, any party to the

proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

COMMENT

Sections 18 to 22 are derived from sections 3.01 and 3.02 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321, 326 (1966); from ideas underlying the Uniform Reciprocal Enforcement of Support Act; and from Ehrenzweig, the Interstate Child and Uniform Legislation: A Plea for Extralitigious Proceedings, 64 Mich. L. Rev. 1 (1965). They are designed to fill the partial vacuum which inevitably exists in cases involving an "interstate child" since part of the essential information about the child and his relationship to other persons is always in another state. Even though jurisdiction is assumed under sections 3 and 7 in the state where much (or most) of the pertinent facts are readily available, some important evidence will unavoidably be elsewhere.

Section 18 is derived from portions of section 3.01 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321. The first sentence relates to depositions, written interrogatories and other discovery devices which may be used by parties or representatives of the child. The procedural rules of the state where the device is used are applicable under this sentence. The second sentence empowers the court itself to initiate the gathering of out-of-state evidence which is often not supplied by the parties in order to give the court a complete picture of the child's situation, especially as it relates to a custody claimant who lives in another state.

SECTION 19. [*Hearings and Studies in Another State; Orders to Appear.*]

(a) A court of this State may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this State; and to forward to the court of this State certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the [County, State].

(b) A court of this State may request the appropriate court of another state to order a party to custody proceedings pending in the court of this State to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.



COMMENT

Section 19 relates to assistance sought by a court of the forum state from a court of another state. See comment to section 18. Subsection (a) covers any kind of evidentiary procedure available under the law of the assisting state which may aid the court in the requesting state, including custody investigations (social studies) if authorized by the law of the other state. Under what conditions reports of social studies and other evidence collected under this subsection are admissible in the requesting state, is a matter of internal state law not covered in this interstate statute. Subsection (b) serves to bring parties and the child before the requesting court, backed up by the assisting court's contempt powers. See section 11.

SECTION 20 [*Assistance to Courts of Other States.*]

(a) Upon request of the court of another state the courts of this State which are competent to hear custody matters may order a person in this State to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this State [or may order social studies to be made for use in a custody proceeding in another state]. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced [and any social studies prepared] shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this State may voluntarily give his testimony or statement in this State for use in a custody proceeding outside this state.

(c) Upon request of the court of another state a competent court of this State may order a person in this State to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

COMMENT

Section 20 is the counterpart of section 19. It empowers local courts to give help to out-of-state courts in custody cases. See comments to sections 18 and 19. The references to social studies have been placed in brackets so that states without authorization to make social studies outside of juvenile court proceedings may omit them if they wish. Subsection (b) reaffirms the existing freedom of persons within the United States to give evidence for use in proceedings elsewhere. It is derived from section 3.02 (b) of the Interstate and International Procedure Act, 9B U.L.A. 327 (1966).

SECTION 21. [*Preservation of Documents for Use in Other States.*] In any custody proceeding in this State the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents

until the child reaches [18, 21] years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents.

COMMENT

See comments to sections 18 and 19. Documents are to be preserved until the child is old enough that further custody disputes are unlikely. A lower figure than the ones suggested in the brackets may be inserted.

SECTION 22. [*Request for Court Records of Another State.*] If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this State, the court of this State upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 21.

COMMENT

This is the counterpart of section 21. See comments to sections 18, 19, and 14(b).

SECTION 23. [*International Application.*] The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees inolving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

COMMENT

Not all the provisions of the Act lend themselves to direct application in international custody disputes; but the basic policies of avoiding jurisdictional conflict and multiple litigation are as strong if not stronger when children are moved back and forth from one country to another by feuding relatives. Compare Application of Lang, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959) and Swindle v. Bradley, 240 Ark. 903, 403 S.W. 2d 63 (1966).

The first sentence makes the general policies of the Act applicable to international cases. This means that the substance of section 1 and the principles underlying provisions like sections 6, 7, 8, and 14(a), are to be followed when some of the persons involved are in a foreign country or a foreign custody proceeding is pending.

The second sentence declares that custody decrees rendered in other nations by appropriate authorities (which may be judicial or administrative tribunals) are recognised and enforced in this country. The only prerequisite is that reasonable notice and opportunity to be heard was given to the persons affected. It is also to be understood that the foreign tribunal had jurisdiction under its own law rather than under section 3 of this Act. Compare Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, sections 10, 92, 98, and 109(2) (1967). Compare also Goodrich, Conflict of Laws 390-93 (4th ed., Scoles, 1964).



[SECTION 24. [*Priority.*] Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act the case shall be given calendar priority and handled expeditiously.]

COMMENT

Judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. The need for speedy adjudication exists, of course, with respect to all aspects of child custody litigation. The priority requirement is limited to jurisdictional questions because an all encompassing priority would be beyond the scope of this Act. Since some states may have or wish to adopt a statutory provision or court rule of wider scope, this section is placed in brackets and may be omitted.

SECTION 25. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, its 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.

SECTION 26. [*Short Title.*] This Act may be cited as the Uniform Child Custody Jurisdiction Act.

SECTION 27. [*Repeal.*] The following acts and parts of acts are repealed:

(1)

(2)

(3)

SECTION 28. [*Time of Taking Effect.*] This Act shall take effect . . . .

# UNIFORM MARRIAGE AND DIVORCE ACT

*Drafted by the*

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

*and by it*

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

*at its*

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-NINTH YEAR
AT ST. LOUIS, MISSOURI
AUGUST 1-7, 1970

WITH AMENDMENTS APPROVED 1971 AND AUGUST 2, 1973

WITH
PREFATORY NOTES AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MIDYEAR
MEETING, FEBRUARY 5, 1974

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# UNIFORM MARRIAGE AND DIVORCE ACT

## PREFATORY NOTE

When the National Conference of Commissioners on Uniform State Laws was formed in 1892, two of the major subjects named as appropriate for uniform laws were commercial paper and marriage and divorce. A law on the former was soon achieved; it was not until August 6, 1970, when the Conference first promulgated this Act, that agreement was reached on a measure combining the two latter subjects. In the intervening years some dozen statutes were approved dealing with various aspects of one or the other. None of them received substantial acceptance by the states.

The activity resulting in the present draft started with the 1965 report of the Special Committee on Uniform Divorce and Marriage Laws, co-chaired by Leonard G. Brown and Bernard Hellring, recommending exploration of the possibility of non-fault divorce laws, the procurement of financial resources to finance research and the recruitment of advisors from all relevant areas of society. The Conference received this proposal with great favor. The next year was devoted to a search for funds and to other promotional work. The Conference continued its approval. Grants in aid were secured from the Ford Foundation and from the United States Department of Health, Education and Welfare. Professor Robert J. Levy of the University of Minnesota was engaged as reporter to supervise research and preliminary drafting. In 1967, Professor Herma H. Kay of the University of California was added as co-reporter. On the request of the Committee, in accordance with the established requirement of consultation with appropriate American Bar Association authorities, the Family Law Section of that Association appointed a Liaison Committee, consisting of Honorable Morris N. Hartman, Chairman, Clarence Kolwyck, Esq., later Chairman [while dissenting from the product, he made many valuable contributions], Honorable Florence M. Kelley, Professor Henry H. Foster, Jr., James P. Hart, Jr., Esq., Godfrey Munter, Esq. The Committee also had the assistance of a Board of Advisors and of a Board of Consultants who were chosen because of their special experience in areas of family law or because of their training in social and behavioral sciences having a particular relevance to the family. The draft was developed and approved by the Conference in the light of the advice given by these qualified and experienced Advisors and Consultants, in 1970, and certain alterations were made in 1971, as the result of additional

helpful suggestions from representatives of the Family Law Section of the American Bar Association.

A review of the legal and nonlegal literature on marriage and divorce suggests that, although the experts may be divided on other issues, there is virtual unanimity as to the urgent need for basic reform in both areas: not only of specific provisions but of the entire conceptual structure. The traditional conception of divorce based on fault has been singled out particularly, both as an ineffective barrier to marriage dissolution which is regularly overcome by perjury, thus promoting disrespect for the law and its processes, and as an unfortunate device which adds to the bitterness and hostility of divorce proceedings. In recent years, persistent demands for reform finally have been heeded. Statutory reform has been accomplished in countries so diverse as England and Italy and in a number of American states as well. Although less attention has been given to the anachronisms of marriage law, the need for modernization of state regulatory patterns in the light of a new approach to divorce is undeniable.

Without undermining the state's interest in the stability of marriages, the Act greatly simplified pre-marital regulation. In addition, the list of "prohibited" marriages has been greatly reduced. Most important, the Act changes the traditional sanctions applied to such marriages. At present, most state regulatory statutes enforce marriage prohibitions by permitting one of the parties (or a parent, in case of youthful marriage) to a prohibited marriage to seek an annulment. It has long been recognized, however, that annulments often are sought for personal or family reasons typically having nothing to do with the purpose the marriage prohibition was designed to serve. The marriage prohibitions therefore serve mainly to provide a legal device alternative to divorce under appropriate conditions. But because annulled marriages are considered "void ab initio," annulments have retroactively deprived spouses of financial support and status. An even harsher sanction, the designation of some prohibited marriages as "void," often deprives innocent spouses of social insurance benefits, workmen's compensation claims, wrongful death recoveries, and the financial benefit of property passing as part of the deceased spouse's estate. This Act has eliminated completely the notion of "void" marriages; has minimized the number of prohibited marriages; and, while permitting a declaration of invalidity in circumscribed cases, has created a procedure which permits courts to refuse to make the decree retroactive. The Act's simplified marriage regulations and circumscribed annulment doctrines require most spouses who desire the termination of their marriage to proceed under the dissolution provisions of the Act rather than the invalidity provisions. This result is proper; if the complaint is that the marriage is no longer viable, termination rather than a declaration of invalidity is the appropriate remedy.



In its provisions on dissolution of marriage, the Act has totally eliminated the traditional concept that divorce is a remedy granted to an innocent spouse, based on the marital fault of the other spouse which has not been connived at, colluded in, or condoned by the innocent spouse. Consideration was given to alternative methods of creating a non-fault device for terminating marriages, including the ground of voluntary separation for a period of time, now recognized by many states. The Conference came finally to the conclusion, also reached in England, California and Iowa, (and, since the Act was promulgated, in a number of other states) that the legal dissolution of a marriage should be based solely on a finding that factually the marriage is irretrievably broken. This standard will redirect the law's attention from an unproductive assignment of blame to a search for the realities of the marital situation.

The Act's elimination of fault notions extends to its treatment of maintenance and property division. The distribution of property upon the termination of a marriage should be treated, as nearly as possible, like the distribution of assets incident to the dissolution of a partnership. The Act authorizes the division of the property belonging to either spouse, or to both spouses, as the primary means of providing for the future financial needs of the spouses, as well as of doing justice between them. Where the property is insufficient for the first purpose, the Act provides that an award of maintenance may be made to either spouse under appropriate circumstances to supplement the available property. But, because of its property division provisions, the Act does not continue the traditional reliance upon maintenance as the primary means of support for divorced spouses. Standards are set up to guide the court in apportioning property and in awarding maintenance.

The custody and support provisions of the Act emphasize the interest of children rather than the wishes of their parents. Fault notions, which occasionally have decided both custody and financial issues, were deliberately and expressly excised. The custody provisions of the Act restate and clarify existing law, both substantive and procedural, and seek to discourage continuing litigation involving children. Provision is made, under appropriate

circumstances, for the appointment of an attorney to represent the child's interests in litigation affecting him directly.

Throughout the Act an effort has been made to reduce the adversary trappings of marital litigation. Thus procedural modifications have been introduced affecting the title of the proceedings and the form of the pleadings; the parties are permitted to file a joint petition for dissolution and the basis chosen for dissolution does not lend itself to recriminatory disputes; and the parties are encouraged to make amicable settlements of their financial affairs and voluntary provisions for the custody of their children.

Although the Conference itself decided not to provide, as part of the Act, a uniform system of obtaining statistical information, consideration of the Act should provide the occasion for each state to make a fresh examination of the legislation, recommended by the Bureau of Vital Statistics, which would permit the gathering of uniform national statistics on marriage and divorce. See U. S. Department H. E. W., Marriage Statistics Analysis 35 (Statistical Series 21, No. 16, 1968); Jacobson, American Marriage and Divorce, 16 (1959).

The Uniform Marriage and Divorce Act is promulgated as one interlocking and interdependent piece of legislation. Because of the terms upon which resources were granted, and, still more, because of the interrelationships involved, the draft presents a unified proposal for a code of marriage and divorce. However, it is realized that local statutory structure, or varied views as to policy may lead some legislatures to prefer to deal with the two subjects in separate bills. The structure of the Act in separable parts facilitates such a separation. Thus a state which desired to enact the marriage portion separately could change the short title (§ 101) to "Uniform Marriage Act." In § 102(b), it could use only purposes (1) and (2). The state then would enact Part II of the Act, only, but would also adopt such portions of Part V (§§ 501-505) as are appropriate. Likewise, if enactment of the dissolution provisions alone were desired, the appropriate short title would be "Uniform Divorce Act," and in § 102(b) the purpose clauses (3), (4) and (5) of § 102(b) would be used. The parts to be adopted would be III, IV, and so much of V as would be appropriate.

It should be kept in mind that the by-lines preceding each section are bracketed, since many states' legislative rules do not permit the incorporation of such material in bills that are presented for introduction. Each draftsman will have to follow the rule prevailing in his own state.



# UNIFORM MARRIAGE AND DIVORCE ACT

## PART I

## GENERAL PROVISIONS

SECTION 101. [*Short Title.*] This Act may be cited as the "Uniform Marriage and Divorce Act."

### COMMENT

This is the customary "short title" clause, which may be placed in such order in the bill for enactment as the legislative practice of the state prescribes. Note, also, that it may be adjusted, as necessary, if parts of the measure are introduced as separate bills, in accordance with the statement in the prefatory note.

SECTION 102. [*Purposes: Rules of Construction.*] This Act shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships;

(3) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(5) make reasonable provision for spouse and minor children during and after litigation; and

(6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

### COMMENT

This sets forth the underlying purposes and objectives of the measure, as a foundation for construction of the Act. As indicated in the prefatory note, the enumeration of underlying purposes of the Act which are appropriate to legislation on marriage or divorce, respectively, may be utilized separately, if it is desired to place the marriage or divorce parts of the act in different divisions of the state statutes. On the use of such purpose provisions as guides to statutory construction, see Merrill, Uniformly Correct Construction of Uniform Laws, 49 Am. Bar Assoc. Jour. 515, 516 (1963) with citation of cases. None of the enumerations of purposes is intended to exclude, in construction and application, the consideration of other purposes spelled out in provisions of the Act.

SECTION 103. [*Uniformity of Application and Construction.*] This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

COMMENT

This is the standard Conference provision on uniformity and construction in aid thereof. This means that, once a provision has been judicially construed, courts of other states should follow that construction unless convinced by overwhelming demonstration that the pristine rendition unquestionably was in error. See *Commercial Nat. Bank v. Canal-Louisiana Bank*, 239 U. S. 520, 528, 60 L. Ed. 417, 421, 35 S. Ct. 194, 197 (1916).

## PART II
## MARRIAGE

SECTION 201. [*Formalities.*] Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this Act is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by law.

COMMENT

The effect of this section is to validate all marriages performed in the enacting state in accordance with its provisions. The provision does not necessarily invalidate marriages performed in the state which are not "licensed, solemnized, and registered" in accordance with this Act. For example, although an applicant for a marriage license may have given a false name to the clerk [see section 202(a)], the general policy favoring the validity of marriages would require that the marriage be held valid. This position is in accord with the case law. See Clark, Domestic Relations 41 (1968). Indeed, because Section 208 narrowly circumscribes the traditional annulment remedy, formal errors committed during the licensing, solemnization, or registration process could not be raised under that section.

In accordance with established usage, marriage is required to be between a man and a woman. These terms refer to all persons authorized by the Act to marry, and are not confined to those who have attained the legal age of majority. *Cochran v. State*, 91 Ga. 763, 165 S. E. 16 (1893); *Thomas v. Nauns*, 47 Haw. 605, 393 P. 2d 615 (1964); *State v. Burt*, 75 N. H. 64, 71 A. 30, Ann. Cas. 1912A, 232 (1908); *Kenyon v. Peo.*, 26 N. Y. 203, 84 Am. Dec. 177 (1863) (per Baltron, J.); *Blackburn v. State*, 22 Ohio St. 102 (1871); *Massa v. State*, 37 Ohio App. 532, 175 N. E. 219 (1930); *State v. Seiler*, 106 Wis. 340, 82 N. W. 167 (1900). The general course of decision holds that not every deviation from formal prescribed procedures renders a marriage subject to successful attack. Substantial compliance, in the light of attendant circumstances and statutory policy, results in a sustainable marriage. *Wallace v. Screws*, 227 Ala. 183, 149 So. 226 (1921); *Russell v. Paglialunga*, 153 So. 44 (La. App. 1934); *Knapp v. Knapp*, 149 Md. 203, 131 A. 329 (1925); *Johnson v. Johnson*, 214 Minn. 462, 8 N. W. 2d 920 (1943); *Hartman v. Valier & Spies Milling Co.*, 356 Mo. 424, 202 S. W. 2d 1 (1947); *Christensen v. Christensen*, 144 Neb. 763, 14 N. W. 2d 613 (1944); *Ponina v. Leland*, 454 P. 2d 16 (Nev. 1969); *Portwood v. Portwood*, 109 S. W. 2d 515 (Tex. Civ. App. 1937) (writ of error dismissed or refused). As to attacks on marriages which, though performed in accordance with the formal requirements of the Act, are either prohibited or are not permitted by the regulatory provisions of Section 202-207, consult Section 208, and comment thereto.

This section additionally emphasizes the legal concept of marriage as a civil contractual status, in distinction from any religious significance also attached thereto. In prescribing that a "marriage may be contracted, maintained, invalidated or dissolved only as provided by law," it does not preclude giving effect to the statutes and decisions of jurisdictions other than the enacting state.

SECTION 202. [*Marriage License and Marriage Certificate.*]

(a) The [Secretary of State, Commissioner of Public Health] shall prescribe the form for an application for a marriage license, which shall include the following information:

(1) name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) name and address of the parents or guardian of each party;

(4) whether the parties are related to each other and, if so, their relationship; and

(5) the name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(b) The [Secretary of State, Commissioner of Public Health] shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

COMMENT

The Act assumes that each state will adapt its existing marriage licensing statute so that it conforms to the substantive regulatory provisions of the Act. Such statutes vary substantially from state to state; and there is no special interest in obtaining uniformity as to the form utilized for marriage licenses and registrations. This section permits the state to forego legislative regulation by leaving the elaboration of forms to an appropriate state official. States unwilling to break completely with past legislative patterns nonetheless may want to review, modernize, and simplify legislation delineating

license and registration forms. The inclusion of social security numbers will facilitate the enforcement of duties of support, if this later becomes necessary. The information regarding prior marriages and their termination, as well as the information concerning children of whom both applicants are parents, similarly will prove helpful in a variety of situations making investigation appropriate. Information as to occupation may be useful to a determination of whether an underage marriage should be approved (Section 205), or in passing on issues as to maintenance, support, property division, or child custody. The name of a party who has been married previously of course should be that which he or she bore during that marriage.

SECTION 203. [*License to Marry.*] When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the [marriage license] clerk and paid the marriage license fee of [$————], the [marriage license] clerk shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective, or will have attained the age of 16 years and has either the consent to the marriage of both parents or his guardian, or judicial approval; [or, if under the age of 16 years, has both the consent of both parents or his guardian and judicial approval;] and

(2) satisfactory proof that the marriage is not prohibited; [and]

[(3) a certificate of the results of any medical examination required by the laws of this State].

COMMENT

To avoid inconvenience when one of the parties to the prospective marriage is residing, temporarily or permanently, outside the state, the Act requires that only one of the parties appear personally before the clerk to provide the information required by this section. Both parties must have signed the application. It is not intended that the state should create a new office to handle marriage license applications; the title of the official presently charged with the responsibility should be substituted for the bracketed phrase "[marriage license]" clerk wherever it appears in this Part. Each state should insert in the brackets its marriage license fee.

If both parties to the marriage have reached the age of 18, neither parental nor judicial consent is required to obtain a license. A number of states have already adopted this position; and it is consistent with the trend in federal as well as state law to lower to 18 the age at which persons are permitted to vote and to make autonomous decisions about important matters affecting their lives. A party under 18 must have consent of both of his parents to the marriage, if both are living and have capacity to consent. If one of his parents is unavailable, or if either or both of his parents refuses [illegible] to consent, judicial approval must be obtained pursuant to the provisions of Section 205. The Act requires judicial as well as parental consent to the marriage if one of the parties is below the age of 16. The provision respecting the issuance of a license for marriage to persons under the age of 16 is bracketed, to signify that states having a policy against marriage by persons so young may omit that provision, without doing violence to the concept of uniformity. The standard governing judicial approval is provided in Section 205.

"Satisfactory proof" of age and of required consent includes such methods as may be prescribed under Section 202(b) in the license form, or any other proof that should satisfy a reasonable official exercising unarbitrary judgment. See *United States v. Lee Huen*, 118 Fed. 442, 457 (N. D. N. Y. 1902).

Subsection (3) is bracketed because the Conference concluded that the traditional forms of premarital medical examination, now required by the marriage laws of most of the states, need not be preserved. The premarital medical examination requirement serves either to inform the prospective spouses of health hazards that may have an impact on their marriage, or to warn public health officials of the presence of venereal disease. For the latter purpose, the statutes have been proved to be both avoidable and highly inefficient. See Monahan, State Legislation and Control of Marriage, 2 Journal of Family Law 30, 34-35 (1962). Moreover, the cursory blood test which satisfies the requirements of most states provides very little service to the prospective spouses themselves. If a state decides to preserve its traditional premarital examination, a reference to its statute should be included in the cross-references to this section.

SECTION 204. [*License, Effective Date.*] A license to marry becomes effective throughout this state 3 days after the date of issuance, unless the [————] court orders that the license is effective when issued, and expires 180 days after it becomes effective.

COMMENT

A relatively short premarital waiting period has been chosen. The information available suggests that longer waiting periods do not discourage potentially unstable marriages; and, at any event, are often waived by judges. The other major function served by a waiting period, to discourage or eliminate the "daze" and "gin" marriages, can be accomplished by the three day delay required by this section. See Ellsey, Marriage or Divorce?, 22 U. Kan. City L. Rev. 9, 17 (1953). Each state should insert in the brackets the name of the appropriate court. The 180 day limit on the effectiveness of the license is for the convenience of engaged couples who need to plan for wedding dates long in advance. Obviously, this limit applies to all licenses.

SECTION 205. [*Judicial Approval.*]

(a) The [————] court, after a reasonable effort has been made to notify the parents or guardian of each underaged party, may order the [marriage license] clerk to issue a marriage license and a marriage certificate form:

[(1)] to a party aged 16 or 17 years who has no parent

capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; [or

(2) to a party under the age of 16 years who has the consent of both parents to his marriage, if capable of giving consent, or his guardian].

(b) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(c) The [————] court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

COMMENT

The court given responsibility for approving youthful marriages should be identified in the statute. Many states, continuing existing practice, will assign this to the juvenile court; in other states, the probate court is used and in still others the designated court is a family court or the trial court of general jurisdiction. In accordance with the decision taken in Section 203, in respect to marriages of persons under 16 years of age, the provision concerning issuance to such persons has been bracketed.

The Act deliberately avoids detailing procedural rules to govern the judicial proceedings it establishes unless some special procedural device is essential to accomplish a substantive result sought by the Act. Thus, subsection (a) requires only that the court make a "reasonable effort" to notify the parents that an underaged party has sought judicial approval of a marriage license. (As to what constitutes reasonable effort to notify a person, see Merrill on Notice, Chapters 13, 14 and 19.) Since a party under the age of 16 years needs the consent of both his parents, if they are alive and have capacity to consent, as well as judicial approval, the court clerk will have to notify both parents when the judicial proceeding is commenced. But when a person aged 16 or 17 seeks judicial approval because one of his parents refuses to consent, the court can approve the application if the parent cannot be located or even if a recalcitrant parent avoids receiving formal notification.

The legal standard for judicial approval requires the judge to estimate the capacity of the underaged party to assume the responsibility of marriage and to determine whether the marriage would serve the best interest of that party. The judge obviously will want to obtain personal information about the other party to the prospective marriage as well; but the statute does not permit the judge to refuse his approval because he believes the marriage would not serve the best interest of the party over 18. The substantive standard necessarily is somewhat vague. Nonetheless, a number of considerations are implicit in the language and structure of the subsection: since judicial approval is a substitute for parental consent for 16 and 17 year old applicants, such applicants cannot be denied judicial approval solely because a parent or parents have refused to consent to the marriage; although the prospective wife's pregnancy is not alone a sufficient ground for judicial approval, neither does the subsection mean that the judge may withhold approval solely because the prospective wife (whether she or her prospective spouse is the applicant) is pregnant. Pregnancy is one, but only one, of the relevant considerations the judge will weigh in determining the applicant's best interest. Although the standard is the same whether the applicant is between the ages of 16 and 18 or is under the age of 16, the judge will no doubt investigate younger applicants more thoroughly. The provision indicates that the judge will be abusing his discretion if he were to decide that no 16 or 17 year old is mature enough to marry.

SECTION 206. [*Solemnization and Registration.*]

(a) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe, or Native Group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the [marriage license] clerk.

(b) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the [————] court for an order permitting the marriage to be solemnized by proxy.

(c) Upon receipt of the marriage certificate, the [marriage license] clerk shall register the marriage.

(d) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

COMMENT

Subsection (a) lists the officials permitted to solemnize marriage. The clause, "no individual acting alone", was designed to take account of the increasing tendency of marrying couples to want a personalized ceremony without traditional church, religious or civil trappings. This provision authorizes one of the parties to such a marriage ceremony to complete the marriage certificate form and forward it to the appropriate official for registration. The phrase, "Native Group", was added to take account of indigenous or other aboriginal cultural groups who do not consider themselves to be nations or Tribes, such as some of the native groups found in Alaska and Hawaii.

Subsection (b) authorizes the solemnization of marriage by proxy. During World War II, special proxy marriage statutes were enacted to facilitate marriages when one of the prospective spouses could not be present because of military responsibilities. Although it is not expected that proxy marriages will be common, there are many reasons why, in individual cases, couples may prefer such a ceremony. So long as the marriage license procedure has been followed and the official performing the ceremony has no reason to doubt the intentions of the absent prospective spouse, there is no reason why a proxy marriage should be prohibited. As to the form of proxy, any written document in the well-known form of a proxy such as is used in other serious transactions suffices. Compare *State v. Anderson*, 239 Ore. 200, 396 P. 2d 558 (1964). The proceeding for an order authorizing proxy marriage is special, and may be informal, so long as the two conditions precedent to solemnization by proxy are demonstrated to the court's judicial satisfaction. If the official solemnizing the marriage is not satisfied that the absent party has consented to the marriage, he may refuse to perform the ceremony until the parties obtain a court order authorizing the marriage by proxy. [Section 205(b).]

Subsection (c) does not deal with the subject of procuring a copy of the registration of the marriage. This will be governed by the law of each state as to the procurement of certified copies of public records. A state that does not provide for the registration of marriages should make provision therefor upon adoption of this Act, either through a special statute or by administrative rule.

Subsection (d) states definitely what probably would be the meaning of the section without it. However, it probably is wise to remove any possibility of misconception.

SECTION 207. [*Prohibited Marriages.*]

(a) The following marriages are prohibited:

(1) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) a marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood, or by adoption;

(3) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures.

(b) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(c) Children born of a prohibited marriage are legitimate.

COMMENT

The Act eliminates most of the traditional marriage prohibitions and, consistent with the national trend, eliminates all affinity prohibitions. Only bigamous and incestuous marriages are prohibited. The Act follows the [illegible] permitting first cousin marriages, but uncle-niece and aunt-nephew marriages are prohibited unless such marriages are permitted by the established custom of aboriginal cultures. The phrase, "aboriginal cultures", is based on language employed in government documents. It is used to denote a cultural practice recognized by the original or earliest known inhabitants of a region (see Random House Dictionary's illustration: "aboriginal customs"). The intent is to save those special customs of Indian tribes, of Alaskan natives of various ethnic origins, and of Polynesians, which may not accord with the incest taboos of Western culture. Rhode Island, in considering this section, must take into account the effect of R. I. Gen. Laws (1956) § 15-1-4, in order to determine whether the Uniform Act, in this respect, should be conformed to local policy. See *In re May's Estate*, 305 N. Y. 486, 114 N. E. 2d 4 (1957). Marriages of brothers and sisters by adoption are prohibited because of the social interest in discouraging romantic attachments between such persons even if there is no genetic risk. The adoption provision is addressed directly to avoiding questions as to the impact of adoption on marriage law, since the adoption statutes in many states have not expressly resolved the issue. Cf. 6 & 7 Eliz., 2 c. 5 § 13 (3) (1958). The Act does not prohibit uncle-niece and aunt-nephew marriages where an adoption has created the relationship.

Subsection (b) is intended to cure a defect arising under the laws of many states. For one reason or another, many persons, whose marriages are invalid because of prohibitions, neglect to contract formal marriages after the impediment is removed. If they reside in a state where common law marriage is recognized, there is no problem. But, in other jurisdictions serious harm can result to legitimate interests of the surviving partner, of a sort which the legislators very likely would not have sanctioned had the possibility occurred to them. This subsection is intended to protect those interests.

Subsection (c) enacts the general modern trend to treat the offspring of prohibited marriages as legitimate.

SECTION 208. [*Declaration of Invalidity.*]

(a) The [————] court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(2) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity;

(3) a party [was under the age of 16 years and did not have the consent of his parents or guardian and judicial approval or] was aged 16 or 17 years and did not have the

consent of his parents or guardian or judicial approval; or

(4) the marriage is prohibited.

(b) A declaration of invalidity under subsection (a) (1) through (3) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(1) for a reason set forth in subsection (a) (1), by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;

(2) for the reason set forth in subsection (a) (2), by either party, no later than one year after the petitioner obtained knowledge of the described condition;

(3) for the reason set forth in subsection (a) (3), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

*Alternative A*

[(c) A declaration of invalidity for the reason set forth in subsection (a) (4) may be sought by either party, the legal spouse in case of a bigamous marriage, the [appropriate state official], or a child of either party, at any time prior to the death of one of the parties.]

*Alternative B*

[(c) A declaration of invalidity for the reason set forth in subsection (a) (4) may be sought by either party, the legal spouse in case of a bigamous marriage, the [appropriate state official] or a child of either party, at any time, not to exceed 5 years following the death of either party.]

(d) Children born of a marriage declared invalid are legitimate.

(e) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this Act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to non-retroactive decrees of invalidity.

COMMENT

This section is designed to replace the traditional law of annulment of marriage. Some of the common grounds for annulment, such as fraud, have been abolished completely. Others have been restated to avoid unnecessary overlap with the dissolution sections.

This section states the circumstances under which the marriage may be terminated by a "declaration of invalidity," and establishes the "defenses" to each of the bases for a declaration. Subsection (b) states a general policy against declarations of invalidity after the death of either party to the marriage, and subsection (c) states a policy in favor of applying the dissolution provisions of Part III to the spouses' financial affairs following a declaration of invalidity.

Subsection (a)(1) states that declaration of invalidity may be obtained where there is proof that one of the parties to the marriage lacked capacity to consent to the marriage because of emotional illness or other mental disturbance or because of the incapacitating effect of alcohol or drugs. In the case of drugs and alcohol, the court is entitled to be somewhat skeptical about a claim of incapacity because of the protective features of the three day waiting period required by Section 204. Courts construing the "lacks capacity to consent" language of Subsection (a)(1) will undoubtedly continue to apply existing stringent standards by holding that a declaration of invalidity is appropriate only if the petitioner offers clear and definite evidence that one of the spouses lacked "sufficient mental capacity to understand intelligently the marriage contract . . . and the obligations it imposed upon him." *Ertel v. Ertel*, 313 Ill. App. 326, 40 N. E. 2d 85 (1942). The proceeding must be commenced within ninety days after petitioner discovered the existence of the condition. [Subsection (b)(1).] If a party was incapacitated by drugs or alcohol, the "statute of limitations" would of necessity begin to run shortly after the ceremony; thus, most claims of invalidity on such grounds will be stale a few months after the marriage. A declaration of invalidity may come later if one of the spouses is mentally retarded, has other mental infirmity, or is emotionally unstable; but the court would properly be skeptical if the petitioner asserted, after a substantial period of cohabitation, that he had discovered, only within the preceding three months, his spouse's lack of capacity, on their wedding day, to consent.

Subsection (a)(2) authorizes a declaration of invalidity if one of the spouses was unable to consummate the marriage by sexual intercourse, so long as the other spouse did not know of the condition at the time of the ceremony and if the proceeding is instituted within a year after the petitioner obtains knowledge of the condition. The one year period is provided to permit couples some time to try to adjust to a marriage under these circumstances without running the risk that a declaration of invalidity would be precluded. Since the marriage cannot be invalidated after the death of either spouse, and since the spouses' finances can be adjusted as if a divorce had been granted under subsection (e), there is no reason to compel the spouses to make a more rapid decision about continuing the marriage. In the absence of proof of extraordinary circumstances, such as a marriage by proxy or some enforced separation of the spouses prior to cohabitation, the court would be warranted in assuming that the one year period begins shortly after the ceremony rather than at some later date.

The phrase, "obtained knowledge of the described condition," in subsec-

tion (b) (1) and (2), is intended to mean awareness of the event, including information from a reliable source. In light of the public interest favoring promptness in bringing the petition, "knowledge" should be construed to include the possession of information sufficient to arouse inquiry concerning the existence of the condition. See Merrill, Notice § 4 (1952).

Subsection (a) (3) provides that, if one of the spouses was under the age of 18 at the time of the ceremony and married without satisfying the consent requirements of Section 203 or Section 205, that party or his parent or guardian may obtain a declaration of invalidity. There are, however, two important limitations to this ground for a declaration of invalidity: (1) a party to the marriage who was over 18, or a party under the age of 18 who had fulfilled the requirements of Section 203 or Section 205, is not entitled to a declaration of invalidity because there is no reason to permit that party to invalidate a marriage he was authorized to contract; (2) the underaged party or his representative is not entitled to a declaration of invalidity when he reaches the age of 18 (or 17, if he had parental consent and lacked only approval from the appropriate judicial officers). The brackets about the provision concerning persons aged under 16 carry out the options extended under Section 203.

The provisions of subsection (b), stating that no declaration of invalidity may be "sought" after the death of either party is intended to prohibit such a collateral attack upon the marriage, in lieu of a declaration, in all proceedings, including probate proceedings. Moreover, the use of the word "sought" rather than "commenced" implies that the death of a party to the marriage at any time before the entry of final judgment would terminate a proceeding attacking the marriage. The underlying policy reasons for this principle are clear: the traditional "void marriage" doctrine often imposed unwise and unfair penalties on innocent "spouses" in stable family situations long after the questioned marriage had occurred. The penalties serve no effective deterrent purpose, but cause severe economic dislocations; a spouse may be denied workmen's compensation and social security benefits, or even a share in a spouse's estate, after the marriage has been terminated by the death of the other spouse, despite the fact that the surviving spouse had no reason to suspect the invalidity of the marriage.

Alternative A of subsection (c) applies this principle to marriages prohibited by Section 207. A declaration of invalidity of a prohibited marriage may be obtained by either party to the marriage, by the legal spouse in bigamous marriages, by the appropriate state official, or by a child of one of the parties—but only prior to the death of one of the parties to the marriage. Alternative B would permit a declaration of invalidity by the same parties at any time up to five years after the death of either party to the marriage. A state considering the adoption of Alternative B should consider whether authorizing post-death collateral attacks on prohibited marriages is worth whatever deterrent effect the provision may have, when the only consequence of a successful attack will be to disturb settled financial relationships.

Subsection (c) authorizes the court to treat declarations of invalidity as what they have in fact become—substitutes for divorce. After considering all relevant circumstances, especially the impact of a retroactive decree upon the spouses, their children and other third parties, the court may make the decree not retroactive and may then apply the provisions of Part III in distributing the parties' property and in determining maintenance and child support. Even if the decree is made retroactive, the court may have to distribute property acquired by the spouses during the marriage. In the past this has been accomplished by analogy to partnership law. Cf. N. H. Rev. Stat. Ann. § 458:16 (1955); Clark, Domestic Relations 136 (1968).

[SECTION 209. [*Putative Spouse.*] A person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (Section 207) or declared invalid (Section 208). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.]

COMMENT

The best known method used by the courts to protect the "marital" interests of persons who have established a stable family relationship which cannot be recognized as a marriage (a marriage which is labelled "void" under current law, perhaps, or parties who have cohabited as husband and wife without marrying ceremonially) is the common law marriage doctrine. See Section 211. But a variety of other equitable doctrines have also been utilized—one or another can be found in almost every state—to preserve, if not the status, the financial incidents of valid marriage in such circumstances. See, e.g., Weyrauch, Informal and Formal Marriage—An Appraisal of Trends in Family Organization, 28 U. Chi. L. Rev. 88 (1960); *Danes v. Smith*, 30 N. J. Super. 292, 104 A. 2d 455 (1954). In the absence of doctrines such as these, many persons who in good faith consider themselves married, and who have established and maintained over a long period a stable family relationship, would be denied both the economic and status incidents of marriage. This section makes it clear that the Act was not intended to abolish such doctrines. In addition, it codifies one of the equitable doctrines which has proved, in California and other experience, to be especially useful. For illustrations of the application of the putative spouse doctrine in California, see Comment, Rights of the Putative and Meretricious Spouse in California, 50 Calif. L. Rev. 866 (1962). Cases from other jurisdictions illustrative of the putative spouse concept include *Walker v. Walker*, 330 Mich. 332, 47 N. W. 2d 633, 31 A. L. R. 2d 1250 (1951) and annotation; *Chrismond v. Chrismond*, 211 Miss. 746, 52 So. 2d 624 (1951); *Barone v. Barone*, 207 Ore. 26, 294 P. 2d 609 (1956); *Brandt v. Brandt*, 215 Ore. 423, 333 P. 2d 887 (1958); *Buck v. Buck*, 19 Utah 2d 161, 427 P. 2d 954 (1967).

It is possible for a person to have more than one putative spouse at the same time, since good faith is the test. In addition, a putative spouse and a legal spouse may be able to claim from a single estate or from other funds legally available to a spouse. A common situation of the latter type might involve a bigamous marriage in which the second spouse was never married or had been divorced. In such cases, the court is instructed to apportion property and the other financial incidents of marriage between the legal and the putative spouse, or among putative spouses. A fair and efficient apportionment standard is likely to be the length of time each spouse cohabited with the common partner. For illustrative cases, see *Estate of Ricci*, 201 Cal. App. 2d 146; 19 Cal. Rptr. 739 (1962); *Sousa v. Freitas*, 19 Cal. App. 3d 660; 89 Cal. Rptr. 485 (1970). Because the codification of any particular equitable doctrine designed to protect the financial interests of innocent parties is bound to be controversial, this section has been bracketed. Passage of the Act without this section should not, therefore, be taken to imply a legislative judgment adverse to continuing development of this or similar doctrines by the case law.

The adoption of this section is most desirable (1) to provide legislative foundation for achieving the obviously just results provided by the putative spouse doctrine; (2) to spell out specifically the rights conferred upon a putative spouse; (3) to state specifically when the status of putative spouse terminates; (4) to eliminate any distinction which some courts might attempt between prohibited marriages and those which merely are subject to declaration of invalidity; (5) to provide specifically for equitable apportionment, on the basis of justice and the special circumstances of each case, either where there are a legal spouse and a putative spouse, or where there are several putative spouses. Some judges have expressed difficulties in this regard, but the standard is a workable one which the courts are accustomed to apply in many fields, and there is a body of available authority to afford guidance, as indicated previously in this Comment.

SECTION 210. [*Application.*] All marriages contracted within this State prior to the effective date of this Act, or outside this State, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicil of the parties, are valid in this State.

COMMENT

This section serves two purposes. It insures that the Act's marriage regulations will not be used to invalidate marriages contracted before it takes effect. More importantly, it codifies the emerging conflicts principle that marriages valid by the laws of the state where contracted should be valid everywhere, even if the parties to the marriage would not have been permitted to marry in the state of their domicil. See Restatement Second of Conflict of Laws, Section 283 [Proposed Official Draft (1969)]. However, the section expressly fails to incorporate the "strong public policy" exception of the Restatement and hence may change the law in some jurisdictions. This section will preclude invalidation of many marriages which would have been invalidated in the past.

The Conference has withdrawn its approval of the Uniform Marriage Evasion Act. This section and the provisions of Section 207 are inconsistent with that Act. A state adopting this Act should repeal the earlier one, if it exists therein.

*Alternative A*

SECTION 211. [*Validity of Common Law Marriage.*] Common law marriages are not invalidated by this Act.]

*Alternative B*

SECTION 211. [*Invalidity of Common Law Marriage.*] Common law marriages contracted in this State after the effective date of this Act are invalid.]

COMMENT

These alternatives are presented because the line of cleavage in the states, between those which consider the common law marriage to be a highly useful social institution and those which insist that all marriages *de jure* should be contracted in accordance with prescribed statutory formalities, proved impossible to erase. In view of this basic conflict as to policy, the Conference concluded that there was no hope of achieving uniformity of enactment, no matter which rule was adopted. Accordingly, the alternative versions of this section permit each state to make its decision in accordance with its own view as to policy, and to change its law at any time desired without destroying the effect of its adoption of the Uniform Act. Alternative A would preserve common law marriage in the form it has already taken by judicial decision. Alternative B would make clear that common law marriages contracted in the adopting state in the future are to not be recognized. The alternatives are a signal to the state legislatures that this issue should be re-examined even if the state is one of those which has already abolished common law marriage.

## PART III
## DISSOLUTION

SECTION 301. [*Application of [Rules of Civil Practice] to Proceedings under this Act.*]

(a) The [Rules of Civil Practice] apply to all proceedings under this Act, except as otherwise provided in this Act.

(b) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of ——— and ———." A custody or support proceeding shall be entitled "In re the (Custody) (Support) of ———."

(c) The initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this Act, shall be denominated as provided in the [Rules of Civil Practice].

(d) In this Act, "decree" includes "judgment."

(e) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

COMMENT

The basic philosophy of this part of the draft is to utilize the procedural systems of the several states, so far as possible, in divorce litigation. However, in certain respects, the change from "fault" to "no-fault" basis dictates the use of terms and of procedures different from those which have become thoroughly associated with fault-orientation, in order to impress bench and bar with the break from past concepts.

The internal brackets in the catchline and the bracketing of "Rules of Practice" throughout the section indicate the bill draftsman's responsibility to use whatever term fits his state's procedural law.

Subsection (a) makes the state's normal procedural rules applicable to proceedings under this Act, except where it specifically provides otherwise. Procedural provisions in the Act include subsections (b) and (c) of Section 301; Section 304; Section 311; Section 314; Section 316; Section 403; Section 406 and Section 410.

Subsection (b) incorporates suggestions made by several writers that substitution of a neutral case title ("In re the Marriage of ———— and ————") for the customary adversary title ("———— v. ————"), will help to reduce the hostile atmosphere of marital actions. The Act adopts this suggestion and extends it to independent custody and support proceedings. A custody or support proceeding commenced as part of a proceeding for dissolution or legal separation need not be separately entitled.

Subsection (c), like subsection (b), is intended to reduce the adversary trappings of family cases by substituting a "proceeding" for the customary "action" and denominating the pleadings "petition" and "response" rather than "complaint" and "answer." Similar provisions are West's Ann. Calif. Civ. Code (1970) §§ 4503, 4504; Iowa General Assembly, 1970 Regular Session H. F. 1156. The practice in states that already use a "petition" for the initial pleading in all civil cases will not be affected by this subsection.

Subsection (d) is designed to prevent any confusion from variance in terms.

Subsection (e) emphasizes the nonadversary philosophy by providing, in accordance with the practice of some states, that decrees of dissolution or separation shall not be awarded to either party. Instead they are to specify the change in the status of the parties.

Since the Rules of Civil Practice are made applicable to proceedings under the Act, such procedural tools as discovery procedures, bills of particulars, etc., may be required in proper cases. Obviously, the nonadversary nature of the proceedings make such tools inappropriate to the issue of irretrievable breakdown and the court should not permit their use. In matters of property division, the propriety of separation or maintenance agreements, and of provision for children, these tools may be extremely useful, and are not precluded by the Act, if they are found in the state's arsenal of procedural weapons.

SECTION 302. [*Dissolution of Marriage; Legal Separation.*]

(a) The [————] court shall enter a decree of dissolution of marriage if:

(1) the court finds that one of the parties, at the time the action was commenced, was domiciled in this State, or was stationed in this State while a member of the armed services, and that the domicil or military presence has been maintained for 90 days next preceding the making of the findings;

(2) the court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage;

(3) the court finds that the conciliation provisions of Section 305 either do not apply or have been met;

(4) to the extent it has jurisdiction to do so, the court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(b) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

COMMENT

Subsection (a) lists the three findings that a court must make before it has jurisdiction to enter a decree of dissolution of marriage: first, it must find that one party to the marriage has established an appropriate connection with the state; second, it must find that the marriage is irretrievably broken; and finally, to the extent it has jurisdiction to do so, it must have considered and passed on the issues of custody, support, maintenance, and property disposition. If the court lacks jurisdiction to act upon any of the matters listed in subsection (a) (3), without acting upon that matter, it may enter a decree of dissolution of marriage. Thus, if the court is acting upon the petition of one spouse only and the other spouse is not subject to the personal jurisdiction of the court, the court lacks jurisdiction to decide issues relating to maintenance, *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 1 L. Ed. 2d 1456, 77 S.Ct. 1360 (1957); *Estin v. Estin*, 334 U.S. 541, 92 L. Ed. 1561, 68 S.Ct. 1213, 1 A. L. R. 2d 1412 (1948), or the distribution of property not before the court, see *Fall v. Eastin*, 215 U.S. 1, 54 L. Ed. 65, 30 S.Ct. 3, 23 L.RANS 924, 17 Ann. Cas. 853 (1909); and may not have jurisdiction, acting alone, to decide issues relating to support, consult the Uniform Reciprocal

Enforcement of Support Act, or child custody, *May v. Anderson*, 345 U.S. 528, 97 L. Ed. 1221, 73 S.Ct. 840 (1953), consult the Uniform Child Custody Jurisdiction Act. In such a case, the court has jurisdiction only to dissolve the marriage and it may enter its decree of dissolution after making the findings set forth in subsection (a) (1) and (2).

The 90 day period of subsection (a) (1) is intended to be continuous and to apply both to domiciliaries and to members of the armed services. It may be started at any time, but it must exist at the commencement of the action and it must have been maintained for 90 days next preceding the findings by the court. Obviously, dependent upon circumstances, it may commence, effectively, sometime before the initiation of the action. One who has just entered the forum state may commence the proceeding immediately, thus enabling the court to enter such temporary orders as are necessary to protect the rights of the parties. Since the test is domicil, the party need not remain physically present throughout the 90 day period, so long as he has acquired no new domicil. Similarly, a member of the armed forces might be outside the boundary lines, if he remained "stationed" therein. A showing that either party satisfies the 90 day requirement is sufficient; hence a petitioner may utilize fulfillment of the 90 day period by the respondent.

Subsection (a) (2) embodies the basic shift from fault to no-fault grounds for dissolution of the marriage which is the primary object of this part of the Act. Many terms might have been used to characterize the concept. "Irretrievably broken" was chosen because this has become a term of common use in the literature of divorce reform, and so has gained a significant meaning upon which judges may rely for guidance. It is closely related to the standards recently adopted in California ("irremediable breakdown") and in Iowa ("breakdown of the marriage relationship . . . no reasonable likelihood that the marriage can be preserved") and equates to the doctrinal result attained under the concept of incompatibility, *Newman v. Newman*, 391 P. 2d 902 (Okla. 1964) ("irremediable rift . . . such a conflict of personalities as to destroy the legitimate ends of matrimony and the possibility of reconciliation"). Two guidelines are set up for evidence sufficient to support a finding that the marriage is irretrievably broken: (i) that the parties have lived separate and apart for more than 180 days next preceding the commencement of the proceeding for dissolution; (ii) that there exists "serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage." These provisions satisfy the desire of those who wish to have specific guidelines to assist the court in determining what is irretrievable breakdown. At the same time, the second provision retains all the judicial discretion to weigh all the evidence bearing upon the death of the marriage which was envisioned in the original draft of this section as approved by the Conference in St. Louis in 1970.

Subsection (a) (3) prescribes that the court must find specifically either that the conciliation provisions of Section 305 do not apply or that they have been met. This guards against overlooking the Act's policy to encourage conciliation procedures in situations where there is promise of success.

The phrase, "considered, approved, or provided for," in subsection (a) (4) is intended to confer upon the court the authority to refuse to make any award, if the evidence justifies an outright denial, as well as the authority to make such allotment as the facts require. To avoid any doubt, the court is authorized expressly to provide for a later hearing to complete action on these



matters, if necessary. Probably this would be within the general scope of judicial authority in most states.

Subsection (b) means that the court may not grant a decree of legal separation over the objection of one of the parties. In cases where both parties are before the court, if one party requests a decree of legal separation and the other party requests a decree of dissolution, the court lacks jurisdiction to enter a decree of legal separation. If only one party is before the court and the court lacks personal jurisdiction over the other party, the court may enter a decree of legal separation at the petitioner's request. A similar provision is found in the California Family Law Act of 1969, California Civil Code section 4506(b).

SECTION 303. [*Procedure; Commencement; Pleadings; Abolition of Existing Defenses.*]

(a) All proceedings under this Act shall be commenced as provided by the [Rules of Civil Practice].

(b) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(1) the age, occupation, and length of residence in this State of each party;

(2) the date of the marriage and the place at which it was registered;

(3) that the jurisdictional requirements of Section 302 exist and the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) the relief sought.

(c) Either or both parties to the marriage may initiate the proceeding.

(d) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the [Rules of Civil Practice] and within [30] days after the date of service may file a verified response.

(e) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time,

are abolished.

(f) The court may join additional parties proper for the exercise of its authority to implement this Act.

COMMENT

Subsection (a) provides for commencement of proceedings in whatever way is required by the local practice rules or act.

Subsection (b) lists the necessary allegations of the petition. Other appropriate allegations may be included at the pleader's discretion. Residence, of course, has the meaning "domicil," as this is made the basis of jurisdiction in Section 302 (a) (1) and the comment thereto. If a petitioner is a member of the armed services, the allegation of residence in the state is satisfied by an allegation of the length of time petitioner has been stationed within the state as provided in Section 302 (a) (1). "Occupation" means vocation, not avocation. If the petitioner has grounds for relying upon both (i) and (ii) in support of the allegation of irretrievable breakdown, he may allege them conjunctively, and, if the proof supports either one, he will be entitled to his decree under Section 302. Subsection (b) (5) does not require the parties to allege their arrangements as to property division, since, under Section 306, they may choose to keep these arrangements private. In such cases, the court's duty under Section 302 (a) (3) to consider, approve, or make provision for property disposition may be satisfied by inquiring of both parties whether they have freely arrived at a mutually satisfactory disposition of their property.

Subsection (c) permits joint initiation of the proceeding by both spouses, thereby shifting from the traditional doctrine of the law forbidding so-called collusive divorce.

Subsection (d) provides for service of process, petition, or notice, as the case may be, in the manner prescribed by local practice rules or codes, but requires a verified response, if any, and prescribes its filing within 30 days after date of service. This is another of the procedures designed to affirm the variance of the non-fault divorce procedure from the traditional litigation based on fault grounds.

Subsection (e) abolishes the traditional defenses to divorce and legal separation. A state that recognizes other defenses should add those to the list in this subsection and again in the specific repealer, Section 504 (3). The intention is that the sole defense, other than jurisdictional defenses, to dissolution of marriage or legal separation will be that the marriage is not irretrievably broken.

Subsection (f) is designed to insure to the court full authority to cause additional parties to be joined, whenever necessary to the complete effectuation of any of its duties or functions in administering the Act. Under the procedures of some states, it appears that it is necessary to provide expressly for this authority. The method for serving these new parties will be any method available under the state's general procedural rules or statutes.

SECTION 301. [*Temporary Order or Temporary Injunction.*]

(a) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(1) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(4) enjoining a party from removing a child from the jurisdiction of the court; and

(5) providing other injunctive relief proper in the circumstances.

(c) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(d) A response may be filed within [20] days after service of notice of motion or at the time specified in the temporary restraining order.

(e) On the basis of the showing made and in conformity with Sections 308 and 309, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(f) A temporary order or temporary injunction:

(1) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(2) may be revoked or modified before final decree on a

showing by affidavit of the facts necessary to revocation or modification of a final decree under Section 316; and

(3) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

COMMENT

Subsection (a) permits motions for temporary maintenance and temporary support in three kinds of proceedings, (1) dissolution of marriage; (2) legal separation; and (3) independent proceedings for maintenance, support, or property disposition following an *ex parte* dissolution of the marriage granted in another, earlier proceeding. Motions for temporary custody are covered by Section 403.

Subsection (b) is intended to permit the court to restrain either spouse or a third party, including a bank or other institutional holder of property, from dealing with the property in the manner specified, or to take other action which might involve serious mental or physical harm to a party or to one of the children. It also is intended to authorize the court to prevent the removal of a child from its jurisdiction, and to grant any other injunctive relief necessary to proper judicial functioning under the Act. In some states, the local rules of practice may require that third parties be made parties to the proceeding in order to accomplish this goal.

Subsection (c) authorizes a limited *ex parte* practice which permits the court, upon a showing that irreparable injury would otherwise result, to issue a temporary restraining order without notice to the other party. The order becomes effective upon service on the other party and will remain effective until discharged by the court. It is anticipated that an early hearing date will be set on an order to determine whether the temporary restraining order should be continued or made permanent so that the other party may be heard as soon as possible on the merits. A provision similar to subsections (b) and (c) appears in the California Family Law Act of 1969 (California Civil Code, section 4359, as amended, 1970).

Each state should insert its own time limit in subsection (d), bearing in mind that the matter should be handled with dispatch and that the court may make an order shortening time on a proper showing.

Subsection (f) (1) is intended to make clear that the amount established for temporary support or maintenance will not prejudice the parties at later hearings held to determine the amount of permanent support or maintenance. If the parties and their attorneys are able to agree on amounts for temporary payments without having to worry that these amounts will establish a precedent of need or ability to pay at later hearings, much adversary maneuvering and its consequent result of suspicion and bitterness may be avoided.

SECTION 310. [*Irretrievable Breakdown.*]

(a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

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

(1) make a finding whether the marriage is irretrievably broken; or

(2) continue the matter for further hearing not fewer than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court, at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(c) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

COMMENT

This section, with others, embodies a new approach to dissolution of marriage. It provides that the only basis upon which a marriage may be dissolved is that a court has found that the marriage has broken down irretrievably. The traditional grounds for divorce, which assumed that one party had been at fault by committing an act giving rise to a cause of action for divorce, are abolished. The legal assignment of blame is here replaced by a search for the reality of the marital situation: whether the marriage has ended in fact. The public policy embodied in this section was recognized in *DeBurgh v. DeBurgh*, 39 Cal. 2d 858, 863-64, 250 P. 2d 598, 601 (1952) (Traynor, J.): "when a marriage has failed and the family has ceased to be a unit, the purposes of family life are no longer served and divorce will be permitted." California, Iowa, and other states have adopted the no-fault approach to marriage dissolution proposed by this section.

This section makes the determination of whether the marriage is irretrievably broken, in all cases, a matter for determination by the court, "after hearing," which means "upon evidence." *Shields v. Utah Idaho Central R. R. Co.*, 305 U. S. 177, 83 L. Ed. 111, 59 S. Ct. 160 (1938); *Juster Bros. v. Christgau*, 214 Minn. 106, 7 N. W. 2d 601 (1943); *State ex. rel. Ellis v. State Road Com.*, 100 W. Va. 631, 131 S. E. 7 (1925). In procedural terms, it distinguishes two types of cases. In the group of cases covered by subsection (a), the only evidence presented to the court supports the allegation of the petition that the marriage is irretrievably broken. Either both parties have so stated whether in the petition or by oral or written testimony before the court, or one party has done so without objection from the other. In this group of cases, the court must make a finding, after hearing, whether the marriage is irretrievably broken. The Conference considered, even as to this category of cases, that the determination of breakdown should be a judicial function rather than a conclusive presumption arising from the parties' testimony or from the petition. This decision accords with the position taken in

California and in Iowa. The alternative of adjournment, provided by subsection (b) for cases in which there is a dispute as to whether the marriage is irretrievably broken, is not available in these cases. In most cases falling under the terms of subsection (a), it is anticipated that the court will find that the marriage is irretrievably broken because there will be no evidence before the court that might support a contrary finding. In *rare* cases, however, the court may not find the evidence credible. In such cases, the court normally will permit the parties to produce other evidence that the court may find persuasive. For this purpose, normal practice will permit the parties to request that the hearing be continued for a short time. Power to continue is implicit in the power to hear.

Subsection (b) covers the situation in which the parties are in dispute as to whether their marriage is irretrievably broken. In these circumstances, the court is directed to consider the factors relevant to marital breakdown, including the petitioner's reasons for seeking a dissolution of the marriage and the prospect that the parties may achieve a reconciliation, and to decide forthwith or at an adjourned hearing whether the marriage is irretrievably broken.

Because the defense of recrimination and other concepts associated with fault are abolished by the Act (sections 303(a) and 503), the court may not refuse to find that the marriage has broken down irretrievably merely because of petitioner's conduct during the marriage. If the court decides to adjourn the matter as provided in subsection (b) (2), it may suggest that the parties seek counseling during the period of adjournment. The waiting period must be no shorter than thirty days and, if possible in light of the court's calendar, no longer than sixty days after the previous hearing. The court must make its final decision as to whether the marriage is irretrievably broken at the adjourned hearing. The section does not contemplate more than one adjourned hearing, although certainly a hearing not completed at one session may be continued. The power of either party, or of the court, to require a conciliation conference, is in aid of the policy to encourage conciliation, and, in appropriate cases, resort to counseling, without invoking the controversial tool of compulsory counseling.

Section 305 intentionally makes no distinction between childless marriages and those with minor children. If the parties establish that their marriage has broken down irretrievably, the court is not authorized to make a contrary finding because of the impact of a dissolution of the marriage upon the minor children. Under former law, if the parties established the existence of a ground for divorce and no defense existed, the court lacked jurisdiction to deny the divorce simply because of its views about divorce or the impact of divorce on minor children. There is no intention to change this rule. The court's power in this regard is limited to seeing that provision has been made for the custody and support of minor children as contemplated by Section 302(a)(3).

Because it is expected that the parties themselves will be the primary source of evidence as to irretrievable breakdown, the Act has eliminated any requirement of corroboration.

The Conference took no position as to whether a family court should be established as an adjunct to the Act, because it felt that the subject was one in which uniformity was not essential, and, indeed, that uniformity by statute would be impossible, in view of differing state constitutional provisions. The Act does not forbid the creation of a family court, or the use of a family court division within a court having jurisdiction over divorce and related subjects.

Subsection (c) insures that the court, in finding irretrievable breakdown, will consider whether there is any *reasonable* prospect of reconciliation. The remedy for a determination of any relevant fact issue, contrary to the evidence, is afforded by the usual channels of appeal.

SECTION 306. [*Separation Agreement.*]

(a) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(b) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(c) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(d) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support:

(1) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, or

(2) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(e) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(f) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or

limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

COMMENT

An important aspect of the effort to reduce the adversary trappings of marital dissolution is the attempt, made by Section 306, to encourage the parties to reach an amicable disposition of the financial and other incidents of their marriage. This section entirely reverses the older view that property settlement agreements are against public policy because they tend to promote divorce. Rather, when a marriage has broken down irretrievably, public policy will be served by allowing the parties to plan their future by agreeing upon a disposition of their property, their maintenance, and the support, custody, and visitation of their children.

Subsection (b) undergirds the freedom allowed the parties by making clear that the terms of the agreement respecting maintenance and property disposition are binding upon the court unless those terms are found to be unconscionable. The standard of unconscionability is used in commercial law, where its meaning includes protection against one-sidedness, oppression, or unfair surprise (see section 2-302, Uniform Commercial Code), and in contract law, *Scott v. U. S.*, 12 Wall (U. S.) 443 (1870) ("contract . . . unreasonable and unconscionable but not void for fraud") *Stiefler v. McCullough*, 97 Ind. App. 123, 174 N. E. 623 (1931); *Terre Haute Cooperage v. Branscome*, 203 Miss. 493, 35 So. 2d 537 (1948); *Carter v. Boone County Trust Co.*, 338 Mo. 629, 92 S. W. 2d 647 (1936). It has been used in cases respecting divorce settlements or awards. *Bell v. Bell*, 150 Colo. 174, 371 P. 2d 773 (1962) ("It is division of property is manifestly unfair, inequitable and unconscionable"). Hence the act does not introduce a novel standard unknown to the law. In the contest of negotiations between spouses as to the financial incidents of their marriage, the standard includes protection against overreaching, concealment of assets, and sharp dealing not consistent with the obligations of marital partners to deal fairly with each other.

In order to determine whether the agreement is unconscionable, the court may look to the economic circumstances of the parties resulting from the agreement, and any other relevant evidence such as the conditions under which the agreement was made, including the knowledge of the other party. If the court finds the agreement not unconscionable, its terms respecting property division and maintenance may not be altered by the court at the hearing.

The terms of the agreement respecting support, custody, and visitation of children are not binding upon the court even if these terms are not unconscionable. The court should perform its duty to provide for the children by careful examination of the agreement as to these terms in light of the standards established by Section 309 for support and by Part IV for custody and visitation.

Subsection (c) envisages that, if the court finds the agreement unconscionable, it will afford the parties the opportunity to negotiate further. If they are unable to arrive at an agreement that is not unconscionable, the court, on motion of either party, may decide the issues of property disposition, support, and maintenance in light of the standards established in Sections 307 through 309. The court's power to make orders for the custody and visitation of the children is set forth in Part IV.

Subsection (d) permits the parties, in drawing the separation agreement, to choose whether its terms shall or shall not be set forth in the decree. In the former event, the provisions of subsection (c), making these terms enforceable through the remedies available for the enforcement of a judgment, but retaining also the enforceability of them as contract terms, apply. This represents a reversal of the policy of the original 1970 Act, which required a choice between "merging" the agreement in the judgment and retaining its character as a contract. Strong representations as to the undesirability of such a choice, in the light of foreign doctrines as to the enforceability of judgments, as compared with contract terms, in this area of the law, made by persons and groups whose expertise entitled them to respect, led the Conference, in 1971, to change its former decision.

There still remains a place for agreements the terms of which are not set forth in the decree, if the parties prefer that it retain the status of a private contract, only. In this instance, the remedies for the enforcement of a judgment will not be available, but the court's determination, in the decree, that the terms are not unconscionable, under the ordinary rules of res adjudicata, will prevent a later successful claim of unconscionability. Such an agreement, unless its terms expressly so permit, will not be modifiable as to economic matters. Other subjects, relating to the children, by subsection (b) do not bind the Court.

Subsection (f) allows the parties to agree that their provisions as to maintenance and property division will not be modifiable or can be modified only in accordance with the terms of the agreement, even though those terms are included in the decree. If the court finds that these are not unconscionable, it may include them in its decree. The effect of including in the decree a provision precluding or limiting modification of the terms respecting maintenance or property division is to make the decree nonmodifiable or modifiable only in the limited way as to those terms. Subsection (f) thus permits the parties to agree that their future arrangements may not be altered except in accord with their agreement. Such an agreement maximizes the advantages of careful future planning and eliminates uncertainties based on the fear of subsequent motions to increase or decrease the obligations of the parties. However, as stated in the subsection, this does not apply to provisions for the support, custody, or visitation of children.

Concerning the effect of a decree as a lien on the property of the spouse against whom it is rendered, the Conference took the position that the general laws of the state, as to judgment liens, would apply. However, in jurisdictions with special statutes respecting the liens created by decrees for support, maintenance, and the like, care should be taken in preparing the repealer section not to disturb provisions it is desired to retain.

*Alternative A*

[SECTION 307. *[Disposition of Property.]*

(a) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without

regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title thereto is in the name of the husband or wife or both. In making apportionment the court shall consider the duration of the marriage, any prior marriage of either party, any antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the respective estates, and as the contribution of a spouse as a homemaker or to the family unit.

(b) In the proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.]

*Alternative B*

[SECTION 307. [*Disposition of Property.*] In a proceeding for dissolution of the marriage, legal separation, or disposition of property following a decree of dissolution of the marriage or legal dissolution by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's separate property to that spouse. It also shall divide community property, without regard to marital misconduct, in just proportions after considering all relevant factors including:

(1) contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(2) value of the property set apart to each spouse;

(3) duration of the marriage; and

(4) economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for a reasonable period to the spouse having custody of any children.]

COMMENT

Alternative A, which is the alternative recommended generally for adoption, proceeds upon the principle that all the property of the spouses, however acquired, should be regarded as assets of the married couple, available for distribution among them, upon consideration of the various factors enumerated in subsection (a). It will be noted that among these are health, vocational skills and employability of the respective spouses and their contributions to the acquisition of the assets, including allowance for the contribution thereto of the "homemaker's services to the family unit." This last is a new concept in Anglo-American law.

Subsection (b) affords a way to safeguard the interests of the children against the possibility of the waste or dissipation of the assets allotted to a particular parent in consideration of being awarded the custody or support of a child or children.

Alternative B was included because a number of Commissioners from community property states represented that their jurisdictions would not wish to substitute, for their own systems, the great hotchpot of assets created by Alternative A, preferring to adhere to the distinction between community property and separate property, and providing for the distribution of that property alone, in accordance with an enumeration of principles, resemblant, so far as applicable, to those set forth in Alternative A.

SECTION 308. [*Maintenance.*]

(a) In a proceeding for dissolution of marriage, legal separation, or maintenance following a decree of dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse, only if it finds that the spouse seeking maintenance:

(1) lacks sufficient property to provide for his reasonable needs; and

(2) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(b) The maintenance order shall be in amounts and for periods of time the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(1) the financial resources of the party seeking maintenance, including marital property apportioned to him, his ability to meet his needs independently, and the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) the standard of living established during the marriage;

(4) the duration of the marriage;

(5) the age and the physical and emotional condition of the spouse seeking maintenance; and

(6) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

COMMENT

Section 308 (a) authorizes the court to order maintenance to either spouse in three kinds of proceedings: (1) dissolution of marriage; (2) legal separation; and (3) independent proceedings for maintenance following an earlier proceeding for dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse and thus could not affect maintenance [see comment to Section 302 (a)]. In all three kinds of proceedings the court may award maintenance only if both findings listed in (1) and (2) are made. The dual intention of this section and Section 307 is to encourage the court to provide for the financial needs of the spouses by property disposition rather than by an award of maintenance. Only if the available property is insufficient for the purpose and if the spouse who seeks maintenance is unable to secure employment appropriate to his skills and interests or is occupied with child care may an award of maintenance be ordered.

Assuming that an award of maintenance is appropriate under subsection 308(a), the standards for setting the amount of the award are set forth in subsection 308(b). Here, as in Section 307, the court is expressly admonished not to consider the misconduct of a spouse during the marriage. Instead, the court should consider the factors relevant to the issue of maintenance, including those listed in subdivisions (1)-(6).

SECTION 309. [*Child Support.*] In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child and his educational needs; and

(5) the financial resources and needs of the noncustodial parent.

COMMENT

This section does not set forth the conditions under which a parent owes a duty of support to a child. Principles affecting duties of support occur elsewhere in the Act, as well as in the other statutes or the common law of the State. Rather, the intent is merely to indicate the factors which a court should consider in setting the amount of support to be paid by either the mother or the father or both. The provision authorizing an order requiring either or both parents to pay child support permits the court to order the custodial parent to contribute to the child's support as well, or to insure that property or payment set aside to the custodial parent for child support are used for that purpose. "Child" includes any child recognized by the laws of the state as "living" or "in being", and, also, a child by adoption. The Section authorizes the issue of child support to be raised in independent proceedings for dissolution of marriage or legal separation.

SECTION 310. [*Representation of Child.*] The court may appoint an attorney to represent the interests of a minor or dependent child with respect to his support, custody, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the [appropriate agency].

COMMENT

This section authorizes the court to appoint an attorney to represent a minor or dependent child in a proceeding for the dissolution of marriage, legal separation, or any other proceeding which involves the child's support, custody, or visitation. The attorney is not a guardian ad litem for the child, but an advocate whose role is to represent the child's interests. The section intentionally does not authorize the child or his attorney to be heard on the issue of whether the marriage of his parent or parents has broken down irretrievably. The appointment may be made by the court on motion of either parent or by the court on its own motion. It is expected that the authority given the court by this section will be exercised primarily in contested cases, but rare or unusual circumstances may make the appointment appropriate in formally uncontested matters.

SECTION 311. [*Payment of Maintenance or Support to Court.*]

(a) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the [clerk of court, court trustee, probation officer] as trustee for remittance to the person entitled to receive the payments.

(b) The [clerk of court, court trustee, probation officer] shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the

[clerk of court, court trustee, probation officer] of any change of address or of other condition that may affect the administration of the order.

(d) If a party fails to make a required payment, the [clerk of court, court trustee, probation officer] shall send by registered or certified mail notice of the arrearage to the obligor. If payment of the sum due is not made to the [clerk of court, court trustee, probation officer] within 10 days after sending notice, the [clerk of court, court trustee, probation officer] shall certify the amount due to the [prosecuting attorney]. The [prosecuting attorney] shall promptly initiate contempt proceedings against the obligator.

(e) The [prosecuting attorney] shall assist the court on behalf of a person entitled to receive maintenance or support in all proceedings initiated under this section to enforce compliance with the order. The person to whom maintenance or support is awarded may also initiate action to collect arrearages.

(f) If the person obligated to pay support has left or is beyond the jurisdiction of the court, the [prosecuting attorney] may institute any other proceeding available under the laws of this State for enforcement of the duties of support and maintenance.

COMMENT

This section establishes a procedure for payment of support or maintenance orders through a court officer and for enforcement by the appropriate prosecuting attorney. The section is modeled on similar provisions in North Dakota, Wisconsin, and other states and is intended to make use of the state's remedy of civil contempt as an effective device for the enforcement of support and maintenance. Under subsection (f), the person to whom a decree for maintenance or support is awarded also may initiate action to collect arrearages. In this action the person might be represented by personal counsel, by a legal aid society or other public agency, or, by a "friend of the court", as envisaged by the Uniform Reciprocal Enforcement of Support Act. Subsection (f) correlates this procedure with the Uniform Reciprocal Enforcement of Support Act so that enforcement can be obtained even though the obligor is beyond the jurisdiction of the court.

SECTION 312. [*Assignments.*] The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding [$1.00] as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

COMMENT

This section is modeled on similar provisions in Wisconsin and California and provides an additional method of assuring that obligations for support and maintenance will be met when due. The Section goes beyond existing law in authorizing an assignment of trust income as well as periodic earnings. In states which permit spendthrift trusts, for purposes of support and maintenance, to be attacked, this section will also apply to spendthrift trusts. Each state should insert in the bracket the sum it deems sufficient to meet the cost to the payor of deducting the sums due from each payment. The validity of the obligation imposed on the payor of funds is clearly supported by analogy to garnishment, and to cases such as *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 96 L.Ed. 469, 72 S.Ct. 405 (1952).

SECTION 313. [*Attorney's Fees.*] The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

COMMENT

The purpose of this section is to authorize the payment of costs and a reasonable fee by one party to the other party's attorney if the court, after considering the financial resources available to both parties, determines the order to be necessary. The section extends authority to make several orders for costs and fees at different stages of the proceedings, and permits an attorney to enforce the order directly.

SECTION 314. [*Decree.*]

(a) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that

provision, and either of the parties may remarry pending appeal.

(b) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(c) The Clerk of Court shall give notice of the entry of a decree of dissolution or legal separation:

(1) if the marriage is registered in this State, to the [marriage license] clerk of the [county, judicial district] where the marriage is registered who shall enter the fact of dissolution or separation in the [Registry of Marriage]; or

(2) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(d) Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

COMMENT

Subsection (a) abolishes interlocutory periods in those states which have them. The decree of dissolution or separation will be effective when entered subject to the right of appeal. The second sentence of subsection (a) is intended to authorize an appeal from a decree of dissolution which does not challenge the decree insofar as it is based on a finding that the marriage is irretrievably broken. In such cases, either party is free to remarry as soon as the time for taking appeal has expired, despite the fact that an appeal which does not challenge the dissolution may be pending.

Subsection (b) permits either party to a proceeding for legal separation to move, six months after entry of the decree, to convert the decree of legal separation into a decree of dissolution of marriage. The section does not authorize the court to deny the motion. In such cases, the court will enter its order that the original decree be deemed a decree of dissolution of marriage, as of the date the motion for conversion is made.

Subsection (c) establishes a procedure for the registration of a decree of dissolution of marriage or of legal separation in the place where the marriage was originally registered. The purpose of this subsection is to aid in the often difficult problem of proving whether a marriage has been terminated.

Subsection (d) expressly authorizes restoration of the maiden name or any former name of a wife, upon dissolution of a marriage or declaration of its invalidity. By the latter authority, this power exists in the court without express provision. *Reinken v. Reinken*, 351 Ill. 409, 639 (1933); *W. v. H.*, 103 N. J. Super. 24, 210 A. 2d 501 (1968); *Day v. Day*, 137 Ore. 169, 1 P. 2d 123 (1931); *Hartman v. Chumley*, 266 S. W. 2d 444 (Tex. Civ. App. 1924). This provision removes all doubt as to judicial power. Whether the provision as to the power being exercised "upon request by the wife" precludes action by the court upon its own initiative in a proper instance may be a matter for judicial construction. One ill-reasoned opinion so holds, as to the words if the wife "so desires". *Terrell v. Terrell*, 352 S. W. 2d 195 (Ky. 1961). The less preemptive language of this provision, in connection with the general principle of the Act that the rules of practice shall govern procedure generally, point to the conclusion that, in an appropriate instance, the court might exercise a proper judicial discretion to order restoration of name without wifely request.

SECTION 315. [*Independence of Provisions of Decree or Temporary Order.*] If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

COMMENT

This section is intended to abolish self-help remedies, now all too common in family litigation, whereby one party withholds support or maintenance payments to force the other party to comply with visitation orders and vice-versa. Disputes of this kind should be settled by the court. The "he" in the last clause of the section refers to the "other party."

SECTION 316. [*Modification and Termination of Provisions for Maintenance, Support and Property Disposition.*]

(a) Except as otherwise provided in subsection (f) of Section 306, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(b) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(c) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

COMMENT

Subsection (a) makes each installment under an order for periodic support or maintenance final and non-modifiable when it falls due. The accrued installments cannot be modified retroactively, and future installments can be modified only as to those falling due after a motion for modification has been filed. The purpose of thus making each installment final and non-modifiable when it becomes due is to give each past due installment the status of a final judgment entitled to full faith and credit in other states pursuant to the decisions of the Supreme Court in *Lynde v. Lynde*, 181 U.S. 183, 45 L.Ed. 810, 21 S.Ct. 555 (1901); *Sistare v. Sistare*, 218 U.S. 1, 54 L.Ed. 905, 30 S.Ct. 682, 28 LRANS 1068, 20 Ann. Cas. 261 (1910); *Barber v. Barber*, 323 U.S. 77, 89 L.Ed. 82, 65 S.Ct. 137, 157 A.L.R. 103 (1944); and *Griffin v. Griffin*, 327 U.S. 220, 90 L.Ed. 635, 66 S.Ct. 556 (1945). The Supreme Court has not yet held that future installments are entitled to full faith and credit, but at least one state court has done so [*Light v. Light*, 12 Ill. 2d 502, 147 N. E. 2d 34 (1958)] and another state has extended voluntary recognition to future installments [*Worthley v. Worthley*, 44 Cal. 2d 465, 283 P. 2d 19 (1955)]. See the comment to Section 306(d) with respect to international enforcement.

Except where the decree, incorporating the agreement of the parties, provides to the contrary [see Section 306(f)], future installments may be modified, but the person seeking modification must show that circumstances have changed since the date of the original order so that the order is unconscionable at the time the motion is made and will continue to be unconscionable unless modified. This strict standard is intended to discourage repeated or insubstantial motions for modification. In accordance with presently existing law, the provisions of the decree respecting property disposition may not be altered unless the judgment itself can be reopened for fraud or otherwise under the laws of the state. There is no intention to change this law. If the judgment was rendered by another state, normal full faith and credit law would allow it to be reopened in the forum state if it can be reopened under the laws of the rendering state.

Subsection (b) authorizes the parties to agree in writing or the court to provide in the decree that maintenance will continue beyond the death of the obligor or the remarriage of the obligee. In the absences of such an agreement or provision in the decree, this section sets the termination date for the obligation to pay future maintenance.

Subsection (c) is designed to permit the parties to agree in writing or the court to provide in the decree that the obligation of each parent to support the child will extend beyond the child's emancipation and to permit parents, on occasion of a legal separation or dissolution of marriage, to agree that the child support provisions of the decree will terminate upon the death of a parent who has provided for the child in his will. In the absence of such an agreement or provision in the decree, this section terminates the obligation of a parent to support a child, only upon the child's emancipation. The parent's death does not terminate the child's right to support, and the court may make an appropriate order establishing the obligation of the deceased parent's estate to the child. Section 316(c), read in connection with Section 308, authorizes a support order against the estate of a parent who had received property for the child's support if that property was not actually used for the child's support or did not accrue to the child's benefit by virtue of the parent's death.

To avoid indefinite delay in the settlement of estates, there may be modification or commutation to a lump sum payment "to the extent just and appropriate in the circumstances." Any person interested, including a creditor or an attorney for the child (Section 310), may move the court for the appropriate order.

## PART IV
## CUSTODY

SECTION 401. [*Jurisdiction; Commencement of Proceeding.*]

(a) A court of this State competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this State and (i) has been abandoned or (ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(4) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2) or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine custody of the child, and (ii) it is in his best interest that the court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custoday determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(d) A child custody proceeding is commenced in the [————] court:

(1) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the [county, judicial district] in which he is permanently resident or found; or

(2) by a person other than a parent, by filing a petition for custody of the child in the [county, judicial district] in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(e) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

COMMENT

The provisions of the Act concerning custody adjudication are integrated with the provisions of the Uniform Child Custody Jurisdiction Act, promulgated by the Conference in 1968. The latter Act deals with judicial jurisdiction to adjudicate a custody case when more than one state has an interest in the litigation. The Uniform Marriage and Divorce Act governs the substantive and procedural aspects of custody adjudication once the court has decided that it can and should hear the case on the merits. States considering the adoption of this Act should also consider adopting the Uniform Child Custody Jurisdiction Act. If that Act is adopted in the state, subsections (a), (b) and (c), which are intended to track the interstate jurisdictional sections of that Act, should be omitted, and the remaining subsections should be relettered, accordingly.

The court authorized to hear custody cases has not been identified. In many states the legislature will want to consider the establishment of a Family Court for these purposes; in other states the trial court of general jurisdiction will be named.

Subsection (d) makes an important distinction between custody disputes commenced by parents and those commenced by some other person interested in a particular child. A custody proceeding is commenced automatically whenever one of the parents files for a dissolution of legal separation under Part III. Also, a parent may commence a custody proceeding without filing a petition for dissolution or legal separation. On the other hand, subsection (d) (2) makes it clear that if one of the parents has physical custody of the child, a non-parent may not bring an action to contest that parent's right to continuing custody under the "best interest of the child" standard of Section 402. If a non-parent (a grandparent or an aunt or uncle, perhaps) wants to acquire custody, he must commence proceedings under the far more stringent standards for intervention provided in the typical Juvenile Court Act. In short, this subsection has been devised to protect the "parental rights" of custodial parents and to insure that intrusions upon those rights will occur only when the care the parent is providing the child falls short of the minimum standard imposed by the community at large—the standard incorporated in the neglect or delinquency definitions of the state's Juvenile Court Act. Once a custody proceeding is commenced, the court should be able to hear the views of all interested persons; Subsection (d) therefore authorizes the judge to permit intervention by relatives who would not have been allowed to commence an action.

SECTION 402. [*Best Interest of Child.*] The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

COMMENT

This section, excepting the last sentence, is designed to codify existing law in most jurisdictions. It simply states that the trial court must look to a variety of factors to determine what is the child's best interest. The five factors mentioned specifically are those most commonly relied upon in the appellate opinions; but the language of the section makes it clear that the judge need not be limited to the factors specified. Although none of the familiar presumptions developed by the case law are mentioned here, the language of the section is consistent with preserving such rules of thumb. The preference for the mother as custodian of young children when all things are equal, for example, is simply a shorthand method of expressing the best interest of children—and this section enjoins judges to decide custody cases according to that general standard. The same analysis is appropriate to the other common presumptions: a parent is usually preferred to a non-parent; the existing custodian is usually preferred to any new custodian because of the interest in assuring continuity for the child; preference is usually given to the custodian chosen by agreement of the parents. In the case of modification, there is also a specific provision designed to foster continuity of custodians and discourage change. See Section 409.

The last sentence of the section changes the law in those states which continue to use fault notions in custody adjudication. There is no reason to encourage parties to spy on each other in order to discover marital (most commonly, sexual) misconduct for use in a custody contest. This provision

makes it clear that unless a contestant is able to prove that the parent's behavior in fact affects his relationship to the child (a standard which could seldom be met if the parent's behavior has been circumspect or unknown to the child), evidence of such behavior is irrelevant.

SECTION 403. [*Temporary Orders.*]

(a) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in Section 410. The court may award temporary custody under the standards of Section 402 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(b) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody decree be issued.

(c) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under subsection (1) (ii) or (2) of Section 401 is dismissed, any temporary custody order is vacated.

COMMENT

Subsection (a) encourages trial courts to issue temporary custody orders without formal hearing whenever possible. Since the hearing itself may be a traumatic event for both parents (and therefore for their children, indirectly), the trial court is authorized to make temporary orders on the basis of affidavits alone unless one of the parties files formal objection to that procedure. In most cases, it is expected that trial judges will award temporary custody to the existing custodian so as to minimize disruption for the child.

Subsection (b) states an important principle designed to foster values supporting family privacy. If a petition for dissolution or legal separation is dismissed voluntarily, there is no reason for the court to hold a special hearing and make a special (and extraordinary) finding before making any substantive custody decision. In most cases, then, if the dissolution petition is dismissed, the parties, whether or not they reconcile, will determine for themselves who should be the child's custodian. If the child's circumstances warrant concern for his physical or emotional security, the standard for community intervention expressed in the state's Juvenile Court Act should be the measure applied to the family. The divorce court can always alert juvenile court or welfare department staff informally that a problem may exist.

SECTION 404. [*Interviews.*]

(a) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(b) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

COMMENT

This section, and the two which follow, are designed to permit the court to make custodial and visitation decisions as informally and non-contentiously as possible, based on as much relevant information as can be secured, while preserving a fair hearing for all interested parties.

The general rule is that the judge may interview the child in chambers. It is often important for the judge to discover the attitudes and wishes of the child, and there is no reason to subject the child to the formality of the courtroom and the unpleasantness of cross-examination. This provision does not require the judge to permit counsel to be present at the interview, but he must make some kind of record of the interview (using a court reporter or a tape recorder) so that counsel for all parties will have access to the substance of the interview. Similarly, the judge may call informally on experts in a variety of disciplines without subjecting them, in the first instance, to the formal hearing process. But the experts' advice should be available to counsel for the parties so that the judge's decision will not be based on secret information; and the parties should be able to examine the expert as to the substance of his advice to the judge.

SECTION 405. [*Investigations and Reports.*]

(a) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by [the court social service agency, the staff of the juvenile court, the local probation or welfare department, or a private agency employed by the court for the purpose].

(b) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained

if he has reached the age of 16, unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (c) are fulfilled, the investigator's report may be received in evidence at the hearing.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

COMMENT

The Act steers a middle course between those courts which prohibit a custody investigation unless both parties stipulate to it and those statutes which permit the judge to order an investigation in every case. It is obvious that custody investigations, whether made by a member of the court's staff or by a public or private agency employed for that purpose, can be useful aids to the court. But most custody dispositions are consensual decisions of the parents, and there is no reason to permit the judge to order an investigation in such cases unless one of the spouses, although agreeing to the disposition, wants some further inquiry made. Under these circumstances, the court can order an investigation even if the other spouse opposes it. Similarly, in contested cases, where the judge's need for independent investigation is greatest, a custody study can be ordered even if both spouses are opposed.

The provisions of subsections (b) and (c) detail the procedural aspects of custody investigations and reports. They assure that investigations will be conducted with due regard to fair hearing values, while encouraging investigators to provide accurate information to the court.

SECTION 406. [*Hearings.*]

(a) Custody proceedings shall receive priority in being set for hearing.

(b) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(c) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(d) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

COMMENT

This section further details procedural aspects of custody hearings. Subsection (c) changes the law in those states which now permit a jury to determine child custody. Subsection (d) authorizes the court to protect the child by preventing unnecessary publicity if it finds that sealing the record is necessary for the child's welfare. Although this authority restricts access to public records, the evil of limitation is clearly outweighed by the public interest in the protection of children.

SECTION 407. [*Visitation.*]

(a) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(b) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

COMMENT

With two important exceptions, this section states the traditional rule for visitation rights. The general rule implies a "best interest of the child" standard. Although the judge should never compel the noncustodial parent to visit the child, visitation rights should be arranged to an extent and in a fashion which suits the child's interest rather than the interest of either the custodial or noncustodial parent. The empirical data on post divorce living arrangements suggests that, if the judge can arrange visitation with a minimum of contest, most parties will eventually reach an accommodation and the bitterness accompanying the divorce will gradually fade. The section does make clear, however, that the judge must hold a hearing and make an extraordinary finding to deprive the noncustodial parent of all visitation rights. To preclude visitation completely, the judge must find that visitation would endanger "seriously the child's physical, mental, moral, or emotional health." These words are intended to work with other uniform legislation. See Uniform Juvenile Court Act, Section 47. Although the standard is necessarily somewhat vague, it was deliberately chosen to indicate its stringency when compared to the "best interest" standard traditionally applied

to this problem. The special standard was chosen to prevent the denial of visitation to noncustodial parent on the basis of moral judgments about parental behavior which have no relevance to the parent's interest in or capacity to maintain a close and benign relationship to the child. The same onerous standard is applicable when the custodial parent tries to have the noncustodial parent's visitation privileges restricted or eliminated.

SECTION 408. [*Judicial Supervision.*]

(a) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(b) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the [local probation or welfare department, court social service agency] to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

COMMENT

This section states an important rule designed to promote family privacy and to prevent intrusions upon the prerogatives of the custodial parent at the request of the noncustodial parent. In general, the custodial parent should be, and in this section is designated as, the person responsible for post-divorce decisions concerning the upbringing of the child. If the parents agree in writing about a particular problem such as the child's religious upbringing, the court may enforce the agreement subject to constitutional constraints. *Lynch v. Uhlenhopp*, 248 Iowa 68, 78 N. W. 2d 491 (1956). But in the absence of parental agreement the court should not intervene solely because a choice made by the custodial parent is thought by the noncustodial parent (or by the judge) to be contrary to the child's best interest. To justify such an intervention, the judge must find that the custodial parent's decision would "endanger the child's physical health or significantly impair his emotional development"—a standard patently more onerous than the "best interest" test. The standard would leave to the custodial parent such decisions as whether the child should go to private or public school, whether the child should have music lessons, what church the child should attend. The court could intervene in the decision of grave behavioral or social problems such as refusal by a custodian to provide medical care for a sick child.

Subsection (b) protects the family privacy theme by significantly limiting the judge's authority to order supervision of the child and the custodial parent. To be sure, there are situations in which an objective umpire is needed to facilitate post-divorce adjustment to the custody and visitation decree. But in these situations both parents will usually recognize the need and agree to supervision. If the parents cannot agree to supervision, however, it should not be ordered unless the judge finds some extraordinary need for it. Thus, the provision adopts a more stringent standard than the normal "best interest" standard.



SECTION 409. [*Modification.*]

(a) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(b) If a court of this State has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(1) the custodian agrees to the modification;

(2) the child has been integrated into the family of the petitioner with consent of the custodian; or

(3) the child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(c) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

COMMENT

Most experts who have spoken to the problems of post-divorce adjustment of children believe that insuring the decree's finality is more important than determining which parent should be the custodian. *See* Watson, The Children of Armageddon: Problems of Custody Following Divorce, 21 Syracuse L. Rev. 55 (1969). This section is designed to maximize finality (and thus assure continuity for the child) without jeopardizing the child's interest. Because any emergency which poses an immediate threat to the child's physical safety usually can be handled by the juvenile court, subsection (a) prohibits modification petitions until at least two years have passed following the initial decree, with a "safety valve" for emergency situations. To discourage the noncustodial parent who tries to punish a former spouse by

frequent motions to modify, the subsection includes a two-year waiting period following each modification decree. During that two-year period, a contestant can get a hearing only if he can make an initial showing, by affidavit only, that there is some greater urgency for the change than that the child's "best interest" requires it. During the two-year period the judge should deny a motion to modify, without a hearing, unless the moving party carries the onerous burden of showing that the child's present environment may endanger his physical, mental, moral, or emotional health.

Subsection (b) in effect asserts a presumption that the present custodian is entitled to continue as the child's custodian. It does authorize modifications which serve the child's "best interest;" but this standard is to be applied under the principle that modification should be made only in three situations: where the custodian agrees to the change; where the child, although formally in the custody of one parent, has in fact been integrated into the family of the petitioning parent (to avoid encouraging noncustodial kidnapping, this ground requires the consent of the custodial parent); or where the noncustodial parent can prove both that the child's present environment is dangerous to physical, mental, moral, or emotional health and that the risks of harm from change of environment are outweighed by the advantage of such a change to the child. The last phrase of subsection (b) (3) is especially important because it compels attention to the real issue in modification cases. Any change in the child's environment may have an adverse effect, even if the noncustodial parent would better serve the child's interest. Subsection (b) (3) focuses the issue clearly and demands that presentation of evidence relevant to the resolution of that issue.

Subsection (c) provides an additional sanction against vexatious and harassing attempts to relitigate custody.

SECTION 410. [*Affidavit Practice.*] A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving paper an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

COMMENT

This section establishes a procedure for seeking temporary custody or a modification of a custody decree by motion supported with affidavits. The procedure is designed to result in denial of the motion without a hearing unless the court finds that the affidavits establish adequate cause for holding a hearing. The procedure will thus tend to discourage contests over temporary custody and prevent repeated or insubstantial motions for modification.



## PART V
## EFFECTIVE DATE AND REPEALER

SECTION 501. [*Time of Taking Effect.*] This Act shall take effect [————————].

SECTION 502. [*Application.*]

(a) This Act applies to all proceedings commenced on or after its effective date.

(b) This Act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this Act shall be in compliance with this Act.

(c) This Act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Act.

(d) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this Act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

COMMENT

The purpose of this section is to indicate the application of the Act to new and pending proceedings. Subsection (a) makes the Act applicable to new proceedings; all those commenced on or after its effective date.

Subsection (b) states the applicability of the Act to proceedings that were pending at the trial court level prior to its effective date. The Act will apply to all pending actions and proceedings; but if a judgment has already been entered as to a specific issue, that judgment will not be superseded thereby. For example, if the state recognizes an interlocutory judgment of divorce, in all cases in which interlocutory judgments have been entered prior to the effective date, the interlocutory judgments would not be affected by the Act. The Act would abolish, however, the interlocutory waiting period so that a decree of dissolution of marriage could be entered immediately after its effective date in a pending but undecided action.

The second sentence of subsection (b) makes unnecessary amendment of the pleadings in pending actions for divorce, but the provisions of this Act will apply at any hearing held after its effective date.

Subsection (c) makes the Act applicable to proceedings commenced after its effective date for the modification of orders or judgments entered prior to its effective date only if the previously entered judgment or order would have been modifiable under prior law. Thus, if a prior order for child custody, support, visitation, or maintenance would have been modifiable under the state's prior law, then those orders may be modified under this Act in accordance with the standards established by this Act. But if a prior judgment

dividing marital property or awarding lump sum alimony would not have been modifiable under prior law, those judgments are not subject to reopening for change under this Act, even though the standards for property division are different under this Act. In an event, judgments awarding marital property are not modifiable under this Act (see Section 316(a)). On the other hand, an order that would have been modifiable under prior law may cease to be modifiable under this Act. For example, in states where maintenance is retroactively modifiable as to unpaid installments, installments accruing after the effective date of this Act will not be retroactively modifiable under Section 316(a).

Subsection (d) provides that this Act does not apply to appeals that had been perfected and thus were pending at its effective date, to new trials ordered prior to its effective date, or to any subsequent appeals or new trials resulting from these pending appeals or new trials. The purpose of this provision is to allow the correction on appeal or in a new trial of errors made in applying the law in effect at the time of the original hearing pursuant to that law. Changing the rules on appeal or at the new trial seems unfair to the party prejudiced by the error. A similar provision was included in the California Family Law Act of 1969.

SECTION 503. [*Severability.*] If any provision of this Act or 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.

SECTION 504. [*Specific Repealer.*] The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed: [Here should follow the acts to be specifically repealed, including any acts regulating:

(1) marriage, including grounds for annulment and provisions for void marriages;

(2) existing grounds for divorce and legal separation;

(3) existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time; and

(4) alimony, child support, custody, and division of spouses' property in the event of a divorce and judicial proceedings designed to modify the financial or custody provisions of divorce decrees].

SECTION 505. [*General Repealer.*] Except as provided in Section 506, all acts and parts of acts inconsistent with this Act are hereby repealed.

SECTION 506. [*Laws Not Repealed.*] This Act does not repeal: [Here should follow the acts not to be repealed, including any acts regulating or prescribing:

(1) the contents of and forms for marriage licenses and methods of registering marriages and providing for license or registration fees;

(2) the validity of premarital agreements between spouses concerning their marital property rights;

(3) marital property rights during a marriage or when the marriage terminates by the death of one of the spouses;

(4) the scope and extent of the duty of a parent to support a child of the marriage;

(5) custody of and support duty owed to an illegitimate child;

(6) the Uniform Child Custody Jurisdiction Act; and

(7) any applicable laws relating to wage assignments, garnishments, and exemptions other than those providing for family support and maintenance].

# UNIFORM PARENTAGE ACT

*Drafted by the*

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

*and by it*

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

*at its*

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-SECOND YEAR
AT HYANNIS, MASSACHUSETTS
JULY 26-AUGUST 2, 1973

WITH PREFATORY NOTE AND COMMENTS

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# UNIFORM PARENTAGE ACT

## PREFATORY NOTE

On a variety of occasions, the National Conference of Commissioners on Uniform State Laws has concerned itself with the law relating to the child born out of wedlock. Significant efforts of the Conference were the development of the "Uniform Illegitimacy Act" in 1922, the "Blood Tests To Determine Paternity Act" of 1952, the "Uniform Paternity Act" of 1960 and certain provisions in the "Uniform Probate Code" of 1969. For a variety of reasons, the "Uniform Illegitimacy Act" was withdrawn by the Conference and none of the other Acts was adopted widely. As of June 1973, the Blood Tests to Determine Paternity Act had been enacted in 9, the "Uniform Paternity Act" in 4 and the "Uniform Probate Code" in 5 states.

The present Act had its genesis in an article entitled "A Proposed Uniform Act on Legitimacy" published in the April 1966 issue of the Texas Law Review and written by Professor Harry D. Krause, College of Law, University of Illinois. The Conference appointed a committee to study this subject in 1969, Lewis C. Green of St. Louis, Missouri, became chairman and Professor Krause agreed to serve as reporter to the committee. The present draft is the result of extensive research and redrafting. It has profited from consultation with appropriate American Bar Association authorities as well as with professionals in other fields, notably the field of social work. As a member of the Council of the Section on Family Law of the American Bar Association, Professor Krause also served as liaison between the Family Law Section and the Conference's committee on this Act. Special thanks are due to Judge Eugene A. Burdick, of Williston, North Dakota, the President of the Conference, and to Professor William J. Pierce, its Executive Director, for their interest and counsel.

When work on this Act began, the notion of substantive legal equality of children regardless of the marital status of their parents seemed revolutionary if one considered existing state law on this subject. See Krause, Equal Protection for the Illegitimate, 65 Mich. L.Rev. 477 (1967). Even though the Conference had put itself on

record in favor of equal rights of support and inheritance in the Paternity Act and the Probate Code, the law of many states continued to differentiate very significantly in the legal treatment of legitimate and illegitimate children.

This Act is promulgated at a time when the states need new legislation on this subject because the bulk of current law on the subject of children born out of wedlock is either unconstitutional or subject to grave constitutional doubt.

Since 1968, a series of decisions rendered by the United States Supreme Court under the Equal Protection Clause of the 14th Amendment of the U.S. Constitution has mandated equal legal treatment of legitimate and illegitimate children in a broad range of substantive areas, one exception being the right of intestate succession. Quotations from two recent decisions illustrate the Supreme Court's views on this subject:

> "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual — as well as an unjust — way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these luckless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where — as in this case — the classification is justified by no legitimate state interest, compelling or otherwise." *Weber v. Aetna Casualty & Surety Company*, 92 S.Ct. 1400, 1406-07 (1972).
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> "We have held that under the Equal Protection Clause of the Fourteenth Amendment a State may not create a right of action in favor of children for the wrongful death of a parent and exclude illegitimate children from the benefit of such a right. Similarly, we have held that illegitimate children may not be excluded from sharing equally with other children in the recovery of workmen's compensation benefits for the death of their parent. Under these decisions, a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to receive support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because her natural father has not married her mother. For a State to do so is 'illogical and unjust.' We recognize the linking problems with respect to proof of paternity. These problems are not to be lightly brushed aside, but neither can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination." (Citations omitted.) *Gomez v. Perez*, 93 S.Ct. 872, 874-75 (1973).

Accordingly, in providing substantive legal equality for all children regardless of the marital status of their parents, the present Act merely fulfills the mandate of the Constitution. With the exception of the child's right to inherit from his intestate father, which a growing number of states has provided without constitutional compulsion, the equal treatment provided by the Act is not the Conference's "wishful thinking." It is the law of the land.

Although earlier drafts of this Act contained detailed substantive provisions, the Supreme Court cases equalizing the substantive legal position of the illegitimate child with that of the legitimate child have obviated the need for those provisions. For that reason the substance of the Act now is expressed in the first two sections. The remainder of the Act is largely concerned with the *sine qua non* of equal legal rights—the identification of the person against whom these rights may be asserted. In the context of the child born out of wedlock that person is the father. (To cover the rare case in which there may be uncertainty as to the mother, the present Act permits a declaratory action on the question of maternal descent.)

In order to identify the father, the Act first sets up a network of presumptions which cover cases in which proof of external circumstances (in the simplest case, marriage between the mother and a man) indicate a particular man to be the probable father. While perhaps no one state now includes all these presumptions in its law, the presumptions *are* based on existing presumptions of "legitimacy" in state laws and do not represent a serious departure. Novel is that they have been collected under one roof. All presumptions of paternity are rebuttable in appropriate circumstances.

The ascertainment of paternity when no external circumstances presumptively point to a particular man as the father are the next major function of the Act. Noteworthy is the pre-trial procedure envisaged by the Act which, the Committee expects, will greatly reduce the current high cost and inefficiency of paternity litigation.

The Act also contains appropriate provisions for setting the level of support, the enforcement of judgments, and deals with related issues such as custody. The custody problem has been complicated by the U.S. Supreme Court's decision in *Stanley v. Illinois*, 92 S.Ct. 1208 (1972). In that case, the unmarried father was given substantial, but not carefully delineated rights to the custody of his child. Many state courts have interpreted the *Stanley* case very broadly, probably overly broadly, and the adoption process has become cumbersome and insecure. The Act provides an efficient procedure by which the rights of the disinterested unmarried father may be ter-

minated. Delay and interference with the adoption process is kept to the minimum the Committee believed to be consistent with a reasonable interpretation of the *Stanley* case.

A review of the Act will indicate that it is one interlocking and interdependent piece of legislation that does not lend itself to being enacted in part.

Aside from the need for new state law to replace those rendered unconstitutional by the U.S. Supreme Court decisions referred to above, it is expected that this Act will fulfill an important social need in terms of improving the states' systems of support enforcement. Federal legislation encouraging the states to develop effective support enforcement procedures in connection with the Aid to Families with Dependent Children Program under the Social Security Act currently is pending and may be enacted soon. See S.2081, 93rd Cong., 1st. Sess., June 27, 1973.

## UNIFORM PARENTAGE ACT

SECTION 1. [*Parent and Child Relationship Defined.*]

As used in this Act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

SECTION 2. [*Relationship Not Dependent on Marriage.*]

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

### COMMENT

Sections 1 and 2, the major substantive sections of the Act, establish the principle that regardless of the marital status of the parents, all children and all parents have equal rights with respect to each other. As indicated in the Prefatory Note, recent U.S. Supreme Court decisions and lower federal and state court decisions require equality of treatment in most areas of substantive law. See, generally, H. Krause, Illegitimacy: Law and Social Policy 59-104 (1971).

The first two cases to reach the U.S. Supreme Court concerned Louisiana's wrongful death statute and held that statute unconstitutional insofar as it (1) discriminated against illegitimate children, holding them ineligible to recover for the wrongful death of their *mother* (*Levy v. Louisiana*, 391 U.S. 68 (1968)) and (2) denied a mother recovery for the wrongful death of her child (*Glona v. American Guarantee & Liability Insurance Co.*, 391 U.S. 73 (1968)).

It was a surprise when, within three years of deciding *Levy* and *Glona*, the U.S. Supreme Court reached a conclusion seemingly at odds with *Levy* and *Glona*. The Court had occasion to reconsider the question of the illegitimate child's legal position in a case involving inheritance, and refused to extend *Levy* or *Glona* to permit an acknowledged illegitimate child to inherit from his intestate father under Louisiana law. (*Labine v. Vincent*, 401 U.S. 532, 91 S.Ct. 1017 (1971).)

The surprise engendered by the *Labine* decision was surpassed when the Supreme Court again reversed its position on this subject in 1972. In a dramatic departure from *Labine*, the U.S. Supreme Court held that workmen's compensation benefits related to the death of their father are due dependent, unacknowledged, illegitimate children. (*Weber v. Aetna Casualty & Surety Co.*, 92 S.Ct. 1400, 406 U.S. 164 (1972).) In January, 1973, the U.S. Supreme Court, finally substituting consistency for vacillation on this

subject, decided that the illegitimate child is guaranteed a right of support from his father. (*Gomez v. Perez*, 93 S.Ct.872 (1973).)

These decisions engendered a large number of decisions by lower federal courts and state courts at all levels which have broadly extended the legal relationship between the father and his child born out of wedlock. It should be noted, however, that several states had previously provided full (or nearly full) legal equality to illegitimates. To illustrate, Ore. Rev. Stat. § 109.060 (1969) provides:

> "[t]he legal status and legal relationships and the rights and obligations between a person and his descendants, and between a person and his parents, their descendants and kindred, are the same for all persons, whether or not the parents have been married."

See also N.D. Cent. Code § 56-01-05 (Supp. 1969); Ariz. Rev. Stat. Ann. § 14-206 (1956); Alaska Stat. 25.20.050(a) (1962).

SECTION 3. [*How Parent and Child Relationship Established.*] The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this Act;

(2) the natural father may be established under this Act;

(3) an adoptive parent may be established by proof of adoption or under the [Revised Uniform Adoption Act].

COMMENT

This section introduces the portion of the Act which deals with the ascertainment of parentage.

SECTION 4. [*Presumption of Paternity.*]

(a) A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the [appropriate court or Vital Statistics Bureau],

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(4) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(5) he acknowledges his paternity of the child in a writing filed with the [appropriate court or Vital Statistics Bureau], which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the [appropriate court or Vital Statistics Bureau]. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

COMMENT

In the situations described in subsection (a), substantial evidence points to a particular man as being the father of the child and formal proceedings to establish paternity are not necessary. A presumption of paternity arises in the described circumstances. Most of the situations correspond to instances in which current state law imposes a presumption of legitimacy.

Subsection (b) contemplates that a presumption raised under subsection (a) may be rebutted in appropriate circumstances. In accordance with current law in most states relating to the rebuttal of a presumption of "legitimacy", the presumption is difficult to rebut in that proof must be made by "clear and convincing evidence." Other details are covered in Sections 6(a) and (b).

SECTION 5. [*Artificial Insemination.*]

(a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the [State Department of Health], where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

COMMENT

This Act does not deal with many complex and serious legal problems raised by the practice of artificial insemination. It was thought useful, however, to single out and cover in this Act at least one fact situation that occurs frequently. Further consideration of other legal aspects of artificial insemination has been urged on the National Conference of Commissioners on Uniform State Laws and is recommended to state legislators. A useful reference is Wadlington, *Artificial Insemination: The Dangers of a Poorly Kept Secret*, 64 NW.U.L. REV. 777 (1970).

SECTION 6. [*Determination of Father and Child Relationship; Who May Bring Action; When Action May Be Brought.*]

(a) A child, his natural mother, or a man presumed to be his father under Paragraph (1), (2), or (3) of Section 4(a), may bring an action

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a); or

(2) for the purpose of declaring the non-existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than [5] years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father and child relationship presumed under Paragraph (4) or (5) of Section 4(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 4 may be brought by the child, the mother or personal representative of the child, the [appropriate state agency], the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with Section 13(b), between an alleged or presumed father and the mother or child, does not bar an action under this section.

(e) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

COMMENT

This section consists of two major parts. Subsections (a) and (b) deal with the action to declare or dispute the existence of the father and child relationship presumed under Section 4(e). Attack on the presumptions based on marriage or on a relationship between the parents that resembles marriage is restricted to a limited circle of potential contestants and in point of time. Presumptions created in other circumstances may be attacked more freely.

Subsection (c) defines who may bring the action to ascertain paternity when no presumption applies. It is made clear that the child may bring the action. Moreover, since the Act contemplates that the principal interest involved in the action is that of the child, Subsection (d) does not permit an agreement between the mother and an alleged or presumed father to bar an action to ascertain paternity. *Cf.* Comment on Section 9.

SECTION 7. [*Statute of Limitations.*] An action to determine the existence of the father and child relationship as to a child who has no presumed father under Section 4 may not be brought later than [3] years after the birth of the child or later than [3] years after the effective date of this Act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until [3] years after the child reaches the age o

majority. Sections 6 and 7 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

COMMENT

The three year provision stated in the first sentence of this Section will serve as an admonition that paternity actions should be brought promptly. In effect, however, this Section provides for a twenty-one-year statute of limitations, except that a late paternity action does not affect laws relating to distribution and closing of decedents' estates or to the determination of heirship. Since the U.S. Supreme Court decisions speak in terms of the *child's* substantive right to a legal relationship with his father, it was considered unreasonable to bar the child's action by reason of another person's failure to bring a paternity action at an earlier time. On the other hand, it is fully understood that such an extended statute of limitations will cause problems of proof in many cases. In part for that reason and also to provide every infant with the means to exercise his rights, rather than leave his fortunes to the whim of his mother or the views of the social worker, an earlier draft of the Act contained a provision in Section 6(c) which read as follows:

> "If a child has no presumed father under Section 4 and the action to determine the existence of the father and child relationship has not been brought and proceedings to adopt the child have not been instituted within [1] year after the child's birth, an action to determine the existence of the relationship shall be brought promptly on behalf of the child by the [appropriate state agency]."

While this provision was stricken from the final draft, state legislators may wish to consider such a procedure, especially if S.2081, 93d Cong., 1st Sess., or a similar bill should be enacted. (See summary of S.2081 in Prefatory Note.)

SECTION 8. [*Jurisdiction; Venue.*]

(a) [Without limiting the jurisdiction of any other court,] [The] [appropriate] court has jurisdiction of an action brought under this Act. [The action may be joined with an action for divorce, annulment, separate maintenance, or support.]

(b) A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this Act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by [rule or] statute, including [cross reference to "long arm statute"], personal jurisdiction may be acquired by [personal service of summons outside this State or by registered mail with proof of actual receipt] [service in accordance with (citation to "long arm statute")].

(c) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

COMMENT

The court having jurisdiction over actions under this Act should be identified here. To avoid multiplicity of actions, the bracketed clause would allow joinder of the action to ascertain paternity with an action for divorce, annulment, separate maintenance, or support. This might be considered in choosing the court which is given jurisdiction over actions under this Act.

Subsection (b) provides a novel, but not unheard of, extension of the "long arm" concept. *Cf. Poindexter v. Willis*, 87 Ill. App.2d 213, 23 N.E.2d 1 (5th Dist. 1967). The venue provision in Subsection (c) provides choices considered reasonable and convenient.

SECTION 9. [*Parties.*] The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the [appropriate state agency] as guardian ad litem for the child. The natural mother, each man presumed to be the father under Section 4, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

COMMENT

This Section emphasizes that the child is a party to the action. While this is a departure from the law of a number of states which have viewed the mother as the sole party in interest, this provision is considered a necessary consequence of the U.S. Supreme Court decisions establishing the child's substantive rights vis à vis his father. The mother or father may not represent the child in the action, since their interests may conflict with those of the child.

SECTION 10. [*Pre-Trial Proceedings.*]

(a) As soon as practicable after an action to declare the existence or non-existence of the father and child relationship has been brought, an informal hearing shall be held. [The court may order that the hearing be held before a referee.] The public shall be barred from the hearing. A record of the pro-

ceeding or any portion thereof shall be kept if any party requests, or the court orders. Rules of evidence need not be observed.

(b) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground this his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

(c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

COMMENT

Sections 10 through 13 provide details concerning the pre-trial hearing. The purpose of the pre-trial hearing is to minimize inconvenience and embarrassment in the many cases which the Committee expects will be resolved on the basis of the voluntary compromise contemplated by Section 13.

SECTION 11. [*Blood Tests.*]

(a) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(c) In all cases, the court shall determine the number and qualifications of the experts.

SECTION 12. [*Evidence Relating to Paternity.*] Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;



(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

COMMENT

It is expected that blood test evidence will go far toward stimulating voluntary settlements of actions to determine paternity. In this connection, proposed legislation currently pending in the U.S. Senate should be considered. Senate Bill 2081, 93d Congress, 1st Sess. (June 27, 1973), looks toward the establishment of a national system of federally assisted child support enforcement and provides for an efficient system of blood typing:

"REGIONAL LABORATORIES TO ESTABLISH PATERNITY THROUGH ANALYSIS AND CLASSIFICATION OF BLOOD

"Sec. 458. (a) The Secretary shall, after appropriate consultation and study of the use of blood typing as evidence in judicial proceedings to determine paternity, establish, or arrange for the establishment or designation of, in each region of the United States, a laboratory which he determines to be qualified to provide services in analyzing and classifying blood for the purpose of determining paternity, and which is prepared to provide such services to courts and public agencies in the region to be served by it.

"(b) Whenever a laboratory is established or designated for any region by the Secretary under this section, he shall take such measures as may be appropriate to notify appropriate courts and public agencies (including agencies administering any public welfare program within such region) that such laboratory has been so established or designated to provide services, in analyzing and classifying blood for the purpose of determining paternity, for courts and public agencies in such region.

"(c) The facilities of any such laboratory shall be made available without cost to courts and public agencies in the region to be served by it.

"(d) There is hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"SUPPORT COLLECTION SERVICES FOR OTHER INDIVIDUALS

"Sec. 459. The child support collection or paternity determination services established under this part shall be made available to any individual not otherwise eligible for such services under the preceding sections of this part upon application filed by such individual with the Attorney General or, if a State or political subdivision has a program approved under section 454 with such State or political subdivision as may be appropriate. The Attorney General (or a State or political subdivision) shall impose an application fee for furnishing such services. Any costs in excess of the fee so imposed shall be paid by such individual by deducting such costs from the amount of any recovery made.

Centralized blood typing facilities already exist in Oslo, Copenhagen and Stockholm and serve the whole of their respective countries. Over several decades, great expertise has been developed. (See generally, Henningsen, *Some Aspects of Blood Grouping in Cases of Disputed Paternity in Denmark*, 2 Methods of Forensic Science 209 (1963); Henningsen, *On the Application of Bloodtests to Legal Cases of Disputed Paternity*, 12 Revue de Transfusion 137 (1969); P. Andresen, The Human Blood Groups 73 (1952).) The Scandinavian laboratories are distinguished not only in terms of their use of complex and advanced blood typing systems, but also in terms of highly developed safety procedures which assure accuracy of the results they report. This latter point may be the most important element of blood typing. There can be little doubt that it would be better not to admit blood tests into evidence at all than to admit unreliable evidence under the halo of scientific truth — as has too often been done in the United States where a re-check of even relatively simple tests revealed about one-third of them to have been in error! (See Wiener, *Foreword*, L. Sussman, Blood Grouping Tests — Medicolegal Uses, ix (1968); See also Wiener, *Problems and Pitfalls in Blood Grouping Tests for Non-Parentage*, 15 Journal of Forensic Medicine 106, 126 (1968).) The Copenhagen laboratory (and the practice in Stockholm and Oslo is similar) employs two sets of systems in "yers", the routine blood group determination resulting in exclusion of paternity for about 70 per cent of non-fathers and an extended blood group determination which increases paternity exclusions to about 90 per cent of non-fathers. While an exclusion figure approximating 90 per cent of men falsely named as fathers is impressive, cases which do not produce an exclusion are pursued further on the basis of a "blood group paternity index" by means of which the "probability" of the named man's paternity is estimated. See Gürtler, *Principles of Blood Group Statistical Evaluation of Paternity Cases at the University Institute of Forensic Medicine, Copenhagen*, 9 Acta Medicinae et Socialis 83 (1956).) That index compares the frequency of a given father-mother-child blood constellation in a sample of actual fathers with the blood constellation in a sample of non-fathers and is related to the constellation obtained in the case in question. If the resemblance exceeds 95 percent or falls below 5 percent, the result is reported to the court. At the outer limits, this approach produces *de facto* inclusions or exclusions. In less extreme cases, it produces interesting circumstantial evidence. It is of particular value, of course, when the relative likelihood of paternity of several possible fathers is to be compared. See generally, Krause, Illegitimacy: Law and Social Policy, 121-44 (1971).

Section 13. [*Pre-Trial Recommendations.*]

(a) On the basis of the information produced at the pre-trial hearing, the judge [or referee] conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(1) that the action be dismissed with or without prejudice;

(2) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge [or referee] conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge [or referee] conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in Section 15(e), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or non-paternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(3) that the alleged father voluntarily acknowledge his paternity of the child.

(b) If the parties accept a recommendation made in accordance with Subsection (a), judgment shall be entered accordingly.

(c) If a party refuses to accept a recommendation made under Subsection (a) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge [or referee] shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(d) The guardian ad litem may accept or refuse to accept a recommendation under this Section.

(e) The informal hearing may be terminated and the action set for trial if the judge [or referee] conducting the hearing finds it unlikely that all parties would accept a recommendation he might make under Subsection (a) or (c).

Comment

The settlement procedures contemplated by this Section are voluntary. If any party refuses to accept a settlement recommendation, the action will be set for trial. It is expected, however, that, as soon as reliable blood test evidence becomes available on a large scale, the great majority of cases will be settled consensually in the light of such evidence.

tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by [appropriate public authority].

COMMENT

This allows the court to apportion the cost of litigation among the parties or, if a party is indigent, charge it to the appropriate public authority.

SECTION 17. [*Enforcement of Judgment or Order.*]

(a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

COMMENT

This Section provides suitable enforcement remedies.

SECTION 18. [*Modification of Judgment or Order.*] The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in Subsections (c) and (d) of Section 15 and Section 17(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under Section 15(d) may specify that the judgment or order may not be modified or revoked.

COMMENT

In accordance with current state law on this subject, the court is given continuing jurisdiction to modify or revoke judgments relating to support, custody and related matters.

SECTION 19. [*Right to Counsel; Free Transcript on Appeal.*]

(a) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(b) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

COMMENT

This permits each party to be represented by counsel regardless of financial circumstances.

SECTION 20. [*Hearings and Records; Confidentiality.*] Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this Act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the [appropriate state agency] or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

COMMENT

In view of the sensitive nature of paternity proceedings, the Committee considered it essential that such proceedings be kept in confidence.

SECTION 21. [*Action to Declare Mother and Child Relationship.*] Any interested party may bring an action to determine the existence or non-existence of a mother and child relationship. Insofar as practicable, the provisions of this Act applicable to the father and child relationship apply.

COMMENT

This Section permits the declaration of the mother and child relationship where that is in dispute. Since it is not believed that cases of this nature will arise frequently, Sections 4 to 20 are written principally in terms of the ascertainment of *paternity*. While it is obvious that certain provisions in these Sections would not apply in an action to establish the mother and child relationship, the Committee decided not to burden these — already complex — provisions with references to the ascertainment of *maternity*. In any given case, a judge facing a claim for the determination of the mother and child relationship should have little difficulty deciding which portions of Sections 4 to 20 should be applied.

SECTION 22. [*Promise to Render Support.*]

(a) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to Section 6(d).

(b) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

COMMENT

This permits any written promise to furnish support for a child based on a supposed or alleged father and child relationship to be enforced in accordance with its terms, with the exception of stipulations that seek to bar a paternity action. Since existing law adequately covers this area, it was considered unnecessary to spell out that the agreement may be avoided if it is shown that the agreement was based on a mutual mistake or fraud relating to the existence of the father and the child relationship. In view of the possibly sensitive nature of such a promise, the provision relating to confidentiality is considered useful.

SECTION 23. [*Birth Records.*]

(a) Upon order of a court of this State or upon request of a court of another state, the [registrar of births] shall prepare [an amended birth registration] [a new certificate of birth] consistent with the findings of the court [and shall substitute the new certificate for the original certificate of birth].

(b) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the [amended birth registration] [new certificate] but the actual place and date of birth shall be shown.

(c) The evidence upon which the [amended birth registration] [new certificate] was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

COMMENT

This provision permits the issuance of an amended or new birth certificate to assure confidentiality. It resembles provisions in many adoption acts which permit the issuance of a new or amended birth certificate after an adoption has been completed.

SECTION 24. [*When Notice of Adoption Proceeding Required.*]

If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

COMMENT

This section provides that a father whose identity is presumed under Section 4 or whose paternity has been formally ascertained, must be given notice of an adoption proceeding relating to his child.

SECTION 25. [*Proceeding to Terminate Parental Rights.*]

(a) If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the [ ] court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(b) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is ide

fied as a possible father, each shall be given notice of the proceeding in accordance with Subsection (e). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(d) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal upon the expiration of [6 months] after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(e) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father [in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or] in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. [If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.]

COMMENT

Subsection (a) deals with the case in which the father has not been formally ascertained and the mother seeks to surrender the child for adoption. In the light of the U.S. Supreme Court's decisions in *Stanley v. Illinois*, 92 S.Ct. 1208 (1972); *Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan*, 92 S.Ct. 1488 (1972) and *Vanderlaan v. Vanderlaan*, 92 S.Ct. 1488 (1972) and related state court decisions, it is considered essential that the unknown or unascertained father's potential rights be terminated formally in order to safeguard the subsequent adoption.

Subsections (b) through (c) provide a procedure by which the court may ascertain the identity of the father and permit speedy termination of his potential rights *if he shows no interest in the child*. If, on the other hand, the natural father or a man representing himself to be the natural father claims custodial rights, the court is given authority to determine custodial



rights. It is contemplated that there may be cases in which the man alleging himself to be the father is so clearly unfit to take custody of the child that the court would proceed to terminate his potential parental rights without deciding whether the man actually is the father of the child. If, on the other hand, the man alleging himself to be the father and claiming custody is *prima facie* fit to have custody of the child, an action to ascertain paternity is indicated, unless a voluntary acknowledgment can be obtained in accordance with Section 4(a)(5) of this Act.

Subsection (d) raises serious constitutional questions in that it attempts to cut off after a given period *any* claim seeking to reopen a judgment terminating parental rights. While of questionable constitutionality, such a provision is not without precedent. A similar provision is contained in Section 16(b) of the revised Uniform Adoption Act, approved by the Commissioners on Uniform State Laws in 1969, and other similar provisions are contained in the adoption acts of a number of states. Moreover, it must be considered that the case of adoption differs from other situations. The parent's claim to his child can hardly be compared to a person's claim to property. The Supreme Court itself recognized that the interest of the child is heavily involved in those cases when remanding the *Rothstein* case to the Wisconsin Supreme Court, requiring that the court give "due consideration [to] the completion of the adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." *Cf. Armstrong v. Manzo*, 380 U.S. 545 (1965).

Subsection (e) seeks to conform to the following footnote in *Stanley v. Illinois*:

> "We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.
>
> Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law governing procedure in juvenile cases . . . provides for personal service, notice by certified mail or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of 'all whom it may concern.' Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood."

This footnote *might* be interpreted to require publication in all cases in which a child with unascertained paternity is surrendered for adoption. The Committee considered, however, that there will be many such cases in which it will be highly probable that publication will not lead to the identification of the father. In view of that and the fact that in nearly all cases publication will lead to substantial embarrassment for the mother, the Committee thought it appropriate to allow the court to determine whether, in the particular circumstances of each case, publication would be likely to lead to the identification of the father. One serious consequence that might result from an indiscriminate publication requirement is that some mothers may be caused to withhold their children from adoption even where adoption would

be in the child's best interest.

SECTION 26. [*Uniformity of Application and Construction.*] This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION 27. [*Short Title.*] This Act may be cited as the Uniform Parentage Act.

SECTION 28. [*Severability.*] 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.

SECTION 29. [*Repeal.*] The following acts and parts of acts are repealed:

(1) [Paternity Act]

(2)

(3)

SECTION 30. [*Time of Taking Effect.*] This Act shall take effect on [ ].

COMMENT

Sections 26-30 are the customary clauses which may be placed in such order in the bill for enactment as the legislative practice of the state prescribes. A specific listing of statutes which are repealed by the enactment of this Act should be listed in section 29.

# UNIFORM PARENTAGE ACT

## ERRATA SHEET

SECTION 24, page 23, should be divided into 2 sections as follows:

SECTION 24. [*When Notice of Adoption Proceeding Required.*]

If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

COMMENT

This section provides that a father whose identity is presumed under Section 4 or whose paternity has been formally ascertained, must be given notice of an adoption proceeding relating to his child.

SECTION 25. [*Proceeding to Terminate Parental Rights.*]

(a) If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the [ ] court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(b) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception o the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Subsection (e). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental right, with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(d) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal upon the expiration of [6 months] after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(e) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father [in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or] in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. [If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.]

COMMENT

Subsection (a) deals with the case in which the father has not been formally ascertained and the mother seeks to surrender the child for adoption. In the light of the U.S. Supreme Court's decisions in *Stanley v. Illinois*,

92 S.Ct. 1208 (1972); *Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan*, 92 S.Ct. 1488 (1972) and *Vanderlaan v. Vanderlaan*, 92 S.Ct. 1488 (1972) and related state court decisions, it is considered essential that the unknown or unascertained father's potential rights be terminated formally in order to safeguard the subsequent adoption.

Subsections (b) through (e) provide a procedure by which the court may ascertain the identity of the father and permit speedy termination of his potential rights *if he shows no interest in the child*. If, on the other hand, the natural father or a man representing himself to be the natural father claims custodial rights, the court is given authority to determine custodial rights. It is contemplated that there may be cases in which the man alleging himself to be the father is so clearly unfit to take custody of the child that the court would proceed to terminate his potential parental rights without deciding whether the man actually is the father of the child. If, on the other hand, the man alleging himself to be the father and claiming custody is *prima facie* fit to have custody of the child, an action to ascertain paternity is indicated, unless a voluntary acknowledgment can be obtained in accordance with Section 4(a)(5) of this Act.

Subsection (d) raises serious constitutional questions in that it attempts to cut off after a given period *any* claim seeking to reopen a judgment terminating parental rights. While of questionable constitutionality, such a provision is not without precedent. A similar provision is contained in Section 15(b) of the revised Uniform Adoption Act, approved by the Commissioners on Uniform State Laws in 1969, and other similar provisions are contained in the adoption acts of a number of states. Moreover, it must be considered that the case of adoption differs from other situations. The parent's claim to his child can hardly be compared to a person's claim to property. The Supreme Court itself recognized that the interest of the child is heavily involved in these cases when remanding the *Rothstein* case to the Wisconsin Supreme Court, requiring that the court give "due consideration [to] the completion of the adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." *Cf. Armstrong v. Manzo*, 380 U.S. 545 (1965).

Subsection (e) seeks to conform to the following footnote in *Stanley v. Illinois*:

> "We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.
>
> Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law governing procedure in juvenile cases . . . provides for personal service, notice by certified mail or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of 'all whom it may concern.' Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood."



This footnote *might* be interpreted to require publication in all cases in which a child with unascertained paternity is surrendered for adoption. The Committee considered, however, that there will be many such cases in which it will be highly probable that publication will not lead to the identification of the father. In view of that and the fact that in nearly all cases publication will lead to substantial embarrassment for the mother, the Committee thought it appropriate to allow the court to determine whether, in the particular circumstances of each case, publication would be likely to lead to the identification of the father. One serious consequence that might result from an indiscriminate publication requirement is that some mothers may be caused to withhold their children from adoption even where adoption would be in the child's best interest.

Sections 26 through 29 *should be* renumbered as follows:

SECTION 25 *should be* SECTION 26
SECTION 26 *should be* SECTION 27
SECTION 27 *should be* SECTION 28
SECTION 28 *should be* SECTION 29
SECTION 29 *should be* SECTION 30

The COMMENT on page 26 *should read* as follows:

Sections 26-30 are the customary clauses which may be placed in such order in the bill for enactment as the legislative practice of the state prescribes. A specific listing of statutes which are repealed by the enactment of this Act should be listed in section 29.

## Legislative Seminars

The Institute, in cooperation with the National Conference of State Legislatures, will sponsor seminars for state legislators on the development and implementation of child support enforcement programs. Two seminars are planned for the first year.

**Institute courses and technical assistance services are available to individuals from the many organizations and agencies that work together to protect a child's rights in cases of paternity and nonsupport.**

The Institute is operated by University Research Corporation (URC) under contract to the Office of Child Support Enforcement, U.S. Department of Health, Education, and Welfare. Representatives of the child support enforcement field participate in the Institute through a National Advisory Group. Representation includes persons from state and local child support enforcement programs, the National Council of IV-D Directors, the National District Attorneys Association, the National Council of Public Administrators, the National Reciprocal and Family Support Enforcement Association, the judicial branch of government, and the academic community. Other organizations assisting URC are

- The National Governors' Association
- The National Conference of State Legislatures
- The Western Federation for Human Services

For information about Institute courses, seminars, or technical assistance, write or call

National Institute for
Child Support Enforcement
1601 North Kent Street
Suite 1101
Arlington, Virginia 22209
(703) 525-3011

## The National Institute for Child Support Enforcement is dedicated to improving the administration of programs that protect the right of children to receive support from both parents.

*The Institute is a new center for high-quality educational, training, and technical assistance services aimed at improving program operations and professional development in the child support enforcement field.*

## The Institute serves a variety of professionals involved in child support enforcement:

- *State and local agency administrators and staff*
- *District attorneys*
- *Clerks of the court*
- *Law enforcement officers*
- *The judiciary*
- *Case workers*
- *Program specialists*
- *State and local officials*
- *Support enforcement staff*

## Technical Assistance

*The Institute is developing a consultant bank of peer experts — people in child support enforcement programs who have demonstrated knowledge and skills in specific program areas. At the request of a IV-D child support enforcement program (Title IV-D of the Social Security Act), the Institute will match expressed needs with technical assistance expertise in its bank of peer consultants. In addition, the Institute will underwrite travel and per diem costs and arrange logistics for the technical assistance exchange. Up to 20 states will be served during the Institute's first year.*

*Technical assistance expertise will be provided in such areas as*

- *Setting up an effective management system for your IV-D program*
- *Planning for and implementing an effective enforcement program*
- *Planning for and implementing an effective collection program*
- *Organizing for functional case management using the team approach*
- *Self-evaluation of your IV-D program*
- *Managing case files for compliance with federal audit procedures and safeguarding confidentiality*
- *And other problem areas as identified by IV-D agencies.*

## Training

*The Institute will provide high-quality training in subject areas directly related to on-the-job problems and skill needs in child support enforcement programs. Curricula will be based on state and local perceptions of training needs and will be tailored to the unique requirements of the IV-D work setting. NICSE courses will cover such topics as*

- *Effective models and techniques for IV-D program management*
- *Supervision of front-line IV-D work and workers*
- *Communication and technical skills for front-line workers*
- *What every IV-D worker should know about the law*
- *Prioritization models for case processing*
- *Public information concepts and techniques in child support enforcement*
- *State-of-the-art techniques for paternity establishment*
- *How to develop and deliver training for IV-D workers*
- *Effective techniques for enforcement of child support obligations.*

STAMP

National Institute for Child Support Enforcement
Attn: Technology Coordinator
1601 North Kent Street
Arlington, Virginia 22209

The Institute is operated by University Research Corporation (URC) under contract to the Office of Child Support Enforcement, U.S. Department of Health, Education, and Welfare. Representatives of the child support enforcement field participate in the Institute through a National Advisory Group. Representation includes persons from state and local child support enforcement programs, the National Council of IV-D Directors, the National District Attorneys Association, the National Council of Public Administrators, the National Reciprocal and Family Support Enforcement Association, the judicial branch of government, and the academic community. Other organizations assisting URC are:

- The National Governors' Association
- The National Conference of State Legislatures
- The Western Federation for Human Services.

*For information about Institute courses, seminars, or technical assistance, write or call:*

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Child Support Enforcement
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Arlington, Virginia 22209
(703) 522-3010

## *The Technology Transfer Program: A Cornerstone of the Institute*

Usually, technical assistance means instruction from *outsiders* in their areas of specialty. The Institute's Technology Transfer Program (TTP) is different. Our technical assistance involves a cooperative effort among *peers* — information sharing among the best in the business.

The Institute's consultant bank of peer experts has people who are currently working in child support enforcement programs and who have demonstrated knowledge and skills in specific program areas.

Through TTP, the Institute responds to requests for assistance by matching expressed needs with the known expertise of its consultant bank. Then, a technology transfer is made.

## *Who Qualifies for TTP?*

Technology transfer services are available to state and local child support enforcement agencies. Priority will be given to requests for transfers which are likely to increase collections, establishments of paternity, or program efficiency.

## *What Must the Applicant Do?*

The interested agency need only provide a statement of need and then work with the Institute to coordinate the technology transfer and, subsequently, to evaluate the assistance delivered. The Institute generally pays for travel and per diem expenses of consultants.

## *How Can the Technology Transfer Program Help You?*

Technical assistance can be provided to your program in a variety of areas including:

- Program evaluation
- Functional case management
- Information systems
- Compliance with Federal audit procedures and requirements of confidentiality
- Establishment of paternity
- Garnishment and wage assignment
- IRS services
- Administrative hearing procedures
- Enforcement techniques
- Public relations
- Legislation
- Other identified problem areas.

## *How To Apply*

Applications may be made by telephone (Call (703) 522-3010), letter, or by mailing the reply card portion of this pamphlet.

***The Institute is a new center for high-quality educational, training and technical assistance services aimed at improving program operations and professional development in the child support enforcement field.***

I am interested in:

- ☐ More information concerning the Technology Transfer Program
- ☐ More information concerning Training Programs
- ☐ Receiving Technology Transfer

I represent: (Organization) _____

(Name & Title) _____

(Address) _____

(Telephone) _____

Area of need (please describe): _____

Signature and Date: _____

Oct, Nov & Dec. 1979
AK Women's Resource Center

av. 5 abandonments per wk thru this
3 mo period

of these, 12 (over 3 months) were dealt with by AWRC - others ref. to other agencies, or went outside

of the 12 - 9 white, 2 Native, 1 black*

* had 9 children, 2 (twins) 2 yr olds left at home. - sent via "agency bounce" - didn't fit into any category

only 9 on ADC get help in tracking down disappeared man - * this is an area that should be looked into

gen. characteristics of the 12
husbands had retired family recently; sometimes alcohol involved; & usually spent life raising family & keeping home