

HB

43

Alaska State Legislature

HOUSE OF REPRESENTATIVES

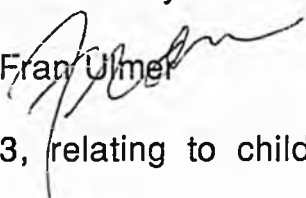


REPRESENTATIVE FRAN ULMER

MEMORANDUM

March 27, 1991

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer 

RE: HB 43, relating to child support arrearages

I would like to request a hearing before the House Judiciary Committee for HB 43, relating to child support arrearages. This bill requires that when past due child support is collected for families who have been receiving public assistance, those arrearages will be paid first to the family, and secondly to the state for reimbursement of the public assistance. Although this bill is a technical change to the way in which the state handles payment of child support arrearages, it will help families remain financially independent. This legislation was recommended by the Family Support Task Force and is supported by the Alaska Children's Commission, the Alaska Family Support Group and by Alaska Dads and Moms.

Thank you for your consideration of this request.

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 10, 1991

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 43, relating to child support arrearages

I would like to request a hearing for HB 43, relating to child support arrearages, before the House Judiciary Committee at the committee's earliest convenience. This bill has wide support among both custodial and non-custodial parent organizations, the Alaska Children's Commission, as well as the administration. I urge you to bring this before the Judiciary Committee for review.

Thank you for your consideration of this request.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947



Alaska State Legislature

HOUSE OF REPRESENTATIVES

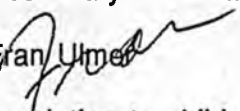


REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 21, 1991

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer 

RE: HB 43, relating to child support arrearages

One of the responsibilities of the Child Support Enforcement Division of the Department of Revenue is to collect past due child support. When a custodial parent applies for public assistance, he or she must assign the rights to uncollected, past due support to the state for reimbursement of the assistance received. When the delinquent child support is collected, the state is reimbursed first for the assistance paid to the family. After the state is fully repaid, the balance of the past-due child support is paid to the family. [Note: Although the state is reimbursed for arrearages first, that reimbursement does not affect payment of current monthly child support to the family.]

The effect of HB 43 is to reverse this order of payment regarding arrearages. Under the bill, past-due child support will be paid first to the family and secondly to the state for reimbursement of assistance received by the family. The purpose of this change is to make this "family-first" priority a clear policy of the state and to ensure that child support is received when it is most needed. Under the current order of payment, families sometimes wait years for their share of past-due child support. In some cases, the children are grown and on their own by the time the delinquent payments are received--long after they were most needed by the family. HB 43 ensures that families will receive payments first.

There are several changes I would like to suggest the committee make to HB 43. I have recently learned of a case pending in the State of Washington whose outcome may have significant bearing on Alaska's child support arrearage collection system (*Jensen v Washington Dept. of Social & Health Services*). That case attempts to rectify in Washington certain inequities which occur in Alaska's arrearage collection system as well.

Briefly, in Alaska and Washington, when a parent assigns rights to child support arrearages to the state as reimbursement for AFDC payments, the state then holds that parent liable for the full amount of the assistance provided. Assume, for example, a family receives public

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assistance benefits in the amount of \$10,000 and the state collects all the child support due during that period of time, which is \$3,000. The family terminates from public assistance and an additional \$4000 worth of support accrues. The family then goes on public assistance for a second time. The state will use the "gap period of arrears" of \$4000 to reimburse unpaid AFDC benefits from either the first or second welfare period. (See attached chart.)

This practice creates a grave inequity between those families receiving assistance who have outstanding child-support arrears, and those families who have no child-support arrearages to be collected. No other AFDC recipient is required to repay the assistance provided. Federal law is silent on this issue; federal regulations are contradictory. If the legal challenge in Washington is upheld, Alaska will have solid grounds for redressing this inequity. Counsel from the Legal Affairs Agency advises me, however, that we may well have litigation on this issue regardless of how we choose to handle it.

I **strongly recommend** that we amend HB 43 to indicate the Legislature's intention that AFDC payments shall be reimbursed from child support arrearages up to the total amount of child support ordered for those months in which the family received assistance, or the total amount of the assistance provided during that period, **whichever is lesser**. I also suggest we add the proviso "to the extent allowed by federal law" to address prospectively the failure of the Washington litigants to overturn this practice in Washington. I have prepared a committee substitute which incorporates these changes for your review.

Passage of HB 43 will require additional personnel in the Child Support Enforcement Division to calculate the amounts of child support owed to both the family (the "obligee") and to the state. Clients tend to go on and off of public assistance over a period of months and years; each time a client returns to the public assistance rolls, the debts to the state and the family must be recalculated.

In addition, payment of "families first" will result in a loss of revenue to the state in the amount of approximately \$2,400.0. This loss will require an additional appropriation to the AFDC program (\$1,961.0) and to the Child Support Enforcement program (\$462.5). Although these numbers appear large, the loss is only temporary; the funds eventually may be recovered by the state.

HB 43 was recommended by the Family Support Task Force and is supported by the Alaska Family Support Group, Alaska Dads and Moms, and the Alaska Commission on Children and Youth.

HB 43, Child Support Arrearages

Sample Case

	Child Support Owed	AFDC Paid
Period 1: [on AFDC]	\$3000	\$10,000
Period 2: [off AFDC]	\$4000	0
Period 3: [on AFDC]	\$1500	\$5000
Total	\$8500	\$15,000

Under current law: State will retain all child support arrearages from periods #1,2 and 3 (\$8500) as reimbursement for AFDC benefits.

Family would receive no arrearages.

Under CSHB 43: State would retain child support arrearages only from periods #1 and #3 (\$4500) as reimbursement for AFDC benefits.

Family would receive \$4000 in arrearages before state retained \$4500 for AFDC reimbursement.

CSHB 43, CHILD SUPPORT ARREARAGES

Sectional Analysis

Section 1. (d) Provides that past-due child support payments collected by the state shall be paid **first** to the custodial parent (the "obligee") and **secondly** to the state for reimbursement of public assistance paid to the family. This reverses the current order of payment.

(e) To the extent permitted by federal law, after the past-due child support owed to the family has been paid, the state may retain past-due child support payments equal to the total amount of child support owed during the period in which the family received AFDC benefits, or the total amount of assistance paid, whichever is lesser.

(f) The state shall pay past-due child support recovered through off-set of the obligor's federal tax refund **first** to the state for unreimbursed assistance and **secondly** to the family, as required by federal regulation.

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 21, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3-26-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 43

HOUSE BILL NO. 43

CHILD SUPPORT ARREARAGES

"An Act relating to the distribution of child support arrearages collected by the child support enforcement agency."

RECOMMENDATIONS: [] the same title
be replaced with _____ [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact D.O.R.


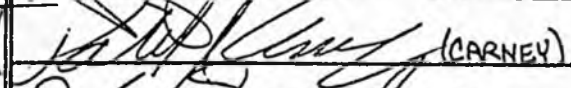
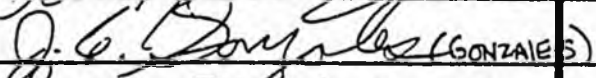
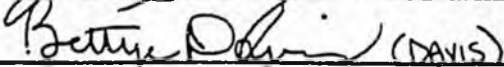


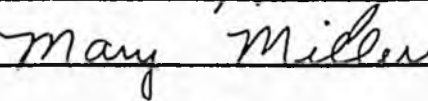
[] fiscal note(s) _____


[] zero fiscal note _____

[] zero fiscal note(s) _____

SIGNING DO PASS: (LINCOLN)

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
				
 (CARNEY)				
 (GONZALES)				
 (DAVIS)				
 (DAVIS)	 (HANLEY)		X	
	 Miller		X	


CO-Chairman's Signature

HB 43, CHILD SUPPORT ARREARAGES

Sectional Analysis

Section 1. (d) Provides that past-due child support payments collected by the state shall be paid **first** to the custodial parent (the "obligee") and **secondly** to the state for reimbursement of public assistance paid to the family. This reverses the current order of payment.

(e) After the past-due child support owed to the family has been paid, the state may retain past-due child support payments equal to the total amount of unreimbursed assistance.

(f) The state shall pay past-due child support recovered through off-set of the obligor's federal tax refund **first** to the state for unreimbursed assistance and **secondly** to the family, as required by federal regulation.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

February 25, 1991

Mr. Steve Strube
P.O. Box 521155
Big Lake, AK 99652

Dear Mr. Strube:

In the chaos of moving into this job I apparently overlooked a memo from Governor Hickel dated January 8, 1991 advising me of the formation of an advisory team for the Department of Revenue.

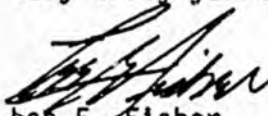
Apparently this appointment was also not communicated to at least some of you, since my telephone calls to several people on the list resulted in their expression of surprise at the appointment.

Regardless, you have been assigned to the advisory team for the Department of Revenue and I welcome the opportunity to receive your input and expertise.

Since 75 % of the team resides in the Anchorage/MatSu area I have asked Jim Magowan to serve as Chairman. He will coordinate a meeting in the near future. After you have had the chance to identify issues on which you wish to counsel the Department of Revenue, he will schedule a meeting with me.

Your positive input and solutions to perceived problems of the Department of Revenue will be welcomed.

Very truly yours,


Lee E. Fisher
Commissioner

LEF:m11

cc: Lt. Governor Jack Coghill
James Rockwell, Special Assistant
to the Governor

MARCH 23, 1991



REP. LINCOLN, CO-CHAIR
HOUSE H.E.S.S. COMMITTEE
PO BOX V

JUNEAU, AK 99811

RE: HB 43

DEAR REP. LINCOLN AND COMMITTEE MEMBERS,

PASSAGE OF THIS BILL WILL PUT ABOUT
TWO MILLION DOLLARS INTO THE HANDS
OF CUSTODIAL FAMILIES, AND CHILDREN,
THAT WOULD OTHERWISE BE EARNED BY
GOVERNMENT TO REIMBURSE ACCRUED
AFDC DEBTS.

THE ALASKA FAMILY SUPPORT GROUP, INC.
STRONGLY SUPPORTS THIS BILL BECAUSE
WE BELIEVE CHILDREN SHOULD BE PAID
BEFORE GOVERNMENT.

ATTACHMENT 1 B 2 SHOWS THESE ISSUES ARE
RECOMMENDATIONS # 35 ~~#~~ 36 OF THE
FAMILY SUPPORT TASK FORCE LAST SESSION.

SINCERELY,

Steven P. Stuber, President

P.S. PLEASE DI

P.O. Box 521155

AK Fam. Support Grp Stmt

bx (907) 892-7760

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB43 (JUD)

Revision Date: April 26, 1991
Title: Act relating to distribution of child support arrearages collected by the CSEA
Sponsor: Representative Ulmer
Requestor: House Judiciary

Department Affected: Department of Revenue
BRU: Social Services
Component: Child Support Enforcement

COMPONENT SERIAL NO. | 1 | 1 | 1 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	466.4	525.6	549.2	615.1	642.8	716.7
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	36.7	38.0	40.0	40.0	40.0	40.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	38.5	13.4	0	14.8	0	16.3
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	541.6	577.0	589.2	669.9	682.8	773.0
CAPITAL	0	0	0	0	0	0
REVENUE	(716.8)	(1608.9)	(1725.8)	(1771.6)	(1742.2)	(1742.2)

FUNDING: (Thousands of Dollars)

GENERAL FUND	184.2	196.2	200.3	227.8	232.2	262.8
FEDERAL FUNDS	357.4	380.8	388.9	442.1	450.6	510.2
OTHER	0	0	0	0	0	0
TOTAL	541.6	577.0	589.2	669.9	682.8	773.0

POSITIONS:

FULL-TIME	11	12	12	13	13	14
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: See attached analysis.

Prepared By: Ardith Lynch *Ardith Lynch* Phone: 263-6277
Division: Child Support Enforcement Division Date: April 26, 1991

Approved by Commissioner: Lee E. Fisher *Lee E. Fisher*
Agency: Department of Revenue Date: 4/29/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ANALYSIS FOR FISCAL NOTE
HB 43
CHILD SUPPORT ENFORCEMENT DIVISION
PAGE 2 OF 3

This legislation reverses the current order of collection of child support arrearages in those cases where child support was unpaid before, during, and after a custodial relative's receipt of AFDC grants. These cases create two debts. Current policy is to collect the State's debt first. * This means that money owed to the State of Alaska from assigned support due (but unpaid) during a child's period of receipt of AFDC benefits, and other cost recoveries, is collected by CSED before it collects any unpaid support that accrues after a custodial relative leaves the AFDC rolls.

By reversing the priority of debt collected, paying any excess over current support due to the family for post-AFDC unpaid support before paying the State for assigned (AFDC) unpaid support, the State relinquishes (in the first year) \$1,961,000 in collections and \$462,500 in prepaid Federal Incentives that are remitted to the General Fund to help pay the State's AFDC General Fund match and finance the child support program.

However, child support collections and timely support payments to the family will increase if CSED receives prompt notification when an obligor becomes employed. Increased State revenues from collection of assigned support will result. Currently, CSED's match with records of the Department of Labor, Employment Security Division, serves as the primary means for identifying a delinquent parent's employer. By the time CSED receives the data, four to six months have elapsed. This time lag allows many obligors to delay enforcement of their child support, and permits obligors who work in seasonal employment to avoid payment of their child support. The employer reporting provisions of HB 43 will allow CSED to require companies who employ a large number of obligors to report new hires to CSED. Fewer than 100 companies employed 20 or more obligors in CSED's caseload during the last three years. Prompt notification to CSED will increase the agency's ability to collect support when the obligor parent is employed and earning regular wages.

This fiscal note reflects the lost revenues to the State from the change in arrearage payment priority, which are partially offset by revenues from increased child support collections based on employer reporting. Collection has been expanding at a rate between 12% and 15% a year. This fiscal note adjusts the rate of revenue loss accordingly in the four following fiscal

* When a support collection is made by CSED, Ongoing Support - the support obligation that is due in the current month - is always paid to custodial parents who are not receiving AFDC, before any arrearage payment is made.

ANALYSIS FOR FISCAL NOTE
HB 43
CHILD SUPPORT ENFORCEMENT DIVISION
PAGE 3 OF 3

years from FY92, and holds incentive losses constant. These revenues are reflected in future-year budgets as Program Receipts; their loss will require additional appropriations in the AFDC program and the Child Support Enforcement program.

The legislation will require increased operational staffing at CSED. To pay arrearages to the family first, CSED must greatly accelerate the rate at which subrogated debt calculations are completed. Presently, payments exceeding the current support due can be retained to the State until the accumulated amount nears the amount of the estimated subrogated debt. The legislation will necessitate a sub-debt calculation as soon as a child leaves the AFDC rolls, and each time the child leaves, in order to guarantee the correct distribution of debt between the State and the custodial relative. (A given child can go on and off the AFDC rolls, and can change custodial relationships, many times. Each of these movements, for each child, must be tracked before a correct sub-debt can be calculated.) CSED presently has one accounting technician assigned to calculate sub-debts; approximately 45 sub-debts can be researched and accurately completed each month. The number of sub-debts that will be required to be completed each month in FY 92 under the proposed legislation is 250. The Division has already automated the sub-debt process to the maximum degree possible. Additional staff will be essential to implementing the change. This fiscal note reflects the cost of additional accounting technicians who will be assigned full-time to sub-debt research and calculation: three in FY 92, increasing to four in FY 93 and FY 94, five in FY 95 and FY 96, and six in FY 97, to meet the estimated increase in CSED's caseload involving past public assistance payments. Each position in FY 92 will cost \$36,100, with associated equipment costs for computer terminals, telephones, and furniture for one person in FY 92 at \$12,800. Increases in equipment costs in the years after FY 92 are projected to increase at a rate of 5%.

The bill will also require additional personnel to enter reports from employers and issue appropriate withholding orders to collect child support. However, revenues from increased collections will exceed the personal services costs. (CSED receives 66% federal funding, in addition to federal incentive payments.) These positions will collect an additional three million dollars in child support in 1992. To minimize costs, these additional staff will utilize existing equipment in swing-shift arrangements. This fiscal note reflects five child support enforcement officers and three clerk positions, with a 3.75% shift differential. Increases in Personal Services costs in the outlying years beyond FY92 are projected at a conservative rate of 4.5 percent. In addition, the change in the debt priority will require CSED to forgo immediate collection of additional miscellaneous cost recoveries amounting to \$36,700 in FY 92 for expenditures such as blood-testing.

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

Pay Family Arrearages First If AFDC Fully Funded

RECOMMENDATION 35:

TO THE EXTENT ALLOWED BY FEDERAL LAW, AND PROVIDED THAT THE LEGISLATURE APPROPRIATES ADEQUATE FUNDS, CEED SHOULD DISTRIBUTE AMOUNTS IN EXCESS OF THE CURRENT MONTH'S CHILD SUPPORT OBLIGATION TO PAYMENT OF ARREARAGES IN THE FOLLOWING ORDER:

- (1) First, to the obligee, who is not receiving public assistance, support arrearages accrued after the obligee stopped receiving public assistance;
- (2) Second, to the State for unreimbursed public assistance; and
- (3) Third, to the obligee, support arrearages which accrued before the obligee received public assistance, and which exceed the amount of public assistance paid to the family.

RECOMMENDATION 36:

THE LEGISLATURE SHOULD APPROPRIATE FUNDS TO MAKE UP THE ESTIMATED \$1.6 MILLION SHORTFALL CAUSED BY RECOMMENDATION 35.

Issue

How should child support arrearages collected by the Child Support Enforcement Division in cases involving former AFDC recipients be distributed by the State?

PSA Requirement

Section 122 of the Family Support Act requires that states distribute child support payments and arrearages they collect within time limits to be set forth in federal regulations.

Rationale

On August 4, the federal government issued final regulations establishing the time limits for distribution of child support payments and arrearages, as required under Section 122 of the Family Support Act. Those regulations indicate that the states have discretion to distribute a portion of child support arrearages to the family before satisfying state liens for prior AFDC payments. Before the new regulations were issued, it did not appear that the states had this discretion.

House Judiciary Committee

APRIL 30, 1991

Dear Members:

Please review the final Draft of
CSHB 43 (JUD) which was reported out
of committee yesterday, so Final
Action can be approved at today's
Hearing.

Thank you.

[Handwritten signature]
H-30-1

**CS FOR HOUSE BILL NO. 43 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES ULMER, Brown, Carney, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to distribution of child support collected by the child support enforcement
2 agency; requiring certain employers to provide information to the agency; requiring the
3 Department of Health and Social Services to give notice of assignments to recipients of
4 aid to families with dependent children; and providing for an effective date."

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

6 * Section 1. AS 25.27.075 is repealed and reenacted to read:

7 Sec. 25.27.075. EMPLOYMENT INFORMATION. (a) Upon notice by the agency and
8 except as provided in (b) of this section, an employer doing business in the state shall report to
9 the agency the

10 (1) hiring of a person who resides or works in this state to whom the employer
11 anticipates paying earnings; and

12 (2) rehiring or return to work of an employee who was laid off, furloughed,
13 separated, granted a leave without pay, or terminated from employment.

14 (b) An employer is not required to report the hiring of a person who the employer

1 anticipates

2 (1) will be employed for less than one month's duration; or

3 (2) will be employed sporadically so that the employee will be paid for less than
4 350 hours during a continuous six-month period.

5 (c) An employer required to report under (a) of this section may make the report by
6 mailing the employee's copy of the W-4 form or by other means authorized by the agency that
7 will result in timely reporting.

8 (d) An employer required to report under (a) of this section shall submit reports within
9 seven days of hiring, rehiring, or return to work of an employee. The report must contain

10 (1) the employee's name, address, social security number, and date of birth; and

11 (2) the employer's name, address, and employment security reference number or
12 unified business identifier number.

13 (e) The agency shall retain the information received under (a) - (d) of this section for a
14 particular employee only if the agency is responsible for establishing, enforcing, or collecting a
15 support obligation of the employee. If the employee does not owe a support obligation, the
16 agency may not create a record regarding the employee, and the information contained in the
17 notice shall be promptly destroyed.

18 (f) An employer of the obligor or a labor union of which an obligor is a member shall
19 provide to the agency information requested regarding the obligor's employment, wages or salary,
20 and location. The information required under this subsection is in addition to the information
21 required under (a) of this section, if any.

22 (g) In addition to civil liability under AS 25.27.260, if applicable, or any other law, an
23 employer of an obligor or a labor union of which an obligor is a member that knowingly violates
24 this section is liable for a civil penalty of not more than \$1,000.

25 * Sec. 2. AS 25.27.130 is amended by adding new subsections to read:

26 (d) Except as provided in (f) of this section, if the obligee is not receiving assistance
27 under AS 47.25.310 - 47.25.420 at the time the state recovers money in an action under this
28 section, the recovery of any amount for which the obligor is liable shall be distributed to the
29 obligee for support payments that have become due and unpaid since the termination of
30 assistance under AS 47.25.310 - 47.25.420 under a support order in favor of the obligee.

31 (e) After payment to the obligee under (d) of this section, the state may retain an amount

1 not to exceed the total unreimbursed assistance paid on behalf of the obligee under
2 AS 47.25.310 - 47.25.420.

3 (f) Notwithstanding (d) of this section, the state shall, if required under federal law or
4 regulations, distribute amounts recovered through offset of the obligor's federal tax refund as past
5 due support with first distribution to the state for unpaid support assigned to the state under
6 AS 47.25.345.

7 * Sec. 3. AS 47.25.340 is amended by adding a new subsection to read:

8 (b) During the application process, the department shall give to the applicant written
9 notice of the assignment of support rights that will be considered to have occurred under
10 AS 47.25.345. The notice must

11 (1) be plainly written;

12 (2) include a statement that informs the applicant that the assignment under
13 AS 47.25.345 includes an assignment of support rights that may have accrued during any time
14 that the family was not receiving assistance and that, under the assignment, the state may retain
15 support that it collects on behalf of the applicant to reimburse the state for assistance received
16 by the applicant during previous periods of assistance, if any.

17 * Sec. 4. This Act takes effect January 1, 1992.

CSHB 43, CHILD SUPPORT ARREARAGES

Sectional Analysis

Section 1. States the legislature's intent that the Child Support Enforcement Agency shall use the full latitude available under applicable federal laws and regulations to return as much money as possible to the family first when it collects child support payments in order for the family to remain self-supporting.

Section 2. (d) Provides that past-due child support payments collected by the state shall be paid **first** to the custodial parent (the "obligee") and **secondly** to the state for reimbursement of public assistance paid to the family. This reverses the current order of payment. In addition, it requires that public assistance payments shall be reimbursed up to the maximum amount of the child support collected during the period of assistance, or the amount of the assistance paid, **whichever is lesser.**

(e) The state shall pay past-due child support recovered through off-set of the obligor's federal tax refund **first** to the state for unreimbursed assistance and **secondly** to the family, as required by federal regulation.

Section 3. (a) Requires the Child Support Enforcement Agency to amend the state plan to reflect the payment priorities of Section 2 of the bill.

(b) Requires the Child Support Enforcement Agency to report to the legislature if a provision of this bill, or a state plan amendment to implement the bill is disapproved by the federal Office of Child Support Enforcement.

RECEIVED APR 29 1991

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

WALTER J. HICKEL, GOVERNOR

FAIRBANKS FIELD OFFICE
675 7TH AVENUE, STATION G
FAIRBANKS, ALASKA 99701
PHONE (907) 451-2830
FAX (907) 451-2959

April 25, 1991

Representative Dave Donley, Chairman
House Judiciary Committee
State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 43

Dear Representative Donley:

Thank you for the opportunity to testify on behalf of the Child Support Enforcement Division (CSED) on House Bill 43. Several additional questions arose at the April 22 hearing, which I will attempt to answer in this letter.

Mandatory wage withholding: Since 1985, orders enforced by CSED have been subject to income withholding when unpaid child support (arrears) equal one month's support obligation. The federal Family Support Act of 1988 requires immediate income withholding on orders issued or modified after October 31, 1990, which are enforced by the agency, even if support payments are not in arrears. The federal law further requires immediate income withholding on all orders issued after January 1, 1994, even if they are not enforced by CSED. Section 101(c) of the Family Support Act (copy attached) requires a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding on all child support awards, to be completed by October 1991. The federal Office of Child Support Enforcement reports that the study is scheduled to begin this summer.

Unpaid child support: CSED is currently enforcing almost 19,000 cases with child support orders. Less than 3,500 of these cases are current on their child support payments. Approximately 16,000 cases have an arrearage balance which totals \$203 million. Unpaid child support orders enforced by CSED as of March 31, 1991, break down as follows:

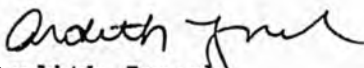
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Cases with arrears	16,000
Amount of Arrears:	TOTAL \$203,000,000
AFDC (7000 cases)	\$ 96,000,000
Non-AFDC (9000 cases)	\$107,000,000

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Representative Dave Donley, Chairman
Re: HB 43
April 25, 1991
Page 2 of 2

CSED appreciates the committee's concern regarding the nonpayment of child support. HB 43 recognizes the importance of support payments to children each and every month. CSED pays the current month's support to non-AFDC custodial parents whenever support is collected. The priority of arrearage payment becomes an issue only when support was not paid before, during, and after a public assistance grant. If support is paid in full each and every month, there will be no unpaid child support arrears to collect or distribute, and children will receive the benefit of timely support payments.

Very truly yours,


Ardith Lynch
Deputy Director
CSED

Attachments: as stated

FN:1115002

TITLE IV—RELATED AFDC AMENDMENTS

- Sec. 401. Benefits for two-parent families.
 Sec. 402. Changes in earned income disregards.
 Sec. 403. Households headed by minor parents.
 Sec. 404. Periodic reevaluation of need and payment standards.
 Sec. 405. CBO study on implementation of national minimum payment standard.
 Sec. 406. Study of new national approaches to welfare benefits for low-income families with children.

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 Sec. 505. Demonstration projects to expand the number of job opportunities available to certain low-income individuals.
 Sec. 506. Demonstration projects to provide counseling and services to high-risk teenagers.
 Sec. 507. Eighteen-month extension of Minnesota prepaid medicaid demonstration project.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Inclusion of American Samoa as a State under title IV.
 Sec. 602. Increase in amount available for payment to Puerto Rico, the Virgin Islands, and Guam.
 Sec. 603. Assistant Secretary for Family Support.
 Sec. 604. Responsibilities of the State.
 Sec. 605. Establishment of preeligibility fraud detection measures.
 Sec. 606. Uniform reporting requirements.
 Sec. 607. State reports on expenditure and use of social services funds.
 Sec. 608. Miscellaneous technical corrections to Medicare Catastrophic Coverage Act of 1988.
 Sec. 609. Extension of quality control penalty moratorium.

TITLE VII—FUNDING PROVISIONS

- Sec. 701. Temporary extension of provisions relating to collection of nontax debts owed to Federal agencies.
 Sec. 702. Limitation on use of reimbursement arrangements to avoid 2-percent floor.
 Sec. 703. Modifications to dependent care credit and exclusion for dependent care assistance.
 Sec. 704. Taxpayer identification number required for dependents who have attained age 2.

TITLE I—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

Subtitle A—Child Support

SEC. 101. IMMEDIATE INCOME WITHHOLDING.

(a) IN GENERAL.—Section 466(b)(3) of the Social Security Act is amended to read as follows:

“(3)(A) The wages of an absent parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after the date of the enactment of this paragraph, on the effective date of the order; except that such wages shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds,

that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

“(B) The wages of an absent parent shall become subject to such withholding, in the case of wages not subject to withholding under subparagraph (A), on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

“(i) the date as of which the absent parent requests that such withholding begin,

“(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

“(iii) such earlier date as the State may select.”

(b) APPLICATION TO ALL CHILD SUPPORT ORDERS.—Section 466(a)(8) of such Act is amended—

(1) by inserting “(A)” before “Procedures”;

(2) by striking “which are issued or modified in the State” and inserting in lieu thereof “not described in subparagraph (B)”; and

(3) by adding at the end the following new subparagraph:

“(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

“(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

“(ii) The requirements of subsection (b)(1) (which shall apply in the case of each absent parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

“(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.

“(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.”

(c) STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES.—The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act.

42 USC 666.

Effective date.

Reports.
42 USC 666 note.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

February 25, 1991

Mr. Steve Strube
P.O. Box 521155
Big Lake, AK 99652

Dear Mr. Strube:

In the chaos of moving into this job I apparently overlooked a memo from Governor Hickel dated January 8, 1991 advising me of the formation of an advisory team for the Department of Revenue.

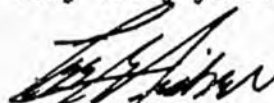
Apparently this appointment was also not communicated to at least some of you, since my telephone calls to several people on the list resulted in their expression of surprise at the appointment.

Regardless, you have been assigned to the advisory team for the Department of Revenue and I welcome the opportunity to receive your input and expertise.

Since 75 % of the team resides in the Anchorage/MatSu area I have asked Jim Magowan to serve as Chairman. He will coordinate a meeting in the near future. After you have had the chance to identify issues on which you wish to counsel the Department of Revenue, he will schedule a meeting with me.

Your positive input and solutions to perceived problems of the Department of Revenue will be welcomed.

Very truly yours,


Lee E. Fisher
Commissioner

LEF:m11

cc: Lt. Governor Jack Coghill
James Rockwell, Special Assistant
to the Governor

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 43

Revision Date: 3/20/91
Title: An act relating to distribution of child support arrearages collected by the CSEA
Sponsor: Representative Ulmer
Requestor: House HESS

Department Affected: Department of Revenue
BRU: Child Support Enforcement Division
Component: _____

COMPONENT SERIAL NO. | | |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	108.3	151.4	158.2	206.5	215.8	270.5
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	36.7	38.0	40.0	40.0	40.0	40.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	38.5	13.4	0	14.8	0	16.3
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	183.5	202.8	198.2	261.3	255.8	326.8
CAPITAL	0	0	0	0	0	0
REVENUE	(2423.5)	(2717.7)	(2967.7)	(3162.5)	(3300.0)	(3300.0)

FUNDING: (Thousands of Dollars)

GENERAL FUND	62.4	68.9	67.4	88.8	87.0	111.1
FEDERAL FUNDS	121.1	133.9	130.8	172.5	168.8	215.7
OTHER	0	0	0	0	0	0
TOTAL	183.5	202.8	198.2	261.3	255.8	326.8

POSITIONS:

FULL-TIME	3	4	4	5	5	6
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: Attach a separate page for analysis.

Prepared By: Ardith Lynch
Division: Child Support Enforcement Division

Phone: 263-6277
Date: March 20, 1991

Approved by Commissioner: Lee E. Fisher
Agency: Department of Revenue

Date: 3-22-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agencies).

ANALYSIS FOR FISCAL NOTE
CHILD SUPPORT ENFORCEMENT DIVISION
PAGE 2 OF 3

This legislation requires a fundamental change in State revenue policy. It reverses the current order of collection of child support arrearages in those cases where child support was unpaid before, during, and after a custodial relative's receipt of AFDC grants. These cases create two debts. Current policy is to collect the State's debt first.* This means that money owed to the State of Alaska from assigned support due (but unpaid) during a child's period of receipt of AFDC benefits, and other cost recoveries, is collected by CSED before it collects any unpaid support that accrues after a custodial relative leaves the AFDC rolls.

By reversing the priority of debt collected, paying any excess over current support due to the family for post-AFDC unpaid support before paying the State for assigned (AFDC) unpaid support, the State relinquishes (in the first year) \$1,961,000 in collections and \$462,500 in prepaid Federal Incentives that are remitted to the General Fund to help pay the State's AFDC General Fund match and finance the child support program. Collection has been expanding at a rate between 12% and 15% a year in this subset of cases (3,116 post-AFDC cases out of 18,131 total AFDC cases). This fiscal note adjusts the rate of revenue loss accordingly in the three following fiscal years from FY92, and holds Incentive losses constant. These revenues are reflected in future-year budgets as Program Receipts; their loss will require additional appropriations in the AFDC program (\$1,961,000) and the Child Support Enforcement program (\$462,500) in the first year.

In addition to revenue losses, the legislation will require increased operational staffing at CSED to greatly accelerate the rate at which subrogated debt calculations must be completed. Presently, payments exceeding the current support due can be retained to the State until the accumulated amount nears the amount of the estimated subrogated debt. The legislation will necessitate a sub-debt calculation as soon as a child leaves the AFDC rolls, and each time the child leaves, in order to guarantee the correct distribution of debt between the State and the custodial relative. (A given child can go on and off the AFDC rolls, and can change custodial relationships, many times. Each of these movements, for

* When a support collection is made by CSED, Ongoing Support- the support obligation that is due in the current month- is always paid to custodial parents who are not receiving AFDC, before any arrearage payment is made.

ANALYSIS FOR FISCAL NOTE
CHILD SUPPORT ENFORCEMENT DIVISION
PAGE 3 OF 3

each child, must be tracked before a correct sub-debt can be calculated.) CSED presently has one accounting technician assigned to calculate sub-debts; approximately 45 sub-debts can be researched and accurately completed each month. The number of sub-debts that will be required to be completed each month in FY 92 under the proposed legislation is 250. The Division has already automated the sub-debt process to the maximum degree possible. Additional staff will be essential to implementing the change. Without them, the changes cannot be implemented. This fiscal note reflects the cost of additional accounting technicians who will be assigned full-time to sub-debt research and calculations: three in FY 92, increasing to four in FY 93 and FY 94, five in FY 95 and FY 96, and six in FY 97, to meet the estimated increase in CSED's caseload involving past public assistance payments. Each position in FY 92 will cost \$36,100, with associated equipment costs for computer terminals, telephones, and furniture for one person in FY 92 at \$12,800. In addition, the change in the debt priority will require CSED to forgo immediate collection of additional miscellaneous cost recoveries amounting to \$36,700 in FY 92 for expenditures such as blood-testing.

Increases in Personal Services costs in the outlying years beyond FY92 are projected at a conservative rate of 4.5 percent, and then are held constant based on turnover assumptions. Increases in equipment costs in the years after FY 92 are projected to increase at a rate of 5%.

FN: WPPADMIN-214

AAL:akj

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

WALTER J. HICKEL, GOVERNOR

FAIRBANKS FIELD OFFICE
675 7TH AVENUE, STATION G
FAIRBANKS, ALASKA 99701
PHONE (907) 451-2830
FAX (907) 451-2959

April 25, 1991

Representative Dave Donley, Chairman
House Judiciary Committee
State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 43

Dear Representative Donley:

Thank you for the opportunity to testify on behalf of the Child Support Enforcement Division (CSED) on House Bill 43. Several additional questions arose at the April 22 hearing, which I will attempt to answer in this letter.

Mandatory wage withholding: Since 1985, orders enforced by CSED have been subject to income withholding when unpaid child support (arrears) equal one month's support obligation. The federal Family Support Act of 1988 requires immediate income withholding on orders issued or modified after October 31, 1990, which are enforced by the agency, even if support payments are not in arrears. The federal law further requires immediate income withholding on all orders issued after January 1, 1994, even if they are not enforced by CSED. Section 101(c) of the Family Support Act (copy attached) requires a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding on all child support awards, to be completed by October 1991. The federal Office of Child Support Enforcement reports that the study is scheduled to begin this summer.

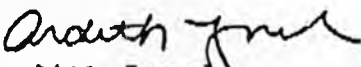
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Representative Dave Donley, Chairman
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Very truly yours,


Ardith Lynch
Deputy Director
CSED

Attachments: as stated

FN:1115002

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- Sec. 704. Taxpayer identification number required for dependents who have attained age 2.

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Subtitle A—Child Support

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and

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42 USC 666.

Effective date.

Reports.
42 USC 666 note.

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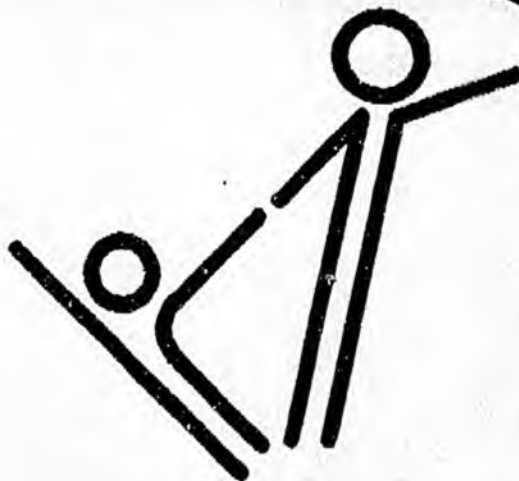
STATE OF ALASKA
DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

FAIRBANKS

FIELD OFFICE

675 7th Avenue, Station G
Fairbanks, Alaska 99701
Phone (907) 451-2830



DATE 4/25

TIME 2:08 pm

FAX

(907) 451-2959

PAGES (includes Cover) 4

FAX TRANSMITTAL SHEET

TO: Name Rep. Dave Donlin

Company/Department _____

Receiving FAX Number 465-2299

Subject HB 43

FROM: Name/Section Ardeith Lynch, Deputy Director

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7 Deborah Perluss
8 Evergreen Legal Services
9 101 Yesler, Suite 300
10 Seattle, WA. 98104
11 (206) 464-5933

12 Joyce Brekke
13 Evergreen Legal Services
14 500 W. 8th Street, Suite 275
15 Vancouver, WA. 98660
16 (206) 693-2941

17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT FOR THE
19 WESTERN DISTRICT OF WASHINGTON

20 NATALIE JENSEN, SHARYN WOODRUFF, and
21 CAROLYN OLSON, individually and on
22 behalf of all others similarly situated,

23 Plaintiffs,

24 vs.

25 RICHARD THOMPSON, Secretary, State of
26 Washington Department of Social and
27 Health Services,

28 Defendant.

FILED ENTERED
LOGGED RECEIVED

JUL 30 1990

AT SEATTLE
CLARK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

C90-5313

NO.

COMPLAINT
CLASS ACTION

29 I. PRELIMINARY STATEMENT

30 1.1 Plaintiffs are present and former public assistance
31 recipients. They bring this class action to challenge defendant's
32 failure to follow federal law in distributing child support that
33 defendant collects after a family stops receiving public assistance
34 (AFDC/FIP). Plaintiffs' rights arise under Titles IV-A and IV-D of

1 the Social Security Act and federal regulations, which require the
2 defendant to collect and distribute support for former assistance
3 recipients to increase the family's self-sufficiency, decrease its
4 need to return to public assistance, and ensure that needy children
5 receive support from their parents.

6 1.2 As a condition of receiving public assistance for their
7 children, plaintiffs must assign to the State of Washington the
8 right to collect child support that was owed before the family went
9 on assistance and that accrues while the family is receiving
10 assistance. In return, the State is required to undertake
11 collection efforts and to distribute the amounts collected among
12 the family, the State, and the federal government.

13 1.3 The assignment of support rights terminates when a family
14 goes off assistance. However, the defendant illegally claims
15 ownership of all child support due and unpaid as of the date the
16 family stops receiving assistance up to the full value of
17 assistance the family has ever received. Defendant further
18 illegally deems as a matter of policy, whenever a family reapplies
19 for assistance after a period of not receiving assistance, that it
20 is entitled to retain support arrears which have accrued since the
21 family stopped receiving assistance to reimburse itself for all
22 assistance previously furnished.

23 1.4 Defendant also illegally fails to provide notice which
24 informs families who are reapplying for assistance that if they go
25 back on assistance the defendant will claim all support arrears
26 which have accrued since the family last received assistance to
27 repay itself for any benefits the family received in the past.

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II. JURISDICTION

2.1 This action arises under 42 USC §1983 (Civil Rights Act) and the Fifth and Fourteenth Amendments to the Constitution of the United States.

2.2 Jurisdiction is conferred upon this court by 28 USC §1331 and 28 USC §1343(a)(3). Plaintiffs' action for declaratory and injunctive relief is authorized by 28 USC §2201 and §2202.

III. PARTIES

3.1 Plaintiff, NATALIE JENSEN, is the mother of four children, ages 11, 9, 2 and 11 months, and resides in Clark County, Washington.

3.2 Plaintiff, SHARYN WOODRUFF, is the mother of two children, ages 17 and 15, and resides in Clark County, Washington.

3.3 Plaintiff, CAROLYN OLSON, is the mother of two children, ages 19 & 15, and resides in Clark County, Washington.

3.4 Defendant, RICHARD THOMPSON, is the Secretary of the Washington State Department of Social and Health Services, which through its Office of Support Enforcement (OSE), is the State agency responsible for administering Titles IV-A and IV-D of the Social Security Act, 42 USC §601 et seq. and 42 USC §651 et seq. Defendant is responsible for establishing, enforcing, collecting, and distributing child support that public assistance recipients assign to the State during the period the family is on assistance. Defendant is also responsible for administering the support enforcement program that is required when a family stops receiving assistance.

1 IV. CLASS ACTION ALLEGATIONS

2 4.1 Plaintiffs pursue their claims on behalf of themselves
3 and all others similarly situated pursuant to Rules 23(a) and
4 (b)(2) of the Federal Rules of Civil Procedure, as representatives
5 of the class defined to include as follows: All persons who (a)
6 now are, or in the future will be, former recipients of public
7 assistance, and who (b) had or will have child support obligations
8 owing to them that accrued during a period between when they
9 stopped receiving public assistance and before they reapplied or
10 will reapply for public assistance.

11 4.2 There are more than 71,000 families who receive Title IV-
12 A public assistance benefits in Washington State on a monthly
13 basis. OSE's average annual caseload for 1988 was 217,277. Of
14 these, 86,938 were classified as current AFDC recipients, 60,183
15 were classified as cases in which the state was collecting AFDC
16 arrears only, and 70,156 were classified as non-AFDC cases. Non-
17 AFDC cases often include past AFDC recipients. These figures are
18 based upon the annual caseload statistics defendant reported to the
19 federal government in fiscal year 1988, the most recent calendar
20 year for which data is available. (Tables 37, 39, 40, and 41,
21 Thirteenth Annual Report to Congress, Vol. II.). The number of
22 "AFDC arrears only" and "non-AFDC" cases in which a child support
23 collection was made in 1988 were 24,968 (Tables 45 and 46). Upon
24 information and belief, the number of families in these categories
25 for FY's 1989 and 1990 has increased.

26 4.3 The number of current recipients of public assistance who
27 had unpaid child support obligations that accrued after they
28 previously went off assistance is unknown, but upon information and

1 belief, number in the thousands. The number of former recipients
2 of public assistance who had unpaid child support obligations that
3 accrued between when they went off assistance and before they
4 returned to assistance is unknown, but upon information and belief,
5 number in the thousands. The class is so numerous that joinder of
6 all members is impracticable.

7 4.4 There are questions of law or fact common to the class.

8 4.5 The questions of law which are common to the class
9 include the following:

10 a) Whether, when a family stops receiving public
11 assistance, the value of the defendant's assigned support rights
12 is fixed at the amount of the support owed, even if the amount of
13 assistance furnished to the family exceeds the amount of the
14 support owed.

15 b) Whether the defendant's practice of claiming that
16 it owns and can keep child support arrears that accrued during the
17 period between when a family stops receiving assistance and before
18 the family reapplies for assistance to reimburse itself for
19 assistance previously paid out violates the Social Security Act,
20 federal regulations, and the Fifth and Fourteenth Amendments to the
21 federal constitution.

22 c) Whether the defendant's failure to give adequate
23 notice which informs public assistance applicants who have received
24 assistance in the past, that defendant intends to claim the child
25 support arrears which have accrued since they last received
26 assistance to reimburse itself for any past benefits the family has
27 received violates the Fourteenth Amendment to the federal constitu-
28 tion.

1 4.6 The claims of the named representative plaintiffs are
2 typical of the claims of the class members.

3 4.7 The named plaintiffs will fairly and adequately represent
4 the interests of the class. The named plaintiffs have a sharply
5 drawn, personally vital controversy with the defendant which
6 dictates that they fully and vigorously prosecute this action. At
7 stake for the plaintiffs and the entire class is their right to
8 receive unpaid child support that accrued during periods of non-
9 receipt of public assistance. Plaintiffs are represented by
10 counsel employed by Evergreen Legal Services who are experienced
11 in class action litigation concerning public programs. Plaintiffs
12 know of no conflict between the plaintiffs and any member of the
13 class.

14 4.8 Certification of the class is proper under Civil Rule
15 23(b)(2). Defendant has acted or refused to act on grounds
16 generally applicable to the class, which makes final declaratory
17 and injunctive relief with respect to the class as a whole
18 appropriate.

19 **V. TITLES IV-A AND IV-D OF THE SOCIAL SECURITY ACT**
20 **AND REGULATORY SCHEME**

21 5.1 Defendant participates in two interrelated Social
22 Security Act programs which benefit children: a public assistance
23 program under Title IV-A, 42 U.S.C. § 601 et seq. and a child
24 support enforcement program under Title IV-D, 42 U.S.C. § 651 et
25 seq.

26 5.2 The IV-A program was established to "encourage the care
27 of dependent children in their own homes..., to help maintain and
28 strengthen family life and to help such parents and relatives to
attain or retain capability for the maximum self support and

1 personal independence consistent with the maintenance of continuing
2 parental care and protection...." 42 USC §601.

3 5.3 The IV-A program provides cash grants to dependent
4 children with caretaker relatives who, although legally responsi-
5 ble, are not financially able to provide adequate care and support
6 for the child without public assistance. To qualify for public
7 assistance benefits, a family's income must fall below state
8 established limits, and countable resources may not exceed limits
9 established by federal law.

10 5.4 The financial assistance received by a family eligible
11 for public assistance is not a loan to that family. There is no
12 expectation or requirement that the family will, upon attaining
13 self-sufficiency, repay the public assistance that has been
14 furnished.

15 5.5 Defendant's child support enforcement program is
16 administered through the cooperation of the federal and state
17 governments pursuant to Title IV-D (Child Support and Establishment
18 of Paternity) of the Social Security Act, 42 U.S.C. § 651 et. seq.
19 As a condition of receiving federal financial participation for its
20 public assistance program under Title IV-A, the defendant is
21 required to participate in and abide by the rules of Title IV-D .

22 5.6 As a condition of participation in the IV-D program,
23 defendant is required to submit to the U.S. Department of Health
24 and Human Services a state plan for provision of IV-D services, in
25 which it must promise to comply with the requirements of Title IV-A
26 (public assistance) and IV-D (support enforcement) of the Social
27 Security Act, and federal regulations implementing those require-
28 ments, 42 U.S.C. §654, 45 CFR §301.10. Federal funds pay part of

1 the state's cost of administering the program if the State meets
2 the federal requirements. 42 U.S.C. §655.

3 5.7 Defendant has been required to provide support enforce-
4 ment services to non-AFDC families since 1975. The importance of
5 providing services to non-AFDC families was underscored in the
6 Child Support Enforcement Amendments of 1984 (CSEA) (P.L. 98-378)
7 when Congress expanded the Title IV-D statement of purpose to
8 specifically guarantee child support services to non-AFDC children.
9 The purpose of the non-assistance support enforcement program is
10 to ensure that children receive needed court ordered support from
11 absent parents and to reduce the likelihood that a family will need
12 to seek public assistance.

13 5.8 Defendant is required to provide non-assistance support
14 enforcement services to parents who have never received public
15 assistance under the provisions of 42 USC §654(6), and to provide
16 non-assistance support enforcement services to former recipients
17 of IV-A benefits under the provisions of 42 USC §654(6) and 42 USC
18 §657(c).

19 5.9 The State is also required to designate a single state
20 agency responsible for collecting and distributing child support
21 pursuant to Title IV-D of the Social Security Act. 42 USC §654.
22 In Washington, the IV-D agency is the DSHS Office of Support
23 Enforcement (OSE).

24 5.10 As a condition of eligibility for IV-A assistance, an
25 applicant or recipient of benefits is required by 42 U.S.C.
26 §602(a)(26)(A) to:

27 assign the State any rights to support from
28 any other person such applicant may have (1)
in his own behalf or in behalf of any other
family member for whom the applicant is apply-

1 ing for or receiving aid, and (ii) which have
2 accrued at the time such assignment is execut-
3 ed.

4 5.11 In Washington State, when IV-A benefits are sought for
5 a child, the custodial parent is required to execute an assignment
6 and power of attorney in favor of the defendant. In addition, the
7 receipt of IV-A benefits operates as an automatic assignment to the
8 State of the right to collect support. RCW 74.20.330, 74.20A.030;
9 WAC 388-14-200, 388-24-108.

10 5.12 The amount of the support obligation assigned under 42
11 U.S.C. §602(a)(26)(A) is either the amount specified in a court
12 order or, in the absence of a court order, an amount administra-
13 tively established by the State. 42 U.S.C. §656.

14 5.13 The support assigned under 42 USC §602(a)(26)(A), if
15 collected during the time the family is receiving AFDC, is not
16 automatically retained by the State. Instead, it is distributed
17 among the State, the federal government, and the family in
18 accordance with the provisions of 42 USC §657(b) and 45 CFR
19 §302.51(b).

20 5.14 When a family stops receiving benefits, the assignment
21 terminates as to future support. Accruals of future support belong
22 to the family. 42 U.S.C. §657(c); 45 C.F.R. §302.51(f); R.C.W.
23 26.23.035. Defendant has no right to accruals of future support
24 even when the total amount of assistance furnished by the State
25 exceeds the total amount of the support obligation owed by the
26 delinquent parent.

27 5.15 When a family goes off assistance, the State retains a
28 right to try to collect the support obligation that accrued during
the months the family received assistance to offset the benefits

1 provided to the family. If the State collects amounts which
2 represent support owed before the family went on assistance, it may
3 apply the amounts so collected towards the difference between the
4 assistance the family received in a subsequent month and the
5 support owed for that same month. In no event may the State's
6 recovery exceed the lesser of 1) public assistance paid out or 2)
7 child support due and unpaid as of the date the family terminated
8 public assistance.

9 VI. FACTUAL ALLEGATIONS

10 PLAINTIFF JENSEN

11 6.1 Plaintiff, NATALIE JENSEN, resides with Danieal Roberts.
12 Danieal Roberts is NATALIE JENSEN'S former husband. They have
13 reconciled but are not remarried. They now have four children,
14 ages 11, 9, 2 and 11 months.

15 6.2 NATALIE JENSEN and her oldest children, Jessica and
16 Crystal, received AFDC from DSHS for approximately two and one-half
17 years, from March 1982 to August 1984.

18 6.3 NATALIE JENSEN and Danieal Roberts were divorced in June,
19 1982. Mr. Roberts was ordered to pay \$250.00 total per month in
20 child support for Jessica and Crystal beginning May 21, 1982.

21 6.4 When NATALIE JENSEN began receiving AFDC in March 1982,
22 she signed an assignment of support rights, as required by 42 USC
23 §602 (a)(26)(A). (A copy of the assignment form is attached as
24 Exhibit A.)

25 6.5 The divorce decree, which ordered Mr. Roberts to pay
26 \$250.00 per month in child support, set the amount of Mr. Roberts'
27 child support obligation as of May 1982. 42 USC §656; 45 CFR
28 §302.50. As long as NATALIE JENSEN's family remained on AFDC, the

1 \$250.00 coming due each month under the decree was available to the
2 State under the child support assignment to reimburse it for public
3 assistance paid out.

4 6.6 NATALIE JENSEN also received assistance for two months
5 before the divorce decree was entered. The amount of support the
6 defendant could collect for these months, March and April 1982, was
7 the amount, if any, that was administratively established by the
8 defendant up to the AFDC paid out for those two months. 42 USC
9 §656; 45 CFR §302.50.

10 6.7 The total amount of AFDC that NATALIE JENSEN and her
11 children received from March 1982 through August 1984 exceeded
12 \$13,500.00.

13 6.8 The total amount of the support obligation due under the
14 decree from May 1982 through August 1984 was \$7,000.00. NATALIE
15 JENSEN does not challenge defendant's entitlement to that support.

16 6.9 When NATALIE JENSEN stopped receiving assistance in
17 August 1984, defendant was not entitled to claim future child
18 support obligations to repay the balance of assistance received by
19 the Jensen family from March 1982 to August 1984, even though the
20 monthly amount of assistance that was furnished during this period
21 exceeded the monthly amount of support owed by Mr. Roberts. The
22 maximum amount defendant was entitled to claim under the AFDC
23 assignment as of September 1984 was child support due and unpaid
24 (approximately \$7,000.00), not the total of AFDC paid out (approx-
25 imately \$13,750.00).

26 6.10 When NATALIE JENSEN and her children went off assistance
27 in September, 1984, the child support installments coming due under
28

1 the divorce decree after August, 1984, became solely the family's
2 property.

3 6.11 Between September 1984 and June 1988, the support that
4 became due under the decree was approximately \$11,500.00.

5 6.12 After NATALIE JENSEN stopped receiving public assistance
6 in 1984, she supported herself and her family from her own
7 earnings. However, in June 1988, NATALIE JENSEN reapplied for
8 public assistance because of the birth of her third child, a
9 temporary disability associated with her pregnancy, and Mr.
10 Roberts' absence from the house.

11 6.13 As a condition of receiving public assistance, NATALIE
12 JENSEN executed a new child support assignment. Neither the
13 assignment form NATALIE JENSEN signed nor any other communication
14 with the defendant advised her that if she returned to public
15 assistance, the defendant would claim as its property her rights
16 to unpaid support arrears from September 1984 to June 1988
17 (\$11,500.00) to reimburse itself for the earlier period that she
18 received public assistance (March 1982 through August 1984). If
19 NATALIE JENSEN had been so notified, she would not have reapplied
20 for public assistance. (A copy of the assignment form is attached
21 as Exhibit B).

22 6.14 NATALIE JENSEN and the three children (Jessica, Crystal,
23 and Monica) received a total of \$1,734.00 in public assistance for
24 a three month period from July 1988 through September 1988.
25 NATALIE JENSEN went off public assistance as soon as she was able
26 to return to work. NATALIE JENSEN and her children have not
27 received public assistance since then.

28

1 6.15 The amount of the child support owed under the divorce
2 decree for the three months NATALIE JENSEN and the children
3 received assistance (July, August, and September 1988) is \$750.00
4 (\$250.00 x 3). NATALIE JENSEN does not challenge defendant's
5 entitlement to that support.

6 6.16 Defendant claims, because NATALIE JENSEN returned to
7 assistance, that it is entitled to retain support arrears that
8 accrued from September 1984 to June 1988 to reimburse itself for
9 assistance the Jensen family received from March 1982 to August
10 1984.

11 6.17 According to defendant, the total amount of unreimbursed
12 assistance benefits that NATALIE JENSEN and her children have
13 received is over \$15,000.00. Consequently, when NATALIE JENSEN
14 stopped receiving assistance in October 1988, defendant claimed it
15 was entitled to over \$15,000.00 of the total unpaid support
16 obligation.

17 PLAINTIFF WOODRUFF

18 6.18 Plaintiff SHARYN WOODRUFF lives with her two minor
19 children ages 17 & 15.

20 6.19 SHARYN WOODRUFF and one of her children received AFDC
21 from DSHS at different intervals between 1976 and 1986.

22 6.20 SHARYN WOODRUFF and her former husband, Nicholas
23 Thompson, were divorced in 1977. The divorce decree ordered Mr.
24 Thompson to pay \$150.00 per month in child support.

25 6.21 When SHARYN WOODRUFF first began receiving assistance
26 in 1976 and at required occasions after that date, she signed an
27 assignment of support rights as required by 42 U.S.C. §602
28

1 (a)(26)(A). (A copy of the assignment form signed in 1984 is
2 attached as Exhibit C.)

3 6.22 The divorce decree, which ordered Mr. Thompson to pay
4 \$150.00 per month in child support beginning February 1977,
5 established the amount of Mr. Thompson's child support obligation.
6 42 USC §656, 45 C.F.R. §302.50. As long as SHARYN WOODRUFF's
7 family received AFDC, the \$150.00 coming due each month under the
8 decree was available to the State under the child support assign-
9 ment to partially offset the public assistance being paid.

10 6.23 The monthly amount of public assistance that SHARYN
11 WOODRUFF and her child received between 1976 and 1986 exceeded the
12 monthly amount of Nicholas Thompson's support obligation during
13 that same period.

14 6.24 When SHARYN WOODRUFF terminated AFDC, defendant was not
15 entitled to retain future accruals of support to reimburse itself
16 for assistance previously paid, even though the monthly amounts of
17 assistance Ms. Woodruff received in AFDC exceeded the monthly
18 amount of Mr. Thompson's support obligation. SHARYN WOODRUFF did
19 not believe that the assistance her family received from 1976 to
20 1986 was considered to be a loan which she was obligated to repay.

21 6.25 During the periods SHARYN WOODRUFF was not receiving
22 AFDC some child support was paid by Mr. Thompson. His payments
23 were received and distributed by defendant's Office of Support
24 Enforcement. Payments representing current support were forwarded
25 to SHARYN WOODRUFF as is required by 42 U.S.C. §657(c). Child
26 support arrearages nevertheless accumulated during the months
27 SHARYN WOODRUFF was not receiving assistance because Mr. Thompson's
28 payments were sporadic and in amounts less than \$150.00 per month.

1 6.26 As of October 1988, SHARYN WOODRUFF's share of child
2 support arrears, according to OSE records, was over \$5,000.00.

3 6.27 When not receiving AFDC SHARYN WOODRUFF supported
4 herself and her children with a combination of earnings, child
5 support and her disabled child's SSI. In October 1988 SHARYN
6 WOODRUFF reapplied for AFDC because of medical problems and Mr.
7 Thompson's inadequate child support payments.

8 6.28 When SHARYN WOODRUFF reapplied for AFDC in 1988 she
9 executed a new child support assignment. The assignment form she
10 signed did not inform her that if she returned to AFDC, defendant
11 would claim her child support arrears to repay AFDC previously paid
12 out. (A copy of the assignment form is attached as Exhibit D).
13 No other communication informed her of this either.

14 6.29 SHARYN WOODRUFF and her children received a total of
15 \$2,712.00 in AFDC for a 6 month period from November 1988 - April
16 1989. SHARYN WOODRUFF terminated AFDC in April 1989. SHARYN
17 WOODRUFF and her children have not received AFDC since then.

18 6.30 The amount of the child support obligation that accrued
19 during the 6 month period SHARYN WOODRUFF and her children received
20 AFDC in 1988-89 is \$900.00 (\$150.00 x 6). She does not challenge
21 defendant's entitlement to that support.

22 6.31 Defendant claims that it can retain support arrears that
23 accrued during the period before SHARYN WOODRUFF returned to
24 assistance in November 1988 to reimburse itself for any assistance
25 previously paid. Therefore, when SHARYN WOODRUFF stopped receiving
26 assistance in April 1989, defendant claimed ownership of all the
27 unpaid child support owed by Nicholas Thompson.

28

1 PLAINTIFF OLSON

2 6.32 Plaintiff CAROLYN OLSON lives with her two children,
3 Malona and Ryan, ages 19 & 15.

4 6.33 CAROLYN OLSON and her children received AFDC from DSHS
5 during different periods between 1976 and 1980.

6 6.34 CAROLYN OLSON and the father of Malona, Mickey
7 Gostischef, were divorced in 1972. The divorce decree ordered Mr.
8 Gostischef to pay \$75.00 per month in child support for Malona.

9 6.35 CAROLYN OLSON and the father of Ryan, Stephen Matthews
10 Lessard, were divorced in 1981. The divorce decree ordered Mr.
11 Lessard to pay \$170.00 per month in child support for Ryan.

12 6.36 When CAROLYN OLSON began receiving assistance in 1976
13 and at required occasions after that date, she signed an assignment
14 of support rights as required by 42 U.S.C. §602 (a)(26)(A).
15 (A copy of the assignment form signed in 1978 is attached as
16 Exhibit E.)

17 6.37 The divorce decree which ordered Mr. Gostischef to pay
18 child support established the amount of Mr. Gostischef's child
19 support obligation. 42 USC §656; 45 C.F.R. §302.50. As long as
20 CAROLYN OLSON's family received AFDC, the money coming due each
21 month under the decree was available to the State under the child
22 support assignments to partially offset the public assistance being
23 paid.

24 6.38 The divorce decree which ordered Mr. Lessard to pay
25 child support established the amount of Mr. Lessard's child support
26 obligation as of June 1981. The amount of support the defendant
27 could collect from Mr. Lessard for the months CAROLYN OLSON
28 received assistance before the divorce decree was entered was the

1 amount, if any, that was administratively established by the
2 defendant up to the AFDC paid out during those months. 42 USC
3 §656; 45 CFR §302.50.

4 6.39 The amount of public assistance that CAROLYN OLSON and
5 her children received between 1976 and 1980 exceeded the monthly
6 amount of the support obligations which had accrued as of the last
7 month the family received assistance.

8 6.40 When CAROLYN OLSON and her children terminated AFDC in
9 1980, defendant was not entitled to retain future accruals of child
10 support to reimburse itself for assistance previously paid, even
11 though the monthly amounts of assistance Ms. Olson received in AFDC
12 had exceeded the monthly amount of Mr. Gostischef's and Mr.
13 Lessard's support obligations. CAROLYN OLSON did not believe that
14 the assistance her family received from 1976 to 1980 was considered
15 to be a loan which she was obligated to repay.

16 6.41 After CAROLYN OLSON and her children ceased receiving
17 assistance in 1980 some child support was paid by Mr. Lessard. His
18 payments were received and distributed by defendant's Office of
19 Support Enforcement. Payments representing current support and
20 arrears that accrued after Carolyn Olson went off assistance were
21 forwarded to CAROLYN OLSON as is required by 42 U.S.C. §657(c) and
22 RCW 26.23.035. Child support arrearages nevertheless accumulated
23 during the months CAROLYN OLSON was not receiving assistance
24 because Mr. Lessard's payments were sporadic and in amounts less
25 than \$170.00 per month.

26 6.42 As of December 29, 1989, CAROLYN OLSON's share of child
27 support arrears, according to OSE records, was over \$9,000.00.

1 6.43 As of December 29, 1989, defendant's share of child
2 support arrears, according to OSE records, was over \$8,000.00.

3 6.44 After CAROLYN OLSON stopped receiving AFDC in 1980 she
4 supported herself and her children with a combination of earnings
5 as a self-employed accountant and paralegal and child support. In
6 January 1990 CAROLYN OLSON reapplied for AFDC for herself and her
7 son because of medical problems, and her inability to continue
8 generating income from her business.

9 6.45 When CAROLYN OLSON reapplied for AFDC in 1990 she
10 executed a new child support assignment. The assignment form she
11 signed did not inform her that if she returned to AFDC, defendant
12 would claim her child support arrears to repay AFDC previously paid
13 out. (A copy of the assignment form is attached as Exhibit F).
14 No other communication informed her of this either.

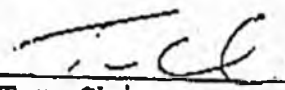
15 6.46 Because CAROLYN OLSON and her children returned to
16 assistance, defendant claims that it can retain support arrears
17 that accrued after CAROLYN OLSON went off assistance in 1980 to
18 reimburse itself for any assistance Ms. OLSON received before she
19 terminated AFDC in 1980. Consequently, defendant claims ownership
20 of all the unpaid child support owed by Mickey Gostischef and
21 Stephen Matthew Lessard.

22 VII. IRREPARABLE INJURY

23 7.1 Plaintiffs and the class they seek to represent will
24 suffer immediate and irreparable injury if the defendant is allowed
25 to keep instead of distribute the support collected following a
26 family's termination from AFDC.

1 7. Grant plaintiffs and class members such additional and
2 further relief as justice may require.

3
4 DATED this 26th day of July, 1990.

5
6 
7 _____
8 Tom Chin
9 Deborah Perluss
10 Joyce Brekke
11 Attorneys for Plaintiffs
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JUDGE TANNER

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APR 10 1991

'ALASKA LEGAL'
SERVICES CORP.
FAIRBANKS

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

NATALIE JENSEN, SHARYN WOODRUFF, and)
CAROLYN OLSON, individually and on)
behalf of all others similarly situated,)

Plaintiffs,)

vs.)

RICHARD THOMPSON, Secretary, State of)
Washington Department of Social and)
Health Services,)

Defendant.)

CLASS ACTION

NO. C90-5313T

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT
(FRCP 56)

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I. INTRODUCTION

Plaintiffs and class members are parents of minor children in Washington State who applied for and received public assistance from defendant Department of Social and Health Services (DSHS) on at least two separate occasions.¹ Plaintiffs sought assistance in many cases because defendant's Office of Support Enforcement (OSE) did not collect the support plaintiffs were owed under existing court orders. As a result of defendant's practices, needy families and children have lost thousands of dollars in child support rights that properly belong to them.

Defendant's wrongful practice, which is undisputed, is its claim that it can reimburse past public assistance plaintiffs received from child support that accrued after they stopped receiving public assistance if plaintiffs return to assistance. Defendant asserts this claim regardless of how brief the subsequent period of assistance turns out to be. Defendant admits that it has no claim to this child support so long as the family never returns to assistance. The instant the family returns to assistance, however, defendant claims all unpaid child support which accrued since the family last received assistance to reimburse itself for

¹In an order entered on November 14, 1990, the court certified a class defined as follows: a) persons who have gone on and off public assistance (AFDC/FIP) at least twice in the State of Washington, and b) for whom some child support was owed and unpaid for the period(s) between when assistance was received, and c) for whom the child support obligation assigned to the State for an earlier assistance period was less than the amount of AFDC/FIP paid to the family during that same period, and d) for whom the child support that was owed and unpaid for the period following termination from public assistance plus the support owed for the subsequent period is greater than the assistance received during that subsequent period.

1 any public assistance received in the past. The financial injury
2 and hardship that plaintiffs suffer as a result of this practice
3 is further compounded by defendant's failure to adequately inform
4 applicants of the practice.

5 Plaintiffs maintain that defendant's challenged practice
6 violates federal regulations, is inconsistent with the Social
7 Security Act, frustrates Congress' intent that children be entitled
8 to receive support that comes due after they go off public
9 assistance, and constitutes a taking of property without due
10 process of law in violation of rights guaranteed them under the
11 Fifth and Fourteenth Amendments to the United States Constitution.

12 II. ILLUSTRATION

13 Defendant's practice is best illustrated by the following
14 example used elsewhere by the State, and will be referred to
15 throughout this memorandum:

16 Assume that a family receives public assistance benefits
17 in the amount of \$10,000.00 and the state collects all
18 the child support due during that period of time, which
19 is \$3,000.00. The family terminates from public
20 assistance and an additional \$4,000.00 worth of support
accrues. The family then goes on public assistance for
a second time... The state will use the "gap period
arrears" of \$4,000.00 to reimburse unpaid AFDC benefits
from either the first or second welfare period.

21 Letter from Daniel Radin to Regional Representative of HHS, dated
22 July 9, 1990, Paine Deposition Ex. 1 (Attached here as Exhibit
23 "A"). Plaintiffs assert that the interim arrears of \$4,000 can
24 only be used to reimburse public assistance during the second
25 assistance period. This is because no child support which had been
26 assigned to the State is due and unpaid as of the time the family
27 stopped receiving public assistance.

2 policies cause is demonstrated by the attached affidavits of
3 plaintiffs and class members. For example, Natalie Jensen received
4 Aid to Families with Dependent Children (AFDC) when two of her
5 children were young. Natalie Jensen became self-supporting and
6 went off AFDC. After this, \$11,500 in unpaid child support due
7 under a divorce decree accumulated. During this time, the Jensens
8 did not receive AFDC and defendant's Office of Support Enforcement
9 (OSE) did not succeed in collecting child support for the family.
10 For almost four years Ms. Jensen supported herself and her children
11 from her earnings. Because of a temporary disability precluding
12 employment and the lack of income from child support, Natalie
13 Jensen reapplied for AFDC and received a total of \$1,734 over a
14 three-month period. She then returned to work and ultimately
15 reconciled with her former husband. OSE then began garnishing Ms.
16 Jensen's former husband's wages and claimed that the \$11,500 coming
17 due during the 4 years the family was off assistance (and the more
18 than \$8000 due during the months the family received AFDC),
19 belonged to the State until all AFDC ever paid the family was
20 reimbursed. At the present time the garnishment continues; the
21 State retains all the funds collected and the family has a reduced
22 income available to meet the children's present needs.

23 Linda McDaniel and her children received AFDC from 1982-1985.
24 She became a registered nurse, terminated AFDC, and worked to
25 support herself and her children. Her former husband paid court
26 ordered support sporadically and OSE did not succeed in obtaining
27 regular collections from him. After Ms. McDaniel became ill and
28 had exhausted her sick benefits at work, she returned to AFDC for

1 three months in 1989. When she applied for assistance, she asked
2 what she would be giving up in support rights if she returned to
3 public assistance. She was told she would only lose rights to the
4 support that came due during the months she received assistance.
5 Instead, the State now claims the unpaid support accruing over the
6 four years between 1985 and 1989 when the family was not on AFDC
7 to repay AFDC they received between 1982 and 1985.

8 III. JURISDICTION

9 Plaintiffs move for summary judgment and seek declaratory and
10 injunctive relief under 28 U.S.C. §§ 2201 and 2202. Their claims
11 arise under 42 U.S.C. § 1983. Jurisdiction exists pursuant to 28
12 U.S.C. §§ 1331 and 1343(3). Maine v. Thiboutot, 448 U.S. 1, 4
13 (1980).

14 IV. SUMMARY JUDGMENT STANDARDS

15 FRCP 56(a) and (c) provide that summary judgment is proper
16 when there are no genuine issues of material fact, and the moving
17 party is entitled to judgment as a matter of law. Anderson v
18 Liberty Lobby, 477 U.S. 242 (1986). There is no genuine issue as
19 to the material facts. The undisputed facts have either been
20 admitted by the defendant, appear from its own documents, or in
21 deposition testimony of department personnel. Plaintiffs' claims
22 rest strictly upon questions of law to be decided by the court.
23 10 C. Wright, A. Miller, M. Kane, Federal Practice and Procedure
24 2712, 2713, n. 10 (2d Ed. 1983).

25 V. STATEMENT OF UNDISPUTED FACTS

26 The undisputed material facts are as follows:

27 If a family does not reapply for public assistance, child
28

1 support coming due under a court or administrative order since the
2 family last received public assistance belongs in full to the
3 family. (DeKay Dep. at 23:13-21) (Cited references to Depositions
4 are attached as appendixes). The moment the family reapplies for
5 public assistance the State claims that child support to repay in
6 full public assistance paid the family at any time in the past and
7 in the future. This occurs even though public assistance is not
8 a loan which the family is obligated to repay. (Paine Dep. at
9 75:25; 76:1-5).

10 When a family returns to public assistance, the State
11 aggregates the total amount of public assistance ever paid and the
12 total amount of child support arrears owed, regardless of when they
13 accrued, and applies support collections against all public
14 assistance ever paid. (Paine Dep. at 90:13-22; 91:7-11; DeKay Dep.
15 at 24:2; 25:1-4; 27:5-29).

16 As part of the application process the family applying for
17 assistance must sign an assignment of support rights form. (Bergh
18 Dep. at 18:15-16) The forms most recently used are attached as
19 Exhibits "B" and "C". These forms are drafted by OSE but presented
20 for signature to applicants for public assistance by (IV-A office)
21 personnel. (Paine Dep. at 30:1-12; Bergh Dep. at 17:16-25; 18:15-
22 16).

23 VI. ARGUMENT

24 **A. FEDERAL LAW PROHIBITS REIMBURSEMENT OF PUBLIC ASSISTANCE** 25 **FROM CHILD SUPPORT ACCRUED AFTER A FAMILY STOPS RECEIVING** **ASSISTANCE.**

26 The child support enforcement provisions of Title IV-D and the
27 public assistance program provisions of Title IV-A of the Social
28 Security Act are interrelated and are designed to help poor

1 families achieve self-sufficiency. 42 U.S.C. § 651 et seq.; 42
2 U.S.C. 601 § et seq. As a condition of receiving federal funds for
3 the State's AFDC program, DSHS is required to provide support
4 enforcement services to both families receiving AFDC and to
5 families not receiving AFDC, in accordance with Title IV-D of the
6 ^{social} Security Act, 42 U.S.C. §651 et seq., implementing federal
7 regulations, 45 C.F.R. § 301 et seq., and a State plan approved by
8 the U.S. Department of Health and Human Services.

9 As a condition of receiving public assistance, an applicant
10 must assign to the State any child support rights which exist on
11 behalf of a child for whom public assistance is sought, and which
12 have accrued "at the time such assignment is executed." 42 U.S.C.
13 § 602(a)(26)(A), 45 C.F.R. § 232.11(A)(1)(ii). The applicant must
14 also assign rights to support that come due while the family is
15 receiving assistance. The support rights assigned to the State
16 during the assistance period constitute "an obligation owed to such
17 State by the individual responsible for providing such support."
18 The obligation is limited by the support amount established by
19 court order or administrative process. 42 U.S.C. § 656(a)(1) and
20 (2), 45 C.F.R. § 302.50(a) and (b). In the example given above,
21 \$3,000 represents the limit of the State's claim for the initial
22 assistance period.

23 The assignment of child support rights is an assignment for
24 purposes of collection only. 42 U.S.C. § 656(a)(1), 45 C.F.R. §§
25 232.20(b), 45 C.F.R. 302.50(c). It does not govern the state's
26 right to retain or duty to distribute child support once collected.
27 Distribution of support is governed by 42 U.S.C. § 657 and 45
28 C.F.R. § 302.51.

1 Child support collected by the IV-D agency while a family
2 receives assistance is used to determine ongoing financial
3 eligibility on the basis of whether the monthly support obligation
4 is sufficient to meet the needs of the child as set off against the
5 monthly public assistance grant. 45 C.F.R. §§ 232.20, 302.32. In
6 accordance with rules prescribed in 45 C.F.R. § 302.51(b)(1)-(5),
7 the State either distributes each support payment it collects to
8 the family receiving assistance or retains it to offset AFDC
9 expenditures.

10 When a family goes off public assistance, the assignment
11 terminates as to future accruals of support, but the State's
12 obligation to collect and distribute child support continues "on
13 the same conditions and on the same basis as in the case of the
14 individuals to whom services are furnished" who are not recipients
15 of public assistance. 42 U.S.C. § 657(c), 45 C.F.R. § 302.51(f).

16 The State concedes that support which comes due after a family
17 goes off public assistance belongs to the family and is not
18 available to the State to reimburse public assistance previously
19 furnished. (Paine Dep. at 79:17-25; 83:6-24; DeKay Dep. at 23:8-
20 21). Thus, in the above example, the State would agree that as
21 long as the family stays off AFDC the State has no claim to the
22 \$4,000 in post-assistance support even though the total support due
23 and collected during the assistance period (\$3,000) was less than
24 the assistance the family previously received. This is because
25 under 42 U.S.C. §656, the amount of the support obligation owed by
26 the responsible parent is less than the amount of assistance
27 furnished when the family terminates public assistance, and the
28 amount of the State's claim is limited to the amount of the support

1 obligation.

2 The family is also not required to pay the deficit that may
3 exist between the value of assistance it received and the total
4 support owed for the assistance period. Public assistance is not
5 a loan to the family in need, and is not conditioned upon the
6 giving of collateral of equal or greater value to satisfy the
7 difference between the amount of public assistance received and the
8 amount of child support owed under the assignment. (Paine Dep. at
9 62:19-25; 63:1-11).

10 **B. THE STATE'S AUTHORITY TO RETAIN CHILD SUPPORT COLLECTIONS**
11 **TO REIMBURSE ITSELF FOR PUBLIC ASSISTANCE PAID TO THE FAMILY IS NOT**
12 **BASED ON THE PUBLIC ASSISTANCE ASSIGNMENT.**

13 The State's right to reimbursement for public assistance is
14 not co-extensive with the public assistance assignment of support.
15 Federal law requires that distributions of support collected be
16 shared between the family and the State and Federal governments.
17 45 C.F.R. § 302.51(b). Federal law also recognizes that the child
18 support obligation may be less than the public assistance grant.
19 42 U.S.C. § 656.

20 Effective in 1984, if the State collects assigned support
21 while the family is on AFDC, the family is entitled to receive the
22 first \$50 of each timely support payment, and any amount collected
23 on a monthly obligation higher than the AFDC grant. 42 U.S.C. §
24 657(b)(1) and (3), 45 C.F.R. § 302.51(b)(1) and (3). The state
25 retains current child support collections after the first \$50 to
26 repay that month's AFDC. 45 C.F.R. § 302.51(b)(2). In addition,
27 child support amounts collected during the assistance period which
28 include payments on support obligations for past months may be
retained by the State to reimburse public assistance payments made

1 during the months to which those support collections are
2 attributable. . 42 U.S.C. § 657(b)(4), 45 C.F.R. §§302.32(d),
3 302.51(b)(4).

4 The State's retention rights are limited to the amount of the
5 support obligation owed in a month in which assistance was provided
6 (less the family's portion identified above), unless the State also
7 collects support amounts which represent the required support
8 obligation "for periods prior to the first month in which the
9 family received assistance". 45 C.F.R. § 302.51(b)(4). These pre-
10 assistance amounts may reimburse the difference between the support
11 obligation owed for the assistance period and the amount of public
12 assistance paid during that period. 45 C.F.R. § 302.51(b)(4).
13 Only if there are pre-AFDC arrears may the State collect any
14 shortfall between the monthly child support obligation and the AFDC
15 grant. 45 C.F.R. § 302.51(b)(4). The State never has access to
16 post-AFDC arrears for this purpose. Thus, in the example above,
17 nothing is available for the State's retention as reimbursement
18 beyond the \$3,000 already collected, because no child support
19 arrears are owed in the period prior to the initial receipt of
20 public assistance.

21 The State is not authorized to seek reimbursement of public
22 assistance expenditures from future accruals of support. Amounts
23 collected in excess of amounts required to be distributed under 45
24 C.F.R. § 302.51(b)(1)-(4) must be distributed to the family. 45
25 C.F.R. § 302.51(b)(5). Thus, in our example, there are no support
26 arrears from which the State may capture the \$7,000 deficit between
27 the support owed and paid during the assistance period and the
28 total amount of assistance provided to the family.

1 When a family goes off public assistance, the State does not
2 accrue any greater rights than it had while the family was
3 receiving assistance. Upon termination from public assistance, the
4 assignment of support rights terminates "except with respect to the
5 amount of any unpaid support obligation that has accrued under such
6 assignment." 45 C.F.R. § 302.51(f) (emphasis added). The State
7 can continue to seek reimbursement for public assistance
8 expenditures only in the same way it could while the family
9 received assistance.

10 **C. THE COLLECTION, RETENTION, AND DISTRIBUTION OF SUPPORT**
11 **RULES DO NOT CHANGE IF A FAMILY IS FORCED TO REAPPLY FOR PUBLIC**
12 **ASSISTANCE AFTER A PERIOD OF NON-RECEIPT.**

12 The rules that govern whether support collections should be
13 distributed to the family or retained by the State, contrary to
14 defendant's practice, operate the same way when a family reapplies
15 for public assistance, but with respect to the following assistance
16 period. A new assignment of support rights is required as a
17 condition of eligibility for the assistance the family is seeking
18 to receive. (Bergh Dep. at 49:22-25; 50:1-2). Once again,
19 distribution occurs as provided in 42 U.S.C. §657 (b) and 45 C.F.R.
20 § 302.51(b). The State ^{is claim} continues to be limited to the amount of
21 the support obligation as reimbursement for public assistance
22 unless the State collects, during the assistance period, child
23 support amounts which represent the required support obligation for
24 "periods prior to the first month in which the family received
25 assistance." 45 C.F.R. § 302.51(b)(4). There is still no
26 authority to retain support collections that represent periods
27 after the family received assistance to satisfy the difference
28 between what was owed in child support and the assistance paid

1 during a prior period of assistance.

2 When a family returns to public assistance, the State's
3 practice, challenged here, is to aggregate the total amount of
4 public assistance ever paid and to claim the total amount of child
5 support arrears owed, regardless of when they accrued. This is
6 what happened to Natalie Jensen and Linda McDaniel and other class
7 members. The State pays no attention to when the assistance was
8 paid or when the support obligation accrued. Nor does the State
9 care how much public assistance is paid out in the subsequent
10 period. (DeKay Dep. at 25-26). It could be as little as one
11 month's public assistance grant. (DeKay Dep. at 25-26).
12 Consequently, the State unlawfully applies the interim child
13 support arrears (\$4,000 in the above example) which accrued after
14 the family stopped receiving assistance to repay the prior public
15 assistance deficit. (Paine Dep. at 74-79, 90-91). This practice
16 violates 45 C.F.R. § 302.51(b)(4), 45 C.F.R. § 302.51(f), as well
17 as 42 U.S.C. § 656.

18 The defendant's position that reapplication triggers a
19 substantive claim to support that accrued in the interim period to
20 reimburse itself for any assistance the family has ever received
21 is inconsistent with the principle that the assignment ended when
22 the family previously went off assistance, and is prohibited by 45
23 C.F.R. § 302.51(b)(4). No statute or regulation provides that
24 support which accrued during the interim period (and which belongs
25 to the family) instantly belongs to the State for back AFDC the
26 moment the family receives any assistance at a later date. Rather,
27 the pool of funds available to the State to reimburse assistance
28 furnished in an earlier period is settled, once and for all, based

1 on the fixed amount of arrears accrued when the family went off
2 assistance and the assignment terminated. The state's practice
3 violates the basic principle expressed in 42 U.S.C. §656, that the
4 debt due the State is limited to the value of the support
5 obligation owed as of the time the assignment is executed and which
6 accrues during the assistance period. By claiming the accrued
7 post-AFDC arrears (\$4,000 in our example) to reimburse the deficit
8 from an earlier period of assistance, the State effectively
9 converts the debt due the State from "the individual responsible
10 for paying support" (42 U.S.C. § 656) to a State debt owed by the
11 needy family.

12 No reasonable interpretation of the statutes and regulations
13 sustains the State's position. In interpreting statutes and
14 regulations, the court must not be guided by a single sentence or
15 part of a sentence but must look to the provisions of the whole law
16 and to its object and policy. Pilot Life Ins. Co. v. Dedaux, 481
17 U.S. 41, 50 (1987). Words must be read in their context and with
18 a view to their place in the overall scheme. United States v.
19 Morton, 467 U.S. 822, 828-829 (1984). The State's view fails to
20 take into account when the support accrued and when the assistance
21 was furnished; it overlooks the fact that an assignment provides
22 the State support rights from which the State can seek to reimburse
23 itself for future assistance that the family receives after the
24 assignment is executed. Seagraves v. Harris, 629 F.2d 385, 392
25 (5th Cir. 1980). Most significantly, it ignores the fact that the
26 assignment terminates when a family goes off assistance and that
27 future accruals belong to the family, many of whom have endured
28 significant economic hardships due to the non-receipt of child

1 support while attempting to remain free of the public assistance
2 system. The statutes and regulations must be read together and
3 interpreted in a way that is consistent with the principle that an
4 assignment begins when a family receives public assistance and ends
5 when the family terminates public assistance. Nowhere is the State
6 given the authority to revive an assignment which has long since
7 terminated in order to claim post-AFDC support arrears to reimburse
8 prior public assistance.

9 D. THE RETENTION OF CHILD SUPPORT WHICH ACCRUES FOLLOWING
10 TERMINATION FROM PUBLIC ASSISTANCE TO REIMBURSE PUBLIC ASSISTANCE
11 RECEIVED DURING AN EARLIER PERIOD IS INCONSISTENT WITH THE POLICY
UNDERLYING THE SOCIAL SECURITY ACT AND THE CHILD SUPPORT
ENFORCEMENT PROGRAM STATUTES.

12 The evolution of the federal child support enforcement program
13 is a dramatic story of Congress' increasingly aggressive efforts
14 to compel the States to aid poor families. A principal goal of the
15 federal Aid to Families with Dependent Children program since 1935
16 has been to "help maintain and strengthen family life and to help
17 [parents] to attain or retain capability for the maximum self-
18 support and personal independence..." 42 U.S.C. § 601, Shea v.
19 Vialpando, 416 U.S. 251, 253 (1974). That goal became more elusive
20 as the growing problem of non-support by absent parents became a
21 significant cause of families resorting to AFDC.

22 In 1974 Congress enacted Title IV-D of the Social Security Act
23 in response to this alarming situation. P.L. 93-647 § 101(a), 88
24 Stat. 2351, 42 U.S.C. § 651 et. seq. Legislative history of the
25 IV-D program demonstrates the focus of Congressional concern:

26 The problem of welfare in the United States is, to a
27 considerable extent, a problem of the non-support of children
28 by the absent parents. Of the 11 million recipients who are
not receiving [AFDC], 4 out of every 5 are on the rolls
because they have been deprived of the support of a parent
who has absented himself from the home.

1 Senate Report 93-1356, 93rd Cong. 2d Session (1974) reprinted in
2 1974 U.S. Code Cong. and Ad. News (USCCAN) 8146-7 (citing Rand
3 Corporation Study, Winston and Forsher, "Nonsupport of Legitimate
4 Children by Affluent Fathers as a Cause of Poverty and Welfare
5 Dependence", December 1971).

6 Title IV-D first mandated that States establish procedures for
7 establishing paternity and support obligations, locating absent
8 parents, and collecting child support through judicial and
9 administrative procedures. Congress expressly made support
10 enforcement procedures available to non-welfare families in
11 recognition that "the problem of non-support is broader than the
12 AFDC rolls and that many families might be able to avoid the
13 necessity of applying for welfare in the first place if they had
14 adequate assistance in obtaining support due from absent parents."
15 Id., 1974 USCCAN at 8158.

16 Congress deemed the public assistance assignment of support
17 for collection as the "most effective and systematic method for an
18 AFDC family to obtain child support from a deserting parent..."
19 Id., 1974 USCCAN at 8152. Thus, the mandatory assignment of
20 support rights as a condition of receiving AFDC was added to Title
21 IV-A of the Social Security Act when Title IV-D was enacted. P.L.
22 93-647, § 101(c), 88 Stat 2337, 42 U.S.C. § 602(a)(26).

23 The distribution of support during the assistance period was
24 separately provided for in 42 U.S.C. § 657(b). In order to ensure
25 the successful transition from AFDC to self-sufficiency, in 1974
26 Congress authorized the States to continue to collect child support
27 for a three month period after a family stops receiving public
28 assistance, and pay the support to the family. 42 U.S.C. § 657(c).

1 See Seagraves v. Harris, 629 F.2d at 391. Congress considered that
2 this transition period would allow the State sufficient time to
3 notify "the father that in the future he will be making support
4 payments directly to the family..." 1974 USCCAN at 8153. After
5 the three month period, child support collections would go to the
6 family, except that the State retained its interest to retain
7 excess collections to satisfy previously assigned support.
8 Seagraves, supra at 392.

9 In 1987, Congress amended 42 U.S.C. §657(c) to require States
10 to continue support enforcement efforts indefinitely to all former
11 AFDC recipients. Omnibus Budget Reconciliation Act of 1987, P.L.
12 100-203, § 9141(a)(1), 101 Stat. 1330-321, eff. Dec. 22, 1987. All
13 post-AFDC child support funds collected must now be paid to the
14 family.

15 The statutory changes in §657(c) reflect the evolution in
16 policy underlying the federal child support enforcement program.
17 Congress increasingly intends that families benefit from effective
18 child support collections and that more funds be passed through to
19 them.

20 For example, in 1984, in order to redress the States'
21 inadequate implementation of child support enforcement procedures,
22 particularly with respect to non-welfare families, Congress enacted
23 the Child Support Enforcement Amendments of 1984. Sen. Rept.,
24 supra, No. 98-387 at 22, 48, reprinted in 1984 USCCAN 2397, 2418,
25 2444. Congress expressly required each state to implement and use
26 specific enforcement tools (such as mandatory wage withholding,
27 imposition of liens, interstate enforcement procedures,
28 interception of federal income tax refunds, and posting of bonds

1 and other security) and to give support enforcement services to
2 non-AFDC families equal to those it gives AFDC families. P.L. 98-
3 378, 98 Stat. 1305, effective October 1, 1984, see 42 U.S.C.
4 §§654(6), 658, 666. Congress also restructured federal financial
5 incentives to encourage States to focus on non-AFDC support
6 collections. 42 U.S.C. §658(a). As regards former AFDC
7 recipients, Congress recognized that "child support enforcement on
8 behalf of these families may be crucial in enabling them to retain
9 their economic independence." Sen. Rept. 93-378, ^{§ 974 U.S.C.A.N.} supra, at 2432.

10 In 1988, the child support enforcement tools were strengthened
11 yet again in the Family Support Act of 1988. P. L. 100-485, §104,
12 102 Stat. 234. This time, Congress focused on the systemic delays
13 by States in undertaking effective child support enforcement
14 actions. Congress mandated HHS to implement specific standards and
15 timelines by which States must begin enforcement action after
16 application for services, timelines for distribution of support
17 once collected and mandates for periodic review of support orders
18 and collection actions. P.L. 100-485, §§101(a), 103(c), and 111.

19 Since 1974, Congressional efforts to compel States to enforce
20 child support have been aimed at helping low income families
21 (usually single women with small children) to become self-
22 sufficient and at reducing welfare costs by avoiding the need for
23 public assistance. Behunin v Jefferson County Department of Social
24 Services, 744 F. Supp. 255 (D. Colo. 1990). Defendant's policy
25 instead furnishes a disincentive for aggressive support collection
26 on behalf of some families who have terminated from public
27 assistance. For instance, if the State does not collect support
28

1 or delays collection and the family returns to public assistance,²
2 the State claims the support not collected to reimburse itself for
3 any past assistance the family has received. Though plaintiffs
4 attribute no ill motives to the State when delays occur, the court
5 should not interpret the regulations in a manner which allows the
6 State to benefit from delay.³ The families adversely affected by
7 the State's practice have often endured long periods of economic
8 hardship due to the non-receipt of child support.⁴ Natalie Jensen
9 and Linda McDaniel, for instance, returned to public assistance for
10 very short periods of time and only when public assistance was a
11 last resort.

12 ²Systemic delays in collection actions by the support
13 enforcement agency are not uncommon. In a report of the Washington
14 State Governor's Executive Task Force on Support Enforcement, the
systemic delays were documented:

15 The Office of Support Enforcement caseload has continued
16 to increase every year but the funding for staff and
equipment has not increased to meet the demand. As a
17 result, enforcement has been delayed in some cases.

18 Final Report, Governor's Task Force on Support Enforcement (Sept.
1986) at 17.

19 ³One advantage the state obtains from claiming interim accrued
20 arrears (to reimburse the public assistance previously paid to the
family) is the priority status it enjoys with respect to funds
21 collected through the federal income tax refund intercept system
authorized by 42 U.S.C. § 664, 45 C.F.R. § 303.72(h). Under these
22 provisions any amounts attributable to the "state's arrears" must
be reimbursed before the "family's arrears."

23 ⁴In 1986, the Governor's Task Force reported:

24 The failure of parents to financially support their
25 children has reached alarming proportions. The federal
government reports that 40 percent of single parents in
26 this country are without an order for child support. Of
the 60 percent who have support orders, 28 percent get
27 no payments and 25 percent get only part of the amount
owed. The total unmet obligation amounts to almost \$4
28 billion per year.

Final Report at 12.

1 E. DEFENDANT'S PRACTICE DENIES PLAINTIFFS DUE PROCESS.

2 1. Defendant's Practice Constitutes an
3 Unconstitutional Taking under the Fifth
4 Amendment.

5 The Fifth and Fourteenth Amendments to the U.S. Constitution
6 provide that private property cannot be "taken for public use
7 without just compensation." To establish a claim that government
8 action constitutes a "taking," three factors have generally been
9 recognized as significant: 1) the economic impact of the
10 regulation or practice on the claimant, 2) the extent to which the
11 practice has interfered with distinct expectations and 3) the
12 character of the governmental action. Bowen v. Gilliard, 483 U.S.
13 587, 606 (1987). Nevertheless, no set formula has been developed
14 to decide whether government action constitutes a "taking."
15 Instead the court has relied on "ad hoc, factual inquiries into the
16 circumstances of each case." Connolly v Pension Benefit Guaranty
17 Corp., 475 U.S. 211, 224 (1986).

18 Plaintiffs and class members had distinct and legitimate
19 expectations that supports rights accrued after they terminated
20 from public assistance belonged to them and were not available to
21 the State for past assistance. The governmental action here forces
22 "some people alone to bear public burdens which, in all fairness
23 and justice, should be borne by the public as a whole." Armstrong
24 v. United States, 364 U.S. 40, 49 (1960). Public assistance is
25 borne by the public as a whole; it is not a family's responsibility
26 to repay. Defendant, however, is making plaintiffs repay public
27 assistance received in the past from support rights that accrued
28 after they went off assistance.

The economic impact on families affected by the defendant's

1 practice here is severe. The family can lose thousands of dollars
2 in accrued support rights. In Natalie Jensen's case, the State
3 claimed over \$7700 in support in return for \$1734 in AFDC. In
4 Cynthia Ohlig's case, the State claimed approximately \$14,500 in
5 return for less than \$6000 in AFDC. (Ohlig declaration). The
6 amounts plaintiffs received do not satisfy the "adequate
7 compensation" required for a constitutional "taking" under the
8 Fifth Amendment.

9 **2. Defendant Fails to Provide Adequate Notice of**
10 **Its Practice to Meet the Due Process Standards**
11 **of the Fourteenth Amendment.**

12 If the court concludes that defendant lacks the legal
13 authority to claim the child support arrearages disputed here, then
14 it will not be necessary to reach the notice claim. If, however,
15 the court holds that DSHS has such authority it will be necessary
16 to decide whether the procedures used afford plaintiffs procedural
17 due process.

18 Child support due a custodial parent is a significant property
19 interest in Washington. The parent is entitled to the money as
20 trustee for the child. Hartman v. Smith, 100 Wn.2d 766, 764 P.2d
21 763 (1984). Until she applies for public assistance, this property
22 interest belongs in full to the custodial parent and children, and
23 the State has no claim to it. 42 U.S.C. §654. Even after going
24 on AFDC the child and custodian retain a protectible property
25 interest in child support passed through to them pursuant to 42
26 U.S.C. §657(b). Vanscoter v. Bowen, 706 F. Supp. 1432 (W.D. WA.
27 1988), aff'd in part, rev'd in part on other grounds 920 F.2d 1142,
28 1150 (9th Cir. 1990).

Under defendant's challenged practice, the child and

1 custodian lose a significant portion of their property interest the
2 moment they return to AFDC, because all child support arrears
3 belonging to the family are converted to State arrears. (Paine
4 Dep. at 89:10-16; DeKay Dep. at 26-28). The government cannot
5 deny due process guarantees in any situation where a significant
6 property interest is at stake. Board of Regents v. Roth, 408 U.S.
7 564, (1972). Any significant governmental taking of property must
8 be preceded by adequate notice. Mullane v. Central Hanover Bank
9 and Trust, 339 U.S. 306, 314-15, (1950). The notice must be
10 reasonably calculated to inform the recipient of the action being
11 taken. It must be of such a "nature as reasonably to convey the
12 required information." Mullane, supra at 314-15.

13 The notice must be tailored in content and format to the
14 particular audience. Memphis Light, Gas and Water Division v.
15 Craft, 436 U.S. 1, 14-15 and n. 15, (1978) (notice of utility
16 service termination must be clear, since many readers may be
17 unsophisticated). It must be sufficiently detailed and readable
18 to meaningfully inform. Grueshow v. Harris, 492 F.Supp 419 (S.Dak.
19 1980). In public assistance programs, notice of eligibility
20 requirements is necessary as a matter of due process. Banks v.
21 Trainor 525 F.2d 837 (7th Cir. 1975).

22 In this case, only if adequate notice of the consequences of
23 the required assignment is given can a public assistance applicant
24 make an informed decision whether or not to accept public
25 assistance benefits. The only notice DSHS gives applicants
26 concerning the subject of child support falls far short of the
27 constitutional standards articulated above.

28 Defendant acknowledges that the purpose of the current notice

1 (Exhibit C) is to inform. (Paine Dep. at 133). Yet, the notice
2 is not understandable for the intended audience. The notice
3 requires a 10th grade reading level to comprehend (Declaration of
4 Carrol Tama). This is four grade levels higher than Defendant's
5 own standards recommend as appropriate for AFDC notices. (DSHS
6 Paperwork Management Manual, Ex. D).

7 The notice provides only generalized, incorrect, and overbroad
8 information. It does not accurately identify just what is being
9 assigned. Defendant's administrator in charge of OSE policies
10 could only speculate as to what is meant by the words "support
11 debt" and "back support" in paragraph 1(a) and (b) of Exhibits B
12 and C (Paine Dep. at 126:7-23). He admits that one would have to
13 "read the statute" to discern the definition of those terms. A
14 recipient must consult federal law to fully understand the impact
15 of paragraph 6, which upon signature "withdraws all prior
16 assignments ... unless they are in keeping with federal law."
17 (Paine Dep. at 128:20 - 129:2).

18 Defendant admits that although the assignment form states in
19 paragraph 3 that "all" child support assigned "belongs to DSHS",
20 in reality the State is entitled to only a portion of the assigned
21 support. (Paine Dep. at 126-128:15-19). The forms fail to identify
22 which portions of child support belong to the parent and what
23 belongs to the State, and is particularly misleading because in
24 practice the State does pass through some child support during and
25 after the family receives AFDC.

26 Defendant acknowledges that the assignment document is "not
27 an accurate statement of what's going on," (Paine Dep. at 128) and
28 that it "could be read a couple of different ways." (Paine Dep.

1 at 130).

2 The notice is ambiguous and completely fails to disclose that,
3 if AFDC benefits are accepted, child support belonging to the
4 family will be taken by the State to reimburse AFDC paid out years
5 before. Instead, it states both that: "OSE will also enforce and
6 collect support for me when I stop getting public assistance" and
7 that "after I am off assistance all support rights assigned above
8 ... belong to DSHS...". It is not at all clear from the language
9 of the notice that a family will lose thousands of dollars in
10 support by accepting a few months of AFDC. The burden should not
11 be placed on plaintiffs "to be so perceptive as to divine such
12 broad meaning from the small amount of information given in the
13 notice". Grueshow v. Harris, supra at 423, (holding that a notice
14 about availability of new assistance program funds was
15 constitutionally defect. Failing to clearly inform a large
16 number of potential recipients of the basis for eligibility);
17 Finberg v. Sullivan, 634 F. 2d 50 (3rd Cir. 1980) (failure to inform
18 judgment debtor of statutory exemptions when bank account was
19 garnished denied procedural due process). Defendant acknowledges
20 that even its staff would have to consult federal statutes to know
21 what particular provisions of the assignment form meant. (Paine
22 Dep. at 118 - 119).

23 Oral conversations between AFDC applicants and an AFDC worker
24 do not cure the deficiencies of the written notice. (Bergh Dep.
25 at 51:10-52). In fact, two of the named plaintiffs have received
26 explicit interpretations of OSE practices exactly contrary to
27 DSHS's practices. (Decls. of Linda McDaniel and Sharyn Woodruff).

28 In evaluating the adequacy of notice and alternatives,

1 competing concerns must be weighed: The interest at stake for the
2 individual, the risk of an erroneous deprivation through the
3 procedures used, the probable value of different or additional
4 procedural safeguards, and the interest of the government in using
5 the current procedures. Landon v. Plasencia, 459 U.S. 21 (1982),
6 citing Matthews v. Eldridge, 429 U.S. 319 (1976).

7 The individual interest at stake in this case is great; it can
8 be all the child support owed the custodian and the children.
9 There is a major risk of error if the notice is not improved, since
10 AFDC applicants do not know what rights they are giving up by
11 accepting AFDC and therefore do not knowingly waive them. The
12 burden on the State is nominal.⁵

13 For the reasons stated above, the notice is so inadequate as
14 to deny procedural due process. The notice must be changed
15 prospectively. In addition, any funds withheld from plaintiffs
16 under the existing notice or previous versions have been taken
17 without procedural due process and must be refunded.

18 19 VII. CONCLUSION

20 The court should grant plaintiffs' motion and declare that
21 defendant's challenged practices violate federal regulations,
22 federal statutes, and the due process clauses of the Fifth and
23 Fourteenth Amendments to the U.S. Constitution. The defendant
24 should be enjoined from continuing these practices and be required

25
26 ⁵The state has already expressed its willingness to add a
27 statement advising AFDC applicants that "the back support that is
28 assigned may be used to reimburse the state for public assistance
payments made in the past." Answer, paragraph 9.2. Though this
would not resolve all of the defects, it would more meaningfully
inform applicants of their rights and responsibilities. To date,
no such statement has been added to the notice.

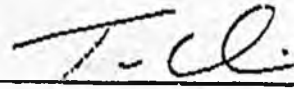
1 to remedy them by paying plaintiffs and class members the support
2 that has been wrongfully withheld from them.⁶

3 Dated: March 13, 1991.

4 Respectfully submitted,

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Joyce Brekke
Attorneys for Plaintiffs

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⁶Plaintiffs reserve the right to argue the scope of relief and to seek attorney's fees under 42 U.S.C. § 1988 upon receiving a favorable declaration on the merits of their claims.