

SB

117-H

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/21/88

FURTHER REFERRALS:

4/30/88

DATE: _____

The Finance Committee has considered SB 117

"An Act relating to child support enforcement."

RECOMMENDS:

- replace with HCS SB 117 (am) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 4/21/88
- zero with analysis

SIGNING DO PASS:

ADAMS Al Adams

POURCHOT Pat Pourchot

LARSON Ron Larson

SWACK Clarence Swack

BOYER Mark Boyer

DAVIS Mike Davis

GALL John Gall

BROWN Tom Brown

SIGNING OTHER RECOMMENDATIONS:

RIEGER Steve Rieger

Al Adams
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HCS SB 117 (Jud)

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to...enforcement
by the child support enforcement agency..."
Sponsor: Governor
Requestor: House Finance

Agency Affected: Labor
BRU: Employment Security
Components: Unemployment
Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Joe Sitton

Division: Employment Security

Phone: 465-2712

Date: 4/26/88

Approved by Commissioner: Jim Sampson

Agency: Department of Labor

Date: 4/26/88

Distribution (by preparer) :

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

RECEIVED

APR 28 1988

FISCAL NOTE

REQUEST:

Revision Date: February 11, 1988
Title: An Act Relating to Child Support Enforcement
Sponsor: Rules
Requestor: Governor

Agency Affected: Revenue
ERU: Child Support Enforcement
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	*	*	*	*	*	*

(see Note below)

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Note on Fiscal Analysis

* Estimated annual income generation of one hundred thousand by imposing fee structure.

Prepared By: Holli Ploog, Director Phone: 263-6270
Division: Child Support Enforcement Division Date: February 11, 1988
Approved by Commissioner: Hugh Malone Date: February 11, 1988
Agency: Department of Revenue

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR SENATE BILL NO. 117 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to spousal support enforcement by
7 the child support enforcement agency and child sup-
8 port enforcement."

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

10 * Section 1. AS 23.20.401 is amended to read:

11 Sec. 23.20.401. CHILD SUPPORT INTERCEPTION. (a) Notwithstand-
12 ing any other provision of this chapter, an individual filing a new
13 claim for unemployment compensation must disclose whether child sup-
14 port obligations as defined in (h) [(g)] of this section are owed by
15 that individual. If the individual discloses that child support
16 obligations are owed and the individual is determined to be eligible
17 for unemployment compensation, the department shall notify the child
18 support enforcement agency of the Department of Revenue that the
19 individual has been determined to be eligible for unemployment compen-
20 sation.

21 (b) The department shall, unless the obligor and obligee agree
22 otherwise, deduct and withhold from unemployment compensation payable
23 to an individual who owes child support obligations as defined in (h)
24 [(g)] of this section

25 (1) the amount specified by the individual to the depart-
26 ment to be deducted and withheld under this subsection, if neither (2)
27 nor (3) of this subsection is applicable;

28 (2) the amount specified in an agreement submitted to the
29 department under section 42 U.S.C. 654(20)(B)(i) (Sec. 454 (20)(B)(i),

1 Social Security Act), by the child support enforcement agency of the
2 Department of Revenue, unless (3) of this subsection is applicable; or

3 (3) any amount required to be deducted and withheld through
4 legal process, as defined in 42 U.S.C. 662(e) (Sec. 462(e), Social
5 Security Act), properly served upon the department.

6 (c) The child support enforcement agency may order the depart-
7 ment to deduct and withhold the allowance paid for a dependent minor
8 child under AS 23.20.350(f), if the child support enforcement agency
9 finds that the individual claiming the allowance has a support obliga-
10 tion to the child and the child is not in the physical custody of the
11 individual and is dependent on the individual for more than 50 percent
12 of support.

13 (d) The department shall pay an amount deducted and withheld
14 under (b) and (c) of this section to the child support enforcement
15 agency of the Department of Revenue.

16 (e) [(d)] An amount deducted and withheld under (b) and (c) of
17 this section shall for all purposes be treated as if it were paid to
18 the individual as unemployment compensation and paid by that indi-
19 vidual to the child support enforcement agency of the Department of
20 Revenue in satisfaction of the individual's child support obligations.

21 (f) [(e)] In (a) - (e) [(d)] of this section, "unemployment
22 compensation" means compensation payable under this chapter, including
23 amounts payable under an agreement under a federal law providing for
24 compensation, assistance, or allowances with respect to unemployment.

25 (g) [(f)] This section applies only if appropriate arrangements
26 have been made for reimbursement by the child support enforcement
27 agency of the Department of Revenue for the administrative costs
28 incurred by the department under this section.

29 (h) [(g)] In this section, "child support obligations" includes

1 only obligations that are being enforced under a plan described in 42
2 U.S.C. 654 (Sec. 454, Social Security Act), which has been approved by
3 the United States Secretary of Health and Human Services under 42
4 U.S.C. 651-665 (Part D of Title IV of the Social Security Act).

5 * Sec. 2. AS 25.24.170 is amended by adding a new subsection to read:

6 (b) For the purposes of a motion to modify or revoke child
7 support, the adoption or enactment of guidelines or a significant
8 amendment to guidelines for determining support is a material change
9 in circumstances, if the guidelines are relevant to the motion.

10 * Sec. 3. AS 25.25.100 is amended by adding a new subsection to read:

11 (b) If admitted to the practice of law in the state, the direc-
12 tor of the child support enforcement agency, or the director's desig-
13 nee, may sign a complaint for support and other pleadings on behalf of
14 the agency in an action under this chapter in which the agency is not
15 represented by the attorney general.

16 * Sec. 4. AS 47.23.020 is amended to read:

17 Sec. 47.23.020. DUTIES AND RESPONSIBILITIES OF THE AGENCY. (a)
18 The agency shall

19 (1) seek enforcement of child support orders of the superi-
20 or courts of the state in other jurisdictions and shall obtain, en-
21 force, and administer the orders in this state;

22 (2) adopt regulations to carry out the purposes of this
23 chapter, including regulations that establish

24 (A) schedules for determining the amount an obligor is
25 liable to contribute toward the support of an obligee under this
26 chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social Secur-
27 ity Act);

28 (B) procedures for hearings conducted under AS 47.-
29 23.170; and

1 (C) subject to AS 47.23.025 and to federal law, a
2 uniform rate of interest on arrearages of support that shall be
3 charged the obligor upon notice if child support payments are 10
4 or more days overdue or if payment is made by a check backed by
5 insufficient funds; however, an obligor may not be charged inter-
6 est on late payment of a child support obligation, other than a
7 payment on arrearages, if the obligor is

8 (i) employed and income is being withheld from
9 the obligor's wages under an income withholding order;

10 (ii) receiving unemployment compensation and child
11 support obligations are being withheld from the obligor's
12 unemployment payments under AS 23.20.401; or

13 (iii) receiving compensation for disabilities under
14 AS 23.30 and child support obligations are being withheld
15 from the obligor's compensation payments;

16 (3) administer and enforce the Uniform Reciprocal Enforce-
17 ment of Support Act (AS 25.25);

18 (4) establish, enforce, and administer child support obli-
19 gations administratively under [IN ACCORDANCE WITH] this chapter;

20 (5) administer the state plan required under 42 U.S.C.
21 651 - 665 (Title IV-D, Social Security Act) as amended;

22 (6) disburse support payments collected by the agency to
23 the obligee, together with interest charged under (2)(C) of this
24 subsection;

25 (7) establish and enforce administratively under this
26 chapter, or through the superior courts of the state, child support
27 orders from other jurisdictions pertaining to obligors within the
28 state;

29 (8) enforce and administer spousal support orders if a

1 spousal support obligation has been established with respect to the
2 spouse and if the support obligation established with respect to the
3 child of that spouse is also being administered; and

4 (9) obtain a medical support order as part of a child
5 support order if health care coverage is available to the obligor at a
6 reasonable cost.

7 (b) In determining the amount of money an obligor must pay to
8 satisfy the obligor's immediate duty of support, the agency shall
9 consider all payments made by the obligor directly to the obligee or
10 to the obligee's custodian before the time the obligor is ordered to
11 make payments through the agency. After the obligor is ordered to
12 make payments through the agency, the agency may not consider direct
13 payments made to the obligee or the obligee's custodian unless the
14 obligor provides clear and convincing evidence of the payment.

15 * Sec. 5. AS 47.23.020 is amended by adding a new subsection to read:

16 (c) If admitted to the practice of law in the state, the direc-
17 tor of the agency, or the director's designee, shall sign a complaint
18 or other pleadings on behalf of the agency in an action to establish
19 or enforce a support obligation under this chapter in which the agency
20 is not represented by the attorney general.

21 * Sec. 6. AS 47.23.060(c) is amended to read:

22 (c) In a court proceeding where the support of a minor child is
23 at issue, the court may order either or both parents to pay the amount
24 necessary for support, maintenance, nurture, and education of the
25 child. The court shall issue a medical support order as part of a
26 child support order if health care coverage is available to the obli-
27 gor at a reasonable cost. Upon a showing of good cause the court may
28 order the parents required to pay support to give reasonable security
29 for payments.

1 (d) An order for prospective child support may be modified or
2 revoked under AS 25.24.170 [AS THE COURT CONSIDERS NECESSARY].

3 * Sec. 7. AS 47.23.062(g) is amended to read:

4 (g) An income withholding order under this section has priority
5 over all other attachments, executions, garnishments, or other legal
6 process brought under state law against the same property [MONEY]
7 unless otherwise ordered by the court. An income withholding order is
8 not limited to the wages of an obligor but may include all money owed
9 to the obligor not otherwise exempt by law. Exemptions under AS 09.38
10 do not apply to income withholdings under this section.

11 * Sec. 8. AS 47.23.062(1) is repealed and reenacted to read:

12 (1) An obligor may petition the court to terminate or modify an
13 income withholding order if the obligor has made payments under the
14 order for at least 12 months and all arrearages have been paid. Upon
15 receipt of the petition under this subsection, the court may terminate
16 or modify the income withholding order unless the court finds good
17 cause to deny the petition due to the obligor's payment history or
18 other grounds. The court may not terminate or modify an income with-
19 holding order solely on the ground that the obligor has paid all
20 arrearages.

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

22 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall
23 provide aid to any person due child support under the laws of this
24 state upon application. The agency may, by regulation, [NOT] impose a
25 fee for services provided under this chapter [AS 47.23.010 - 47.23.280
26 UNLESS REQUIRED BY FEDERAL LAW].

27 * Sec. 10. AS 47.23.105 is amended to read:

28 Sec. 47.23.105. AUDIT OF COLLECTIONS. Within 30 [10] working
29 days after receipt of a written request from an obligor, [OR] the

1 obligor's legal representative, the obligee, or the obligee's legal
2 representative, the agency shall provide an audit of all child support
3 payments made by the obligor and received by the agency. The audit
4 shall include the date and amount of each payment, the name of the
5 obligee, and the total amount of arrearages of support past due and
6 amount of unpaid penalties and interest imposed under AS 47.23.020(a)-
7 (2)(C). The agency is required to provide only one [AN] audit each
8 year for each obligee and [AN] obligor under this section [ONLY ONCE
9 EACH YEAR].

10 * Sec. 11. AS 47.23 is amended by adding a new section to read:

11 Sec. 47.23.135. LIMITATION ON ACTIONS TO ESTABLISH CHILD SUPPORT
12 OBLIGATION. If the same causes of action concerning a duty of child
13 support are pending concurrently in court and before the agency, the
14 second action filed may be abated upon the motion of a party or the
15 agency. The court or the agency may award full costs and attorney
16 fees to the party prevailing on the abatement motion.

17 * Sec. 12. AS 47.23.150(a) is amended to read:

18 (a) Action to enforce a support order administratively under
19 AS 47.23.230 - 47.23.270 is initiated by the agency serving a notice
20 on the obligor of the obligor's liability under the support order.
21 Notice under this subsection shall be served upon the obligor by the
22 agency by certified mail to the last known address of the obligor.
23 Service by mail is effected when the notice is properly addressed,
24 certified, and mailed.

25 * Sec. 13. AS 47.23.190(e) is amended to read:

26 (e) Modification or termination of future periodic support pay-
27 ments may be ordered upon a showing of good cause and material change
28 in circumstances. The adoption or enactment of guidelines or a sig-
29 nificant amendment to guidelines for determining child support is a

1 material change in circumstances, if the guidelines are relevant to
2 the petition.

3 * Sec. 14. AS 47.23.250(e) is amended to read:

4 (e) Any person, political subdivision, or department of the
5 state served with an order to withhold and deliver is required to make
6 true answers to inquiries contained in the order under oath and in
7 writing within 14 [30] days after [OF] service of the order, and is
8 further required to answer all inquiries subsequently put.

9 *Sec. 15. AS 47.23.250(f) is amended to read:

10 (f) If a [ANY] person, political subdivision, or department of
11 the state upon whom service of an order to withhold and deliver has
12 been made possesses property due, owing, or belonging to the obligor,
13 that person, subdivision, or department shall withhold the property
14 immediately upon receipt of the order and shall deliver the property
15 to the agency upon demand after the expiration of the 14-day [30-DAY]
16 period from the date of service of the order. The agency shall hold
17 property delivered under this subsection in trust for application
18 against the liability of the obligor under AS 47.23.130 or for return,
19 without interest, depending on final determination of liability or
20 nonliability under this chapter. The agency may accept a good and
21 sufficient bond conditioned upon final determination of liability in
22 lieu of requiring delivering of property under this subsection.

23 * Sec. 16. AS 47.23.250(i) is amended to read:

24 (i) An order to withhold and deliver under this section has
25 priority over all other attachments, executions, garnishments, or
26 other legal process brought under state law against the same property
27 unless otherwise ordered by the court. Exemptions under AS 09.38 do
28 not apply to proceedings to enforce the payment of child support under
29 AS 47.23.230 - 47.23.270; however, net disposable earnings are exempt

1 from execution as provided in 15 U.S.C. 1673(b). In this subsection,
2 "net disposable earnings" has the meaning given in 15 U.S.C. 1672.

3 * Sec. 17. AS 47.23.255 is amended by adding a new subsection to read:

4 (c) An obligor may petition the agency to terminate or modify an
5 income withholding order if the obligor has made payments under the
6 order for at least 12 months and all arrearages have been paid. Upon
7 receipt of the petition under this subsection, the agency may termi-
8 nate or modify the income withholding order unless the agency finds
9 good cause to deny the petition due to the obligor's payment history
10 or other grounds. The agency may not terminate or modify an income
11 withholding order solely on the ground that the obligor has paid all
12 arrearages. The agency shall notify the obligor in writing of the
13 reason for denying a petition under this subsection.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : HCS SB 117 (Jud)
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to...enforcement
by the child support enforcement agency..." BRU: Employment Security
 Sponsor: Governor Components: Unemployment
 Requestor: House Finance Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Joe Sitton *JS* Phone: 465-2712
 Division: Employment Security Date: 4/26/88

Approved by Commissioner: Jim Sampson *J. Sampson* Date: 4/26/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

SB 117 Child Support Enforcement

Sec 1. Withholding of child support from unemployment compensation.

A person receives more unemployment compensation if they have dependents. CSEA may now garnish up to 50% of the obligor's unemployment check. This protects from garnishment the amount paid for dependents who are actually living in the obligor's home and allows withholding of the support obligation for dependents who are not living in the home but who are dependent on the obligor for more than 50% support.

Sec 2, 6 13. Modification of child support in relation to child support guidelines.

Allows both parties the opportunity to modify their child support order to fit into court set guidelines without the need for attorneys. More efficient way to encourage consistency with the guidelines.

Sec 3 & 5. Signing of complaint or other pleadings.

Allows CSEA to sign the complaint rather than the current requirement that the Attorney General sign. That process has been found too slow particularly in interstate collection cases.

Sec 4. Interest charges on late payments.

States that the obligor may not be charged interest on late payments if that payment is being withheld by their employer, the state or federal government. The obligor has no control if the support is being garnished and therefore should not be charged if payment is late.

Determining amount owed.

Payments made directly from the obligor to the obligee may only be considered if they were made before collection was turned over to the agency. Payments made directly after the agency has become involved in collection may only be considered if the obligor provides clear and convincing evidence of the payment.

Sec 7 & 16 Priority of child support over other attachments.

This is a federal requirement which already exists in judicial withholding. This brings administrative withholding into compliance. Replacing the word money with the word property is somewhat expanding.

Sec 8 & 17 Termination of income withholding.

Federal law says that once an income withholding order has gone into effect merely paying up the arrearage is not adequate to allow the removal of the order. This would allow the withholding order to be removed after all arrearages have been paid and payments have been made in a timely

manner for twelve consecutive months. This is the least restrictive termination qualification accepted by the federal government as being in compliance with federal law.

Sec 9 Collection fees.

Allows agency to charge a fee to non-AFDC clients.

Sec 10 Audits of collections.

Allows the agency 30 rather than 10 days to complete an audit of collections at the request of the obligor or the obligee and states that the agency is only required to perform one audit a year for each party.

Sec 11 Multiple actions.

States that if a case is pending before both the courts and the agency the second action filed may be abated upon motion of the party or the agency. Intended to encourage working in the forum where the action was begun.

Sec 12 Notice of obligation.

Allows notice of child support obligation to be served by certified mail rather than by regular first class mail as is currently done. Service will be considered effected when the notice is properly addressed, certified and mailed. Intended to help obligors separate their important mail from the unimportant.

Sec 14 & 15 Response to withholding order.

Reduces the time from 30 to 14 days in which an agency required to withhold income for child support obligations is required to respond.

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

STEVE COWPER, GOVERNOR

550 WEST 7th, 4th FLOOR
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3441
TOLL FREE: 800-478-3300

April 27, 1988

The Honorable Al Adams, Chairman
House Finance Committee
P. O. Box V
Juneau, AK 99811

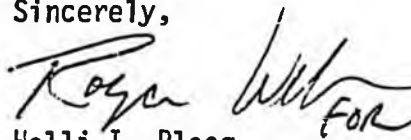
RE: CSSB 117 (Judiciary)

Dear Representative Adams:

I am writing this letter to advise you and members of the Finance Committee that I am in full support of CSSB 117 (Judiciary). The amendments are designed to balance the public goal of ensuring parents are providing support for their children with the realities of the present economic situation in Alaska and the burgeoning caseload of the Division. The amendments were designed by the Division, a subcommittee of the Judiciary Committee, the Women's Lobby and Dads Against Discrimination. We all feel positive about the outcome of our efforts and welcome your support as well.

Thank you for placing a copy of this letter in the Finance Committee file on CSSB 117 (Judiciary).

Sincerely,


Holli I. Ploog
Director

HIP:pwr:m11
88-111

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 31, 1988

SUBJECT: Amendment to HCS SB 117(Jud)
TO: Representative John Sund
FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is an amendment to HCS SB 117(Jud) which specifies how the child support enforcement agency is to serve notice of the initiation of an administrative action to enforce a support order, as requested by John Hartle of your staff.

Also included in the amendment is a technical change to the title of the bill. The bill as passed by the Senate did not accurately express the contents of the bill because the bill title refers only to child support enforcement, while the bill makes substantive changes to spousal support enforcement as well as child support enforcement. I have therefore included a change of the bill title in this draft to reflect the contents of the bill as it was adopted by the Senate. This is permitted under Uniform Rule 24(c) as a technical amendment to the bill.

The amended title would read, "An Act relating to spousal support enforcement by the child support enforcement agency and child support enforcement." This title covers the content of the bill as passed by the Senate, keeps the bill title narrow, and does not open the bill to new unrelated material. This title also will cover the subject of this amendment and the content of the draft HCS SB 117(Jud).

Enclosure

GU:bb
b4/086

MEMORANDUM

State of Alaska

TO The Honorable Fran Ulmer
House Judiciary Committee
Alaska State Legislature

DATE March 16, 1988

FILE NO

TELEPHONE NO 263-6270

FROM Holli I. Ploog *Hi*
Director
Child Support Enforcement Division

SUBJECT: Comments on Amendments
to SB 117

You have asked for my comments on the amendments to SB 117 which have been drafted in response to concerns raised by testimony given at the October Judiciary Committee hearing as well as on individual constituent cases. I fully support these changes and believe they will help achieve more equity in the administration of the child support program.

The first amendment excludes from unemployment garnishment the dependent allowance for children living in the home of the absent parent. By excluding these benefits from attachment, we will be recognizing the financial needs of the children living with the unemployed absent parent.

The second amendment provides for a definition of changed circumstances for purposes of prospectively modifying a child support obligation. The standard would be based on the adoption or amendment of guidelines by the court, the legislature or the agency. This would provide an easier mechanism for either the custodial or absent parent to adjust the obligation upward or downward without protracted and costly litigation. It would also limit modification petitions to once in two years.

The third amendment eliminates interest charges on late payments if the absent parent is under a wage withholding order and the sole reason the payment is late is due to a delay by a third party such as an employer or the Department of Labor on unemployment payments. This would rectify current law which does not distinguish payments late as a result of the absent parent's delinquency from payments late due to conditions outside the absent parent's control.

The final amendment provides specific criteria for terminating an income withholding order. The current statute allows only the court to terminate a withholding order not the Division nor does it specify under what conditions terminations should occur. This amendment establishes criteria of timely payments for a minimum of twelve months and all arrearages paid to justify termination of the withholding order.

HIP:tmr

88-77

RECEIVED
ALASKA DEPARTMENT OF REVENUE

MAR 17 1988

OFFICE OF THE COMMISSIONER

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



PO. Box 1
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

TO: Representative John Sund
FROM: Representative Fran Ulmer
SUBJECT: Child Support Amendments
DATE: March 10, 1988

Several weeks ago, I held a work session in my office with you, several other members of the Judiciary Committee and Holli Ploog, Director of Child Support Enforcement Division. The purpose was to address some of the constituent issues regarding child support with which we have all been dealing these past months.

Based on the consensus at that meeting, four amendments have been drafted which could be proposed to Senate Bill 117, which is now in the Judiciary Committee. I have worked closely with Holli in drafting the amendments and have been assured of her support.

I hope you will review the amendments and let me know of any concerns.

Attachments

3-23-88

Note:

Amendment #1 updated 3-21-88
Amendments #2,3,4 dated 3-4-88

Revised 3/21/88

A M E N D M E N T #1

Offered in the HOUSE

By Ulmer

TO: SB 117

Page 1, after line 7:

Insert a new bill section to read:

** Section 1. AS 23.20.401 is amended to read:

Sec. 23.20.401. CHILD SUPPORT INTERCEPTION. (a) Notwithstanding any other provision of this chapter, an individual filing a new claim for unemployment compensation must disclose whether child support obligations as defined in (h) [(g)] of this section are owed by that individual. If the individual discloses that child support obligations are owed and the individual is determined to be eligible for unemployment compensation, the department shall notify the child support enforcement agency of the Department of Revenue that the individual has been determined to be eligible for unemployment compensation.

(b) The department shall, unless the obligor and obligee agree otherwise, deduct and withhold from unemployment compensation payable to an individual who owes child support obligations as defined in (h) [(g)] of this section

(1) the amount specified by the individual to the department to be deducted and withheld under this subsection, if neither (2) nor (3) of this subsection is applicable;

(2) the amount specified in an agreement submitted to the

department under section 42 U.S.C. 654(20)(B)(i) (Sec. 454 (20)(B)(i), Social Security Act), by the child support enforcement agency of the Department of Revenue, unless (3) of this subsection is applicable; or

(3) any amount required to be deducted and withheld through legal process, as defined in 42 U.S.C. 662(e) (Sec. 462(e), Social Security Act), properly served upon the department.

(c) The child support enforcement agency may order the department to deduct and withhold the allowance paid for a dependent minor child under AS 23.20.350(f), if the child support enforcement agency finds that the individual claiming the allowance has a support obligation to the child and the child is not in the physical custody of the individual and is dependent on the individual for more than 50 percent of support.

(d) The department shall pay an amount deducted and withheld under (b) and (c) of this section to the child support enforcement agency of the Department of Revenue.

(e) [(d)] An amount deducted and withheld under (b) and (c) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by that individual to the child support enforcement agency of the Department of Revenue in satisfaction of the individual's child support obligations.

(f) [(e)] In (a) - (e) [(d)] of this section, "unemployment compensation" means compensation payable under this chapter, including amounts payable under an agreement under a federal law providing for compensation, assistance, or allowances with respect to unemployment.

(g) [(f)] This section applies only if appropriate arrangements

have been made for reimbursement by the child support enforcement agency of the Department of Revenue for the administrative costs incurred by the department under this section.

(h) [(g)] In this section, "child support obligations" includes only obligations that are being enforced under a plan described in 42 U.S.C. 654 (Sec. 454, Social Security Act), which has been approved by the United States Secretary of Health and Human Services under 42 U.S.C. 651-665 (Part D of Title IV of the Social Security Act)."

Page 1, line 8:

Delete "Section 1."

Insert "Sec. 2."

Renumber the following bill sections accordingly.

A M E N D M E N T #2

Offered in the HOUSE

By Ulme

TO: SB 117

Page 1, following line 7:

Insert a new bill section to read:

"* Section 1. AS 25.24.170 is amended by adding a new subsection to read:

(b) For the purposes of a modification of a child support obligation under this section, the adoption or enactment by the legislature, the state supreme court, or the child support enforcement agency of guidelines or a significant amendment to guidelines for determining the amount of a support obligation is a material change in circumstances."

Page 1, line 8:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill section accordingly.

Page 1, following line 18:

Insert a new bill section to read:

"* Sec. 4. AS 47.23.060(c) is amended to read:

(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. The court shall issue a medical support order as part of a child support order if health care coverage is available to the obligor at a reasonable cost. Upon a showing of good cause the court may order the parents required to pay support to give reasonable security for payments.

(d) An order for prospective child support may be modified or revoked under AS 25.24.170 [AS THE COURT CONSIDERS NECESSARY]."

Renumber the following bill sections accordingly.

Page 2, following line 5:

Insert a new bill section to read:

"* Sec. 7. AS 47.23.190(e) is amended to read:

(e) Modification of future periodic support payments may be ordered upon a showing of good cause and material change in circumstances. Each obligor and each obligee or obligee's custodian may petition for a modification under this subsection only once in a period of 24 months. For the purposes of this subsection, the adoption or enactment by the agency, the legislature, or the state supreme court of guidelines or a significant amendment to guidelines for determining the amount of a support obligation is a material change in circumstances."

Renumber the remaining bill sections accordingly.

A M E N D M E N T #3

Offered in the HOUSE

By Ulme

TO: SB 117

Page 1, lines 8 - 12, following "* Section 1.":

Delete all material and insert:

"AS 47.23.020(a) is amended to read:

(a) The agency shall

(1) seek enforcement of child support orders of the superior courts of the state in other jurisdictions and shall obtain, enforce, and administer the orders in this state;

(2) adopt regulations to carry out the purposes of this chapter, including regulations that establish

(A) schedules for determining the amount an obligor is liable to contribute toward the support of an obligee under this chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social Security Act);

(B) procedures for hearings conducted under AS 47.23.170; and

(C) subject to AS 47.23.025 and to federal law, a uniform rate of interest on arrearages of support that shall be charged the obligor upon notice if child support payments are 10 or more days overdue or if payment is made by a check backed by insufficient funds; however, an obligor may not be charged interest on late payment of a child support obligation, other than a

payment on arrearages, if the agency receives the payment within 30 days after the payment is due and the obligor is

(i) employed and income is being withheld from the obligor's wages under an income withholding order;

(ii) receiving unemployment compensation and child support obligations are being withheld from the obligor's unemployment payments under AS 23.20.401; or

(iii) receiving compensation for disabilities under AS 23.30 and child support obligations are being withheld from the obligor's compensation payments;

(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;

(5) administer the state plan required under 42 U.S.C. 651 - 665 (Title IV-D, Social Security Act) as amended;

(6) disburse support payments collected by the agency to the obligee, together with interest charged under (2)(C) of this subsection;

(7) establish and enforce administratively under this chapter, or through the superior courts of the state, child support orders from other jurisdictions pertaining to obligors within the state;

(8) enforce and administer spousal support orders if a spousal support obligation has been established with respect to the spouse and if the support obligation established with respect to the

child of that spouse is also being administered; and

(9) obtain a medical support order as part of a child support order if health care coverage is available to the obligor at reasonable cost."

A M E N D M E N T #4

Offered in the HOUSE

By Ulmer

TO: SB 117

Page 1, following line 18:

Insert the following new bill section to read:

"* Sec. 3. AS 47.23.062(1) is repealed and reenacted to read:

(1) An obligor may petition the court to terminate or modify an income withholding order if the obligor has made payments under the order for at least 12 months and all arrearages have been paid. Upon receipt of the petition under this subsection, the court may terminate or modify the income withholding order unless the court finds good cause to deny the petition due to the obligor's payment history or other grounds. The court may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages."

Renumber the following bill sections accordingly.

Page 3, following line 11:

Insert the following new bill section to read:

"* Sec. 9. AS 47.23.255 is amended by adding a new subsection to read:

(c) An obligor may petition the agency to terminate or modify an income withholding order if the obligor has made payments under the order for at least 12 months and all arrearages have been paid. Upon

receipt of the petition under this subsection, the agency may terminate or modify the income withholding order unless the agency finds good cause to deny the petition due the obligor's payment history or other grounds. The agency may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages."

Renumber the following bill section accordingly.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 9, 1987

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the duties and authority of the child support enforcement division of the Department of Revenue. This bill amends statutory provisions concerning the collection of child support. The amendments will enhance the expeditious handling of child support enforcement matters and will permit the division to charge fees for the services that it provides.

Section 1 of the bill, which amends AS 47.23.020(a)(7), makes clear that child support orders from other jurisdictions may be enforced administratively as well as through the judicial process.

Section 2 of the bill, which amends AS 47.23.020(b), requires the division to credit the obligor with payments made directly to the obligee only if the payments are made before the obligor is ordered to make payments through the child support enforcement division. Currently the division must credit all direct payments, regardless of when they were made. This requirement causes an extra cost to the state in two ways: (1) the division may not, under federal law, report these direct payments to the federal authorities as income, and therefore the state does not receive federal incentive payments for these direct payments; and (2) the division's computer is not programmed to make adjustments for direct payments made after the division is involved, requiring manual audits to be performed. These manual audits are time-consuming and take time away from other enforcement activities. Because of the cost of reprogramming the computer, that alternative is not cost-effective, especially after taking into consideration the fact that manual input would still be required.

Section 3 of the bill, which amends AS 47.23.100, gives the division authority to impose a fee for services provided under AS 47.23.010 -- 47.23.260. Currently, the division is prohibited from charging a fee other than an application fee that is mandated by federal law. The authority to charge fees would allow the division to pursue cost recovery, including attorney time and court costs incurred in the establishment (of support orders) and enforcement activities.

Section 4 of the bill, which amends AS 47.23.105, allows the division to process an obligor's request for an audit within 30 days rather than the currently mandated 10 days. The division does not have sufficient staff to process audit requests within the 10-day time frame without neglecting other areas of concern, particularly audits needed for court enforcement actions.

Section 5 of the bill, which amends AS 47.23.226, provides that the division may seek a judgment without the necessity of filing a motion before the court to do so. The action would be brought before the court on the basis of an affidavit, supplied by either the child's custodian or the division, and notice to the obligor that the action had been commenced. If a motion is not required, the division would not have to use attorney time for this function. The division currently obtains income withholding orders from the court using an affidavit rather than a motion.

Section 6 of the bill amends AS 47.23.250(e) to correspond with federal law and AS 47.23.062(e), which mandate that an obligor's employer begin withholding money from the obligor's wages 14 days after the mailing date on the notice regarding the withholding, or on the first day of the next pay period if that is earlier. Currently, because of the inconsistent time periods, the division does not receive payments on administrative withholding orders for a period of 30 days.

Section 7 amends AS 47.23.250(i) to correspond to the provisions of AS 47.23.062(g). AS 47.23.062(g) gives priority to court-ordered child support garnishments over all other attachments against the same money, unless ordered otherwise by the court. The amendment would require that administrative orders be treated in the same fashion.

Section 8 of the bill, which repeals AS 47.23.180(c), clarifies the procedure for appeal from administrative

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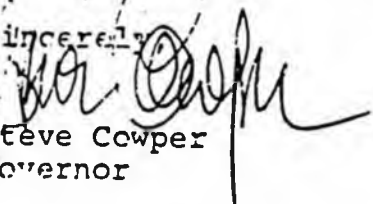
Hon. Jan Faiks

Page 3

decisions. An administrative decision may be appealed to the court under AS 47.23.210. Currently, AS 47.23.180(c) makes it appear that while the administrative process is going on, the obligor can go into court and seek another forum for relief. Often the court will not be informed that the obligor is currently involved in an administrative procedure. Although the court should be available to the obligor as an alternative forum for an appeal, it should not be used to avoid or subvert the administrative procedure.

The amendments in this bill would allow the child support enforcement division to meet its responsibility to collect support in an expeditious and cost-effective manner.

Sincerely,


Steve Cowper
Governor

February 2, 1988

Dear Representative SUND

Attached are the 1988 Legislative Goals of DADS AGAINST DISCRIMINATION Political Action Committee (DADS PAC).

Goals 1 and 2 have been agreed to by the Director of Child Support Enforcement Division, Holli I. Ploog. We are in a negotiation process with her to obtain her support, neutrality or opposition stances on the remaining eight goals.

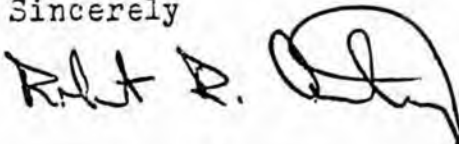
We have a legislative sponsor for Goal one. We are meeting daily with legislative members and staff. We seek sponsors for the remaining goals.

Our involvement began with the interim House Judiciary Committee in October 1987, where 17 obligors or their wives testified to a wide variety of child custody and support problems.

Please contact me in Juneau for further information at 780-4684. I am looking forward to working with you this session.

We will be sending you a follow-up questionnaire next week. Thank You for your assistance.

Sincerely



Robert R. Armstrong, President DADS PAC
5974 North Street
Juneau, Alaska 99801
Phone: 780-4684

FEB 07 1988



1988 Legislative Goals for DADS

Alaska DADS AGAINST DISCRIMINATION (DADS) and its DADS PAC have formed legislative goals for the 1988 legislative session by polling its nearly 100 men and women members from all over Alaska. These legislative goals seek to establish fairness and justice in the law for fathers, their children and the members of the fathers family, primarily. We also advocate for women who are receiving no child support.

1. Problem: CSED is charging interest on support cases where the support is being paid under an income garnishment and being remitted then to CSED by an employer or state agency. The employer or state agency most often remits the support to CSED late, generating an interest charge to the obligor, when the obligor has timely paid the support through the income garnishment at the first of the month.

Solution: Stop interest charges on income garnishments by amending statutes which give CSED authority to charge interest. (AS 47.23.025)

2. CSED is garnishing 50% of the dependent allowance that is provided for by the legislature to children living in the home of an unemployed worker, who is receiving unemployment compensation. This takes food out of one child's mouth, and in over 50% of CSED cases goes to reimburse the federal government for the welfare cost of another child. CSED should not be allowed to hurt any children.

Solution: Exempt the dependent allowance from garnishment by CSED in the statutes. (AS 23.20.350 (f) and (g))

3. Problem: A sworn statement by the obligee, with no proof whatsoever offered, that an amount of back child support is owed, initiates all manner of collection tools by CSED against the obligor. False swearing of false and over-stated amounts of back support owed occurs. Fathers are reluctant to seek criminal enforcement for false swearing, because of the harm that would come to the children if the mother is prosecuted, even though father is damaged by erroneous collection.

Solution: Establish a civil fine for false-sworn-to amounts of back child support, in an amount equal to the falsely sworn to amount.

4. Problem: The adversary divorce process destroys the minds of the children and the possibility of a positive working relationship between former spouses on behalf of the children.

Solution: Pass SB 302.

1988 Legislative Goals for DADS

5. Problem: Garnishment by CSED of the maximum 50% of unemployment compensation for child support, leaves an unemployed obligor with one child, only \$424 per month to live on...without the ability to survive economically. If you destroy the obligor's ability to survive in the process of collecting justly owed child support, you destroy any willingness by the obligor to cooperate with CSED; you destroy marriages due to extreme financial hardship; and you create a third poverty class BELOW welfare.

Solution: Prohibit CSED from garnishing any income source to the extent that an obligor is left with less to live on than the basic welfare grant for the same number of persons in the household. NO ONE should be forced by an action of any government to live on less than the basic welfare grant.

6. Court-ordered visitation between father and his children is frequently denied, by the custodial parent. This stops an important relationship post-divorce in the lives of the children involved. According to a California mental health study of 400 children, those children denied an ongoing post divorce relationship with their fathers have 27% more mental health problems. The loss of father, grand parents and aunts and uncles to a child because of a revenging custodial parent is destructive to the children involved. Contempt of court findings lack effectiveness in compelling visitation previously ordered by the court.

Solution: Make denial of court-ordered visitation a felony---psychologically to child and father's family this act is equal to kidnapping of the child. Michigan has a felony law and access mediators to enforce court-ordered visitation. They have the nation's highest child support income versus outlay of state dollars: to collect child support ratio over every other state. Michigan collects \$8.33 in support for every state dollar spent. Psychologically, there is a connection between paying child support and having an ongoing parental relationship with his child. In Alaska, vast amounts of public resources are spent to collect child support, and no public resources are spent to enforce the other part of a divorce court order---visitation---an unjust, discriminatory imbalance in the use of public resources.

7. Problem: CSED fails consistently to negotiate with an obligor a reasonable payment schedule for arrears owed, and instead most often garnishes at the maximum rate allowed under federal law---55% of an obligors income. If you destroy an obligor's ability to survive economically, you defeat and provide disincentive for payment of support. Children living with the father (step children, his own children during visitation, children of a second marriage) are suffering extreme economic hardship at the hands of CSED's frequent practice of garnishing maximum rates, rather than negotiating a survival amount with the obligor,

7. Solution: Direct CSED employees to negotiate in good faith with obligors with new statute language, so that collection of arrears owed does not result in severe economic hardship of the obligor to the point of financial collapse of his life. We would agree that CSED should receive from the obligor proof of income and proof of household bills to verify hardship.
8. Problem: CSED is executing multiple garnishment instruments against an obligor's income for child support accounts which are CURRENT, where no arrearages exist! Each of 59 CSED caseworkers carries a caseload of about 2,500 cases. There is no way the state could afford to reduce that caseload by funding enough caseworker positions to provide a workable caseload of about 200 per caseworker, the maximum ratio in social services today for accurate handling. The state legislative finance committee must look to cutting out unnecessary casework activity. Garnishment of income should be used only in cases where support is in arrears. Casework time, paper, computer time, postage, unavoidable telephone contact time subsequent to execution of an income garnishment could be reduced significantly if income garnishment was only executed by caseworkers for cases where arrearages exist.

Solution: Direct CSED to stop garnishing for current monthly child support payments.

9. CSED is not coordinating multiple income withholding orders outstanding for the same current monthly payment. This results frequently in the garnishment of the current monthly support payment twice, double collecting, from two different income sources. The most common two examples are:
a. Independent payment by the obligor of his monthly obligation and the garnishing of that same amount from his permanent fund dividend; b. the garnishment of the current monthly obligation from an obligor's pay check and the garnishment of that same amount from his permanent fund dividend. CSED is spending lots in refunded double collection amounts; and is open to suit for double collection.
Solution: Remove every obligor's name from the CSED computer tape transmitted to the Permanent Fund Dividend section of the Dept. of Revenue, who is either paying independently or who is under an income garnishment for the current monthly child support payment.
10. Problem: When a child support account goes into arrears, CSED is not mailing the statutory notice of liability which must precede an initial garnishment by CSED by certified mail. Alaska has a work force made up in large part of "away from home workers", such as fishermen, loggers, tug boat operators, remote site construction workers, North Slope workers. Alaska law used to require certified notice, but changed it. Now remote workers are coming home to find a "taking" of property has already occurred by CSED, sometimes for over-stated and false balances, because the 30 days between notice and taking had already expired, giving the worker no chance to

10. Problem: (continued) negotiate a reasonable payment schedule for arrears in addition to the ongoing monthly obligation; to correct over-stated amounts claimed that are owed.

Solution: Change state statutes to require certified mailing of Notices of Liability. Then a remote worker would have to sign for the notice and would receive actual 30 day notice, prior to a "taking" of his income or property. We believe the State of Alaska has opened itself to a lawsuit on due process grounds brought by the remote worker class, because no effective notice is now being given, prior to a "taking" of property.

OTHER ISSUES OF CONCERN TO DADS:

Summer visitation credits against child support, welfare fraud, establishment of an obligor/obligee complaint officer within CSED, limited telephone hours for fathers to reach CSED and respond as required by law to all manner of notices, CSED not honoring Superior Court orders, failure of CSED to monitor weekly income garnishments so that over-collection does not result, accounting integrity of the CSED computer system resulting in balances-owed figures wildly fluctuating over short periods of time, CSED placing the power to deny court-ordered summer visit credits in the hands of obligees, CSED refusing to accept obligors documentation that an extended visitation between father and children has taken place, failure of the courts to consider fathers as fit custodial parents on an equal footing with mothers, lack of provision in the law for grandparent visitation rights affecting many Alaska seniors, failure of CSED to provide any notice of a garnishment or lien at all due to its one-notice-per-child-support-case policy.

RECORD
3/20/87
EK

Box 241
Juneau, Alaska 99802

March 17, 1987

Senator Jalmar Kertulla
Capital Building
Juneau, Alaska 99811

Dear Senator Kertulla:

Senate Bill 117 concerning child support enforcement is currently in your Judiciary Committee and may pass out on March 19, 1987. Before it does, please consider amending it.

Several major constitutional problems result from existing statute. Senator Duncan has received complaints from his constituents over them.

Foremost among the problems is a violation of due process right to a hearing consistent with "fairness." A fair hearing of an agency decision affords the aggrieved party the opportunity to have a record made of proceedings, call witnesses, testify under oath as to the truth of evidence, call the opposing party to testify under oath, and have at least an attorney preside as the hearing officer.

Presently, the child support agency allows an "informal hearing" at which the obligor may only present cancelled checks for child support payments made. The obligor may not testify as to payments made, subpoena the obligee bank statements for proof of deposit, or in any other way present non-documentary proof of payment.

If a spouse motivated through multiple forms of animosity wants to put the other spouse through the wringer, existing statute provides the machinery. Existing statute requires the obligor to search up to 18 years of cancelled checks. If the checks are not produced, a debt is established even if the obligor has made payment.

Even if the obligor has years of cancelled checks and refutes the affidavit of non payment of the other spouse, the agency can do nothing under existing statute to penalize her for making fraudulent accusations or committing perjury. Thus a spouse can claim non payment of \$7,000, be found to have lied to the agency, and the agency will not and cannot do anything to collect for wasting the resources of the agency or harrasing the obligor. The agency represents the obligee.

This representation of the obligee is the source of the second major problem which needs change. An obligee who makes \$20,000 can force the obligor^{OR} to hire an attorney to appeal to Superior Court a fraudulent claim. The burden the obligee has of hiring an attorney even if he cannot afford one can result in settlement of an unfair fraudulent claim in order to avoid the expense of hiring an attorney. Statute creates this unfair advantage. While indigent parties should retain the representation of the attorney general, there is no reason a non-indigent party should retain the free state funded services which can be used to harrasse the other spouse.

Further specific changes follow.

1. 47.23.100 should allow the agency to charge for any fraudulent claim of non-payment that the obligee makes in a sworn affidavit to agency. The discretion to assess a fine should be sufficiently broad to prevent fraudulent claims. The language should explicitly allow for assessment of fraudulent claims.

2. 47 23 105 should require the agency to complete the audit within 30 days. After 110 days, no audit was performed after I submitted cancelled checks. The language should state the agency must perform the audit within the time limit.

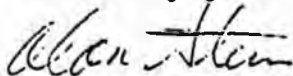
The audit should be made on all payments made not merely to those made to the agency. Many individuals make payments directly to spouses. The agency should have the authority under this section to subpoena records of the obligee to ascertain if payments have been deposited.

The audit should be performed more than once a year upon good cause such as providing newly discovered proof of past payment. Interest adjustments should reflect payment from the date the payment month was made. ~~47~~

47 23 226 should be changed to allow a notice period and response to the court of 30 days. Obligor are often out of state or in remote locations. They are often separated from records of payment by at least a 1000 miles eg fishermen in Bering Sea, loggers in Oregon. To require them to make sworn statements about specific detailed lengthy transactions without opportunity to conduct a search for an accurate sworn response on 15 day time limit is grossly unfair. For good cause, the agency should have power to extend the time limit.

The place of hearing should not be in court which requires the obligor to hire an attorney but by an agency hearing officer. Fairness requires the state absorb the cost of providing a hearing at the first stage that affords all due process protections to both parties.

Sincerely yours,



Alan Stein

cc Senator Eliason
Duncan

(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 AS 47.23.130, 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 a 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 AS 47.23.125 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 AS 47.23.230 — 47.23.270 in the amounts stated in the notice and finding of financial responsibility. (§ 29 ch 126 SLA 1977; am § 7 ch 96 SLA 1981)

Effect of amendments. — The 1981 amendment, in subsection (f), substituted "finding" for "filing" preceding "of financial responsibility."

Editor's notes. — The reference to AS 47.23.125 in paragraph (2) of subsection (e) is apparently incorrect. AS 47.23.120 would appear to be the intended reference.

Sec. 47.23.180. Administrative establishment of support obligations; decision. (a) Within 20 days of the date of the hearing, the hearing officer shall adopt 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 AS 47.23.130 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 entered under (a) of this section. (§ 29 ch 126 SLA 1977)

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 the obligee's 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.

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(9) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, optometrists, osteopaths, naturopaths, physical therapists, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55, religious healing practitioners, and surgeons;

(10) "sexual exploitation" includes

(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 — 11.66.150, by a person responsible for the child's welfare;

(B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1976; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982; am §§ 15, 16 ch 39 SLA 1985; am § 8 ch 56 SLA 1986; am § 3 ch 114 SLA 1986; am § 14 ch 131 SLA 1986)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

Effect of amendments. — The 1985 amendment rewrote paragraph (9) and added paragraphs (3), (7), and (8).

The first 1986 amendment, effective May 30, 1986, in paragraph (9) inserted "naturopaths."

The second 1986 amendment rewrote paragraph (10).

The third 1986 amendment inserted "audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55," near the end of paragraph (9).

Chapter 23. Child Support Enforcement Agency.

Section	Section
20. Duties and responsibilities of the agency	170. Administrative establishment of support obligations; hearing
22. Enforcement requests from other states	225. Support payment obligations as judgments
25. Rates of interest	226. Collection of support
45. Determination of support obligation	250. Order to withhold and deliver
60. Order of support	255. Income withholding orders
62. Income withholding order for support	260. Civil liability upon failure to comply with an order or lien
75. Employment information	265. Service; notification of change of address
125. Accounting and disposition of federal receipts and agency collections	273. Reporting of payment information concerning delinquent obligors
140. Power of agency to administratively establish and enforce support obligation; procedures to be utilized	278. Payments not disbursed
150. Required notice in administrative enforcement of support orders	900. Definitions

Sec. 47.23.020. Duties and responsibilities of the agency. (a) The agency shall

(1) seek enforcement of child support orders of the superior courts of the state in other jurisdictions and shall obtain, enforce, and administer the orders in this state;

(2) adopt regulations to carry out the purposes of this chapter, including regulations that establish

(A) schedules for determining the amount an obligor is liable to contribute toward the support of an obligee under this chapter and under 42 U.S.C. 651 — 665 (Title IV-D, Social Security Act);

(B) procedures for hearings conducted under AS 47.23.170; and

(C) subject to AS 47.23.025 and to federal law, a uniform rate of interest on arrearages of support that shall be charged the obligor upon notice if 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;

(5) administer the state plan required under 42 U.S.C. 651 — 665 (Title IV-D, Social Security Act) as amended;

(6) disburse support payments collected by the agency to the obligee, together with interest charged under (2)(C) of this subsection;

(7) establish and enforce through the superior courts of the state child support orders from other jurisdictions pertaining to obligors within the state;

(8) enforce and administer spousal support orders if a spousal support obligation has been established with respect to the spouse and if the support obligation established with respect to the child of that spouse is also being administered; and

(9) obtain a medical support order as part of a child support order if health care coverage is available to the obligor at a reasonable cost.

(b) In determining the amount of money an obligor must pay to satisfy the obligor's immediate duty of support, the agency shall consider all payments made by the obligor directly to the obligee or to the obligee's custodian. (§ 1 ch 251 SLA 1976; am § 17 ch 126 SLA 1977; am §§ 3 — 5 ch 118 SLA 1982; am § 4 ch 40 SLA 1985; am § 1 ch 72 SLA 1986)

Effect of amendments. — The 1985 amendment in subsection (a) in paragraph (1) substituted "seek enforcement of" for "obtain, enforce, and administer" and added "in other jurisdictions and shall obtain, enforce, and administer the orders in this state"; in paragraph (2) in the introductory language substituted "that" for "which" and made a minor punctuation change and in subparagraph (C) deleted "schedule of penalties and a" following "uniform"; rewrote paragraph (7); added

paragraphs (8) and (9); and made a related stylistic change.

The 1986 amendment, effective June 5, 1986, in paragraph (6) of subsection (a) deleted "child" preceding "support payment;" and inserted a comma following "obligee."

Legislative history reports. — For House letter of intent relating to the 1985 amendment to this section, see 1985 House Journal page 740.

Effect of amendments. — The 1985 amendment substituted "Collection of" for "Action to collect" in the catchline, in the first sentence deleted "commence an action to" preceding "collect the payment" and substituted "motion" for "petition," and in the second sentence substituted "in AS 47.23.265" for "by the rule of civil pro-

cedure for service of summons in a civil action."

The 1986 amendment, effective June 5, 1986, deleted "child" preceding "support" in the catchline, in the first sentence deleted "child" following "payments of" and in the second sentence substituted "must" for "shall."

Sec. 47.23.250. Order to withhold and deliver. (a) At the expiration of 30 days from the date of service of notice under AS 47.23.150, or from the date of service of a notice and finding of financial responsibility under AS 47.23.160, 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 AS 47.23.240. The order shall state the amount of the obligor's liability and shall state in summary the terms of AS 47.23.260 and 47.23.270.

(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 subsection in trust for application against the liability of the obligor under AS 47.23.130 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

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§ 47.23.255 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.23.260

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) Exemptions under AS 09.38 do not apply to proceedings to enforce the payment of child support under AS 47.23.230 — 47.23.270; however, net disposable earnings are exempt from execution as provided in 15 U.S.C. 1673(b). In this subsection, "net disposable earnings" has the meaning given in 15 U.S.C. 1672. (§ 29 ch 126 SLA 1977; am § 8 ch 96 SLA 1981; am § 134 ch 6 SLA 1984; am § 10 ch 144 SLA 1984; am § 12 ch 40 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (i) in the first sentence deleted "50 percent of the obligor's" preceding "net disposable" and sub-

stituted "are" for "is" preceding "exempt" and "as provided in 15 U.S.C. 1673(b)" for "under AS 47.23.230 — 47.23.270."

Sec. 47.23.255. Income withholding orders. (a) The agency shall pay to the obligee all money recovered by the agency from the obligor under an income withholding order except for court costs and money assigned to the agency under AS 47.23.120 — 47.23.130.

(b) Notwithstanding AS 47.23.250, an income withholding order contained in a decision of the agency that has not been set aside by the superior court under AS 47.23.220 shall be enforced under the procedure established in AS 47.23.062. (§ 9 ch 96 SLA 1981; am § 13 ch 40 SLA 1985)

Effect of amendments. — The 1985 amendment substituted "withholding" for "assignment" in the catchline, in subsection (a) inserted "to" preceding "the obligee," "from the obligor," and "court" preceding "costs," and substituted "withhold-

ing" for "assignment" and "and money assigned to the agency under AS 47.23.120 — 47.23.130" for "that are recovered from the obligor," and substituted "withholding" for "assignment" in subsection (b).

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 an answer to an order to withhold and deliver within the time prescribed in AS 47.23.250; (2) fails or refuses to deliver property in accordance with an order issued under AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys real property subject to a lien filed under AS 47.23.230 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

§ 302.34

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(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(3) In an interstate case, the application fee is charged by the State where the individual applies for services under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who has filed an application for IV-D services under this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under this section.

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency

must notify, consistent with the option selected, either the individual who has filed an application for IV-D services or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the applicant of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(e) *Assignment.* (1) The IV-D agency may take an assignment of support rights from an individual who applies for services under this section. However, as assignment by an individual under this section does not constitute an assignment under § 232.11 of this title and may not be a condition of eligibility for services under this section.

(2) Before the applicant for IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section and may have the effect of making the support debt dischargeable in bankruptcy.

(Sec. 1102, Social Security Act (42 U.S.C. 1302) and secs. 454(b) and 455(a), Social Security Act (42 U.S.C. 654(b) and 655(a)))

[49 FR 36772, Sept. 19, 1984, as amended at 50 FR 19648, May 9, 1985]

EDITORIAL NOTE: At 50 FR 19648, May 9, 1985, § 302.33(a), (b) and (c) were revised. This amendment contains information collection requirements which will not be effective until approval has been obtained from the Office of Management and Budget. A notice will be published in the FEDERAL REGISTER.

§ 302.34 Cooperative arrangements.

The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law-enforcement officials. Such agreements may be entered into with a single official covering more than one court, official, or agency, if such single official has the legal authority to enter into agreements on behalf of such courts, officials, or agencies. Such agreements shall contain provisions for providing courts and law-enforcement officials

Office of Child Support Enforcement, HHS

with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law-enforcement official, to the extent that such information is relevant to the duties to be performed pursuant to the agreement. They shall also provide for assistance to the IV-D agency in carrying out the program, and may relate to any other matters of common concern. Under this requirement such agreements may include provisions:

(a) For the investigation and prosecution of fraud directly related to paternity and child and spousal support;

(b) To reimburse courts and law-enforcement officials for their assistance.

(40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982)

§ 302.35 State parent locator service.

The State plan shall provide as follows:

(a) The IV-D agency shall establish a State PLS using:

(1) All relevant sources of information and records available in the State, and in other States as appropriate; and

(2) The Federal PLS of the Department of Health and Human Services.

(b)(1) The IV-D agency shall establish a central State PLS office and may also designate additional IV-D offices within the State to submit requests to the Federal PLS.

(2) To designate more than two additional IV-D offices within the State, the IV-D agency must obtain written approval from the Office.

(c) The State PLS shall only accept requests to use the Federal PLS from:

(1) Any State or local agency or official seeking to collect child and spousal support obligations under the State plan, or medical support obligations if an agreement is in effect under § 306.2 of this chapter;

(2) A court that has authority to issue an order against an absent parent for the support and maintenance of a child, or any agency of such court;

(3) The resident parent, legal guardian, attorney, or agent of a child who is

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 117

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to child support enforcement."

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

8 * Section 1. AS 47.23.020(a)(7) is amended to read:

9 (7) establish and enforce administratively in accordance
10 with this chapter, or through the superior courts of the state, child
11 support orders from other jurisdictions pertaining to obligors within
12 the state;

13 * Sec. 2. AS 47.23.020(b) is amended to read:

14 (b) In determining the amount of money an obligor must pay to
15 satisfy the obligor's immediate duty of support, the agency shall
16 consider all payments made by the obligor directly to the obligee or
17 to the obligee's custodian before the time the obligor is ordered to
18 make payments through the agency.

19 * Sec. 3. AS 47.23.100 is amended to read:

20 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall
21 provide aid to any person due child support under the laws of this
22 state upon application. The agency may, by regulation, [NOT] impose a
23 fee for services provided under AS 47.23.010 -- 47.23.280 [UNLESS
24 REQUIRED BY FEDERAL LAW].

25 * Sec. 4. AS 47.23.105 is amended to read:

26 Sec. 47.23.105. AUDIT OF COLLECTIONS. Within 30 [10] working
27 days after receipt of a written request from an obligor or the
28 obligor's legal representative, the agency shall provide an audit of
29 all child support payments made by the obligor and received by the

1 agency. The audit shall include the date and amount of each payment,
2 the name of the obligee, and the total amount of arrearages of support
3 past due and amount of unpaid penalties and interest imposed under
4 AS 47.23.020(a)(2)(C). The agency is required to provide an audit for
5 an obligor under this section only once each year.

6 * Sec. 5. AS 47.23.226 is amended to read:

7 Sec. 47.23.226. COLLECTION OF SUPPORT. To collect the payment
8 due, the custodian of a child, or the agency on behalf of that person,
9 shall file with the court (1) [A MOTION REQUESTING ESTABLISHMENT OF A
10 JUDGMENT; (2)] an affidavit that states that one or more payments of
11 support are 30 or more days past due and that specifies the amounts
12 past due and the dates they became past due; and (2) [(3)] notice of
13 the obligor's right to respond. Service on the obligor must be in the
14 manner provided in AS 47.23.265. The child's custodian, or the agency
15 on behalf of the custodian, shall file with the court proof of service
16 of the [PETITION,] affidavit[,], and notice. The obligor shall respond
17 no later than 15 days after service by filing an affidavit with the
18 court. If the obligor's affidavit states that the obligor has paid
19 any of the amounts claimed to be delinquent, describes in detail the
20 method of payment or offers any other defense to the custodian's or
21 agency's affidavit [PETITION], then the obligor is entitled to a
22 hearing. After the hearing, if any, the court shall enter a judgment
23 for the amount of money owed. If the obligor does not file an affida-
24 vit under this section, the court shall enter a default judgment
25 against the obligor.

26 * Sec. 6. AS 47.23.250(e) is amended to read:

27 (e) Any person, political subdivision, or department of the
28 state served with an order to withhold and deliver is required to make
29 true answers to inquiries contained in the order under oath and in

1 writing within 14 [30] days after [OF] service of the order, and is
2 further required to answer all inquiries subsequently put.

3 * Sec. 7. AS 47.23.250(i) is amended to read:

4 (i) An order to withhold and deliver under this section has
5 priority over all other attachments, executions, garnishments, or
6 other legal process brought under state law against the same money
7 unless otherwise ordered by the court. Exemptions under AS 09.38 do
8 not apply to proceedings to enforce the payment of child support under
9 AS 47.23.230 -- 47.23.270; however, net disposable earnings are exempt
10 from execution as provided in 15 U.S.C. 1673(b). In this subsection,
11 "net disposable earnings" has the meaning given in 15 U.S.C. 1672.

12 * Sec. 8. AS 47.23.180(c) is repealed.