

**HB**

**514**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 514(JUD)  
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Child Support Enforcemen/Crimes BRU Alaska Court System  
Component Trial Courts  
Sponsor Representative Kott  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
House Bill 514, in part, raises from a misdemeanor to a felony the crime of criminal nonsupport in cases where the obligor is \$10,000 or more in arrears in child support payments or has made no payments for a period of 24 months or more. According to the Child Support Enforcement Division (division), approximately 15,000 Alaskans fall into that category. If felony proceedings were to be brought against even a small percentage of these persons then the impact on the court would be significant. However, the existing crime of criminal nonsupport has been charged very infrequently. The division testified that it plans to continue that tradition and estimates that it would file 6 to 12 felony cases a year under this bill. Given this history and the divisions plans for the future, the court would not anticipate a significant fiscal impact from the passage of this bill. However, if this crime is charged more regularly then the court system may return to the legislature for additional funding.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
Division Alaska Court System Date/Time 2/25/04 3:52 PM  
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004  
Agency Alaska Court System

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 514(JUD)  
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Depl. Affected: LAW  
Title: "An Act relating to child support modification and enforcement, to the establishment of paternity by the child support..." RDU: CRIMINAL & CIVIL  
Sponsor: Representative Kott Component: Criminal Justice Litigation, Torts & Workers' Comp, Collections & Supp  
Requester: House Judiciary Committee Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Intergovernmental Receipts						
1141 RCA Receipts						
<b>TOTAL</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Sections 1-6 amend the statutes relating to criminal nonsupport and aiding and abetting nonsupport. The bill increases each offense to a felony if certain conditions are met. Also, the bill eliminates the requirement that the children be under the age of 18, thus allowing CSED to pursue criminal non support for children who have turned 18 but are still subject to a support order for adult disabled children.

Section 9 permits CSED investigators to be peace officers and carry firearms. Section 12 amends the statute relating to the modification of administrative support orders to eliminate the requirement that there be a material change in circumstances before a modification is granted if more than three years have passed since the order was last issued or modified.

Passage of this legislation will have an indeterminate fiscal impact on law. Any time a penalty is raised

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673  
Division: Administrative Services Date/Time 2/22/04 12:32 PM  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/22/2004  
Agency: Department of Law

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 514(JUD)

ANALYSIS CONTINUATION

from a misdemeanor to a felony, it is more time and resource intensive to prosecute. Additionally, CSED investigators acting as "peace officers" and carrying firearms increases tort liability exposure for the State which raises fiscal implications that we are similarly unable to quantify.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB 514(JUD)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Child Support Enforcement/Crimes RDU Revenue Programs & Services  
Component Child Support Enforcement Division  
Sponsor Representative Kott  
Requester \_\_\_\_\_ Component No. 111

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	31.2	2.0	2.0	2.0	2.0	2.0
Supplies						
Equipment	28.4					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>59.6</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	***	***	***	***	***	***
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	39.3	1.3	1.3	1.3	1.3	1.3
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	20.3	0.7	0.7	0.7	0.7	0.7
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>59.6</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The expenditures would occur to provide training and equipment for the child support investigators. The compromising of arrears section will result in the elimination of arrears owed to the state in favor of receiving ongoing monthly support. This program will provide increased revenues to the state and reduce the amount of child support debt owed. Since CSED can not determine which individuals will use this program, we can not project what this increase in revenue will be.

Prepared by: John Mallonee Phone 269-6802  
Division Child Support Enforcement Date/Time 3/9/04 2:50 PM  
Approved by: Steve Porter, Deputy Commissioner Date 3/9/2004  
Agency Department of Revenue

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB514CS#2-DPS-AST-3-12-04  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title Act Relating to Child Support Enforcement . . . RDU Alaska State Troopers  
Component AST Detachments  
Sponsor Rep. Kott  
Requester Lt. Finance Component No. 2325

**Expenditures / Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill addresses and amends several provisions of the statutes relating to child support enforcement.

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Al Storey Phone 269-4532  
Division Alaska State Troopers Date/Time 3/12/04 11:14 AM  
Approved by: Commissioner William Tandeske Date 3/12/2004  
Agency Department of Public Safety

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB 514(FIN)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title: An Act relating to child support modification and BRU: Centralized Administrative Services  
enforcement... Component: Retirement and Benefits  
Sponsor: Rep. Kott, et al  
Requester: House Finance Component No.: 64

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

AS 24.08.036 FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT SYSTEMS requires an analysis of the long term and short term costs to the state if a bill is adopted, as well as the impact of the bill on the actuarial soundness of the funds.

Removal of section 12 of version U of this bill results in no change in PERS classification of the four investigators affected and no change in employer contribution rates or the unfunded accrued liability of the System.

Prepared by: Melanie Millhom, Director Phone 465-4408  
Division: Retirement and Benefits Date/Time 3/12/04 2:30 PM  
Approved by: Mike Miller, Commissioner Date 3/12/2004  
Agency: Administration

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CS HB 514(FIN)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act relating to child support enforcement RDU Risk Management  
Component Risk Management  
Sponsor Rep. Kott, Coghill, et al  
Requester \_\_\_\_\_ Component No. 71

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

The proposed AS 25.27.020(f) enabling CSED investigators to exercise powers of peace officers including carrying firearms was deleted in this committee substitute, therefore Risk Management concerns regarding increased tort liability exposure have been eliminated.

Prepared by: Brad Thompson, Director Phone 465-5723  
Division: Risk Management Date/Time 3/9/04 9:42 AM  
Approved by: Mike Miller, Commissioner Date 3/9/2004  
Agency: Department of Administration

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 514(JUD)  
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Child Support Enforcement/Crimes BRU Alaska Court System  
Component Trial Courts  
Sponsor Representative Kott  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
House Bill 514, in part, raises from a misdemeanor to a felony the crime of criminal nonsupport in cases where the obligor is \$10,000 or more in arrears in child support payments or has made no payments for a period of 24 months or more. According to the Child Support Enforcement Division (division), approximately 15,000 Alaskans fall into that category. If felony proceedings were to be brought against even a small percentage of these persons then the impact on the court would be significant. However, the existing crime of criminal nonsupport has been charged very infrequently. The division testified that it plans to continue that tradition and estimates that it would file 6 to 12 felony cases a year under this bill. Given this history and the divisions plans for the future, the court would not anticipate a significant fiscal impact from the passage of this bill. However, if this crime is charged more regularly then the court system may return to the legislature for additional funding.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
Division Alaska Court System Date/Time 2/25/04 3:52 PM  
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004  
Agency Alaska Court System

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 514(JUD)  
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to child support modification and RDU CRIMINAL & CIVIL  
enforcement, to the establishment of paternity by the child support..." Component Criminal Justice Litigation, Torts &  
Sponsor Representative Kott Workers' Comp, Collections & Supp  
Requester House Judiciary Committee Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2004) cost: 00  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Sections 1-6 amend the statutes relating to criminal nonsupport and aiding and abetting nonsupport. The bill increases each offense to a felony if certain conditions are met. Also, the bill eliminates the requirement that the children be under the age of 18, thus allowing CSED to pursue criminal non support for children who have turned 18 but are still subject to a support order for adult disabled children. Section 9 permits CSED investigators to be peace officers and carry firearms. Section 12 amends the statute relating to the modification of administrative support orders to eliminate the requirement that there be a material change in circumstances before a modification is granted if more that three years have passed since the order was last issued or modified. Passage of this legislation will have an indeterminate fiscal impact on law. Any time a penalty is raised

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673  
Division Administrative Services Date/Time 2/22/04 12:32 PM  
Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 2/22/2004  
Agency Department of Law

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 514(JUD)

ANALYSIS CONTINUATION

from a misdemeanor to a felony, it is more time and resource intensive to prosecute. Additionally, CSED investigators acting as "peace officers" and carrying firearms increases tort liability exposure for the State which raises fiscal implications that we are similarly unable to quantify.

Adopted  
3123104

23-LS1639\W  
Mischel  
3/23/04

**CS FOR HOUSE BILL NO. 514( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) intentionally

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (f) The agency may forgive all or part of an arrearage owed to the state under  
18 AS 25.27.120 as provided under this subsection and under (h) of this section. The  
19 agency shall adopt regulations establishing procedures and standards for the  
20 forgiveness of all or part of an arrearage providing, at a minimum, that the forgiveness  
21 is based on satisfactory proof that the obligor

22 (1) has or obtains employment for which income withholding can be  
23 initiated under AS 25.27.250 within 60 days after the date the agency approves the  
24 obligor for forgiveness;

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

29 (3) enters into an agreement with the agency providing for alternative  
30 payment procedures if the agency determines that there are unusual circumstances  
31 justifying a waiver of income withholding and the terms of the agreement with the

1 agency are met under (g) of this section.

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

8 (h) During each year in which an obligor complies with the requirements for  
9 forgiveness of an arrearage under (f) of this section and any regulations adopted by the  
10 agency, the agency may forgive 20 percent of the total arrearage owed to the state  
11 under AS 25.27.120, including any interest owed on that part of the debt. For  
12 purposes of determining the amount of the forgiveness under this section, the  
13 arrearage amount is calculated as of the date the obligor is approved for participation  
14 in the forgiveness program.

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

16 (b) The agency may not attempt to establish paternity i. ~~...~~

17 (1) involving incest or forcible rape, unless the mother of the child,  
18 or the mother's parent or legal guardian if the mother is a minor or incompetent,  
19 requests the establishment of paternity; in this paragraph, "forcible rape" means  
20 sexual assault in the first degree under AS 11.41.419 or a conviction under a law  
21 or ordinance from another jurisdiction with similar elements; "forcible rape"  
22 includes adjudications of delinquency for acts with elements similar to  
23 AS 11.41.410;

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

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

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

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

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

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

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

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

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

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

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

25 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted  
26 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.  
27 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this  
28 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as  
29 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person  
30 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by  
31 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

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

3-23-04

Withdrawn

**AMENDMENT**

1

~~Filed~~

OFFERED IN THE HOUSE FINANCE COMMITTEE  
BY REPRESENTATIVE CROFT

TO: CS HB 514 Work Draft version 23-LS1639\W

Page 3, line 2\after (A):

Insert: "and unreasonably"

Renumber accordingly.

3-23-04

**AMENDMENT**

2 5.5 failed

OFFERED IN THE HOUSE FINANCE COMMITTEE  
BY REPRESENTATIVE CROFT

TO: CS HB 514 Work Draft version 23-LS1639\W

Page 4, lines 16-28:

Delete all material.

Insert new section to read: "AS 12.55.139 is repealed"

Renumber accordingly.

# Alaska State Legislature

3-23-04

*Session: (Jan-May)*  
State Capitol, Room 208  
Juneau, AK 99801-1182  
(907) 465-3777  
Fax (907) 465-2819

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## Pete Kott Speaker of the House

DT: March 23, 2004  
TO: House Finance Chairmen  
Members of the House Finance Committee  
FR: Speaker Pete Kott  
RE: Landa Baily's March 8, 2004 Letter

Dear Chairmen and members of the House Finance Committee,

This memo clarifies sections of Ms. Baily's March 8, 2004 letter to Representative John Harris and Bill Williams.

In paragraph 2, Ms. Baily stated that the duties of the CSED investigators would be substantially increased to enforce all state laws, at all times without limitations.

**In response, the HB 514 permits CSED to give their investigators additional authority, but does not require it.**

In paragraph 3, Ms. Baily stated that CSED Policy 042, pertaining to visitors in the workplace, sets forth rigorous security rules.

**In response, CSED Policy 042, Visitors in the Workplace, does not set forth rigorous security rules; it sets the rules by which visitors must abide if they are visiting CSED and delineates the responsibility of the workers at CSED have with regards to visitors.**

In paragraph 4, Ms. Baily stated that the CSED investigators are commissioned as Special Officers by the Alaska Department of Public Safety to assist the Alaska State Troopers with duties she described.

**In response, Ms. Baily chose to exclude the duties of testifying as a peace officer before grand juries, and of issuing citations of summons to**

**noncustodial parents to appear before court to answer charges of criminal nonsupport.**

Additionally, in paragraph 4, Ms. Baily stated that the focus of nonsupport cases is on the gathering of documentary evidence, and not focused on the interactions with the obligor.

**In response, the true focus of nonsupport cases is not only the gathering of evidence, but also the conduct of the obligor, i.e. whether or not the obligor had the "ability to pay and chose not to pay." This can only be ascertained by direct contact with the obligor.**

**During the last 20 years no obligor has ever been charged with criminal nonsupport without at least having been offered an opportunity, either through interview or statement, to give their side of the story as to why they didn't meet their obligation of child support. No Assistant District Attorney (ADA) would ever take a case to court, as complex as criminal nonsupport, without the obligor having been offered the opportunity to voice their side either through interview or statement as to why they didn't pay child support. The obligor's reasons for not paying child support can be crucial when determining if they will be charged or not.**

In paragraph 4, Ms. Baily continued by stating "The building of nonsupport cases is a multi-agency coordination effort."

**In response, it is true that there have been times the CSED investigators have called upon the services of other agencies within the state. However, these incidents are very rare. In the last six years there has only been one multi-agency case. This case involved the Fish & Wildlife Division (FWP) of the Department of Public Safety, and it concerned an individual in which both agencies, Fish and Wildlife (FWP) and CSED, had separate interest. It was in the best interest of both agencies to cooperate, but the matters were charged and tried as separate offenses.**

**The only other occasion of multi-agency coordination on cases was assistance provided from Anchorage Police Department (APD) at the service of a search warrant by CSED investigators. There have been several occasions where CSED investigators coordinated with Anchorage Police Department (APD) or the Alaska State Troopers**

**(AST) to appraise them that the investigators were in the area, but this wouldn't constitute multi-agency investigations as described by Ms. Baily.**

Also in paragraph 4, Ms. Baily stated "CSED investigators working with Alaska State Troopers and the Department of Law, are directed to *never* place themselves in a position of risk to themselves or others."

**In response, until Ms. Baily authored her letter to the House Finance Committee, CSED investigators had not been "directed to never place themselves in a place of risk...."**

**In fact, the Position Description for the investigators at CSED specifically requires "responding to physically threatening incidents against division staff."**

**Under the "Physical Requirements and Potential Hazards" section of the CSED investigator Position Description it indicates that exposure to aggressive/angry people could be reasonably anticipated and expected of this job over 33% of the time. It also shows that restraining/grappling with people is a physical requirement of the investigator's job.**

**Again, Ms. Baily omitted these items from her letter.**

In summary, if Ms. Baily's letter and omissions are to stand as the standard, it could be questioned whether there would ever be any criminal investigations by the CSED investigators. Since her letter conflicts with the present CSED investigator *Position Descriptions* and with the past performance of the current CSED investigators, it is not clear what the duties are for CSED investigators and how will they accomplish them.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

12. In one or two sentences, state the main purpose of the position.

This position conducts complex criminal and civil investigations to 1) locate and gather information, evidence and testimony to be used in litigation and administrative actions and 2) detect or verify suspected violations of state and federal criminal and civil laws, particularly violations committed in the course of evading payment of child support.

13. List all duties of the position. Begin with the most important duty. List duties in a decreasing order of importance with the least important duty last. Describe each task in detail (see previous page). List the percentage of time spent at each duty and rate the importance of each duty (see previous page).

\*The supervisor must define each duty/function as essential (E) or marginal (M).

Essential = E      Marginal = M      Importance = IMP      Percent of Time = %/T

*E/M	IMP	%/T	DUTIES/FUNCTION/TASKS
E	1	90	<p>A CSED investigator serves as an advanced non-Public Safety Investigator, under the general supervision of the division's chief investigator. This position investigates suspected violations of state and federal child support enforcement and criminal laws. A child support enforcement case may involve multiple criminal charges and civil violations, multi-jurisdictional issues and concurrent or consecutive administrative and legal actions; therefore, the investigatory process can be lengthy, complex and sensitive.</p> <p>A CSED investigator works closely with division personnel, other state and federal agencies and attorneys from the U.S. Attorney's office and the Alaska Department of Law when conducting an investigation. Investigators make recommendations and provide support to attorneys in the preparation of search warrants and subpoenas, including places to be searched, items to be seized or subpoenas to be served. In addition, this position is responsible for communicating and working closely with the attorneys and law enforcement communities to ensure that the necessary information and evidence is collected for the investigation.</p> <p>In the course of performing their duties, a CSED investigator must identify, locate, gather, analyze and preserve evidence that will lead to criminal charges, civil sanctions or enforcement of child support in a case. This process is used when dealing with establishing probable cause for search and <u>Glass</u> warrants, orders of execution, federal grand jury subpoenas, "information" and formal indictments. Evidence can include physical evidence such as file records, documents, correspondence or testimonial evidence in the form of signed statements or affidavits from witnesses. A CSED investigator also supports prosecuting attorneys by organizing and providing and overview of a case's history which may include pertinent motions, existing orders, correspondence and important contacts; and coordinating and arranging for testimony of witnesses during litigation. Additional duties include performing similar investigations for the division's child support enforcement officers by locating a non-custodial parent's assets for the payment of child support.</p> <p>A CSED investigator writes case reports outlining investigation results for litigation and administrative actions and individual quarterly investigation activities. Other duties include informing the division's director and management on the status of ongoing cases sent to the Department of Law and recommending the referral of child support cases for civil litigation and criminal prosecution and taking possession or facilitating the final disposition of assets for delinquent child support cases through the Law Enforcement Seizure Program, withholding orders and writs of execution.</p>

E	3	7
E	3	3

This position trains division staff on basic investigative methods, accessing computer databases that assist in locating information about the case parties or their assets and investigation/locate procedures. The investigator ensures compliance with the division's computer security and agreements for accessing other state agencies' computer database information. Associated with this duty, the investigator may be assigned as an alternate terminal security officer for access to the Department of Public Safety's APSIN system and the Division of Correction's OBSICS system. Additional duties include advising division management about security within CSED offices, working with other state and local agencies about security and responding to physically threatening incidents against division staff.

The CSED investigator may act as manager of the investigations and locate section in the absence of the chief investigator and may also be assigned to as the alternate passport liaison officer for the division.

## PHYSICAL REQUIREMENTS AND POTENTIAL HAZARDS

14. The following identifies the physical demands and potential hazards typically encountered by this position. The information is necessary in part to ensure compliance with the Americans with Disabilities Act and the OSHA Bloodborne Pathogens Standards. Your responses should reflect physical demands or exposure to hazards which can be *reasonably anticipated and an expectation of the job*.

Mark the box with the rating that best matches the requirement of this position according to the following scale:

NA: Not applicable, not required of this position.

NE: Requirement is present, but is *not* essential to the position. (For example, a receptionist encounters aggressive/angry people, but this is not an essential assignment.)

O: Occasional up to 33 percent of the time *and* essential to the position. (For example, a lifeguard swims only occasionally, but it is essential that a lifeguard be able to swim; or a correctional officer must deal with aggressive/angry people.)

F: Frequent over 33 percent of the time.

	NA	NE	O	F
Sitting				X
Walking				X
Standing				X
Running		X		
Bending or twisting			X	
Squatting or kneeling			X	
Reaching above shoulder level		X		
Climbing (e.g., ladders)		X		
Driving cars, light duty trucks				X
Driving heavy duty vehicles	X			
Using foot controls to operate equipment ( e.g., not driving a car)	X			
Repetitive motion of hands/fingers				X
Grasping with hand, gripping			X	
Lifting/carrying 10-25 pounds		X		
Lifting/carrying 26-50 pounds		X		
Lifting/carrying more than 50 pounds		X		
Pushing/Pulling		X		
Work in/exposure to inclement weather		X		
Work in/exposure to cold water	X			
Exposure to dust, chemicals or fumes		X		
Work/live in remote field site		X		

PHYSICAL REQUIREMENTS AND POTENTIAL HAZARDS (continued)

	NA	NE	O	F
Use of hazardous equipment (e.g., guns, chainsaws, explosives)	X			
Swimming, scuba diving	X			
Work at heights (e.g., towers, poles)	X			
Exposure to infection, germs, or contagious diseases			X	
Exposure to blood, body fluid, or materials potentially contaminated by blood or body fluids		X		
Exposure to needles or sharp implements	X			
Use of hot equipment (e.g., kitchen ovens and lab equipment)	X			
Exposure to electrical current (not outlets)		X		
Seeing objects at a distance			X	
Seeing objects peripherally			X	
Seeing close work (e.g., typed print)				X
Distinguishing colors				X
Hearing conversations or sounds				X
Hearing via radio or telephone				X
Communicating through speech				X
Communicating by writing/reading				X
Distinguishing odors by smell	X			
Distinguishing tastes	X			
Exposure to wild/dangerous animals		X		
Exposure to insect bites or stings		X		
Work/travel in boat/small aircraft		X		
Exposure to aggressive/angry people (e.g., correctional institutions, law enforcement)				X
Restraining/grappling with people (e.g., correctional institutions, law enforcement)		X		
Other:				
Other:				

Items checked above must be consistent with tasks listed in #13. Provide further explanation if needed.

Are there any other physical or mental requirements of this position that have not been addressed above?

None

15. List machinery, tools, equipment, instruments, vehicles, computer hardware/software, etc., used in performing this job.

Light truck, Sedan  
PC, Office 97, Web Browser, Excel, NSTAR  
Telephone, Typewriter, Printer, Copier,  
Fax, Camera (Video & Still), Voice Recorder

16. List the laws, rules, regulations, standards, codes, or other regulatory guides you regularly use in performing your work. Examples are statutes, federal regulations, professional standards, building codes, trade practices, and procedure manuals:

Division policies and procedures, State and Federal statutes and laws, State and Federal Regulations, Investigative Manuals, Questioned Document Manual, NADA Automobile appraisal books, Rules of Court, Rules of Evidence, NCIC Manual, APSIN Manual, and NSTAR Manual

17. List actions you take or decisions you make on a regular basis without higher level approval:

Obtain leads necessary to initiate investigations. Conduct investigations based upon own judgment on a case by case basis and make changes based upon the information being gathered. Decide the extent of investigation to maximize efficiency and minimize manhours used. Determine where Administrative Subpoenas, search or glass warrants are required. Also determine if Investigations/Locate actions are in compliance with procedures, laws, regulations and policies.

18. List other critical requirements of the job (e.g., skills in writing, negotiating, communications, etc.):

Ability to communicate effectively both verbally and in writing.  
Must pass criminal background check for DPS Special Officer Commission.  
Ability to conduct and complete complex investigations (Civil and Criminal)  
Must be accurate and pay attention to detail concerning all work product.

19. Employee's comments—Note any other aspects of the job not covered:

None

20. Employee Certification. I certify that the above statements are accurate and complete to the best of my knowledge.

Signed

Date



3.8.04 WFD

23-LS1639V  
Mischel  
3/8/04

**CS FOR HOUSE BILL NO. 514( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) intentionally

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 \* Sec. 12. AS 25.27.040(b) is amended to read:

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

18 (1) involving incest or forcible rape, unless the mother of the child,  
19 or the mother's parent or legal guardian if the mother is a minor or incompetent,  
20 requests the establishment of paternity; in this paragraph, "forcible rape" means  
21 sexual assault in the first degree under AS 11.41.410 or a conviction under a law  
22 or ordinance from another jurisdiction with similar elements; "forcible rape"  
23 includes adjudications of delinquency for acts with elements similar to  
24 AS 11.41.410;

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

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

28 \* Sec. 13. AS 25.27.080(b) is amended to read:

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

1 \* Sec. 14. AS 25.27.190(e) is amended to read:

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

11 \* Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 INDIRECT COURT RULE AMENDMENT. Section 14 of this Act has the effect of  
14 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying  
15 a support order.

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

18 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil  
19 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised  
20 under art. IV, sec. 1, Constitution of the State of Alaska, sec. 14 of this Act takes effect for  
21 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-  
22 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,  
23 Constitution of the State of Alaska.

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

26 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted  
27 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.  
28 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this  
29 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as  
30 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person  
31 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by

1 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

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

10 ~~added~~  
11 PILOT PROGRAM FOR CHILD SUPPORT ARREARAGES. (a) From July 1,  
12 2004, through June 30, 2006, the Department of Revenue may operate a pilot project under  
13 which the department may forgive support arrearages owed to the state under AS 25.27.120 in  
14 exchange for consistent future payments of ongoing support and arrearages owed to a  
custodial parent.

15 change to Feb. 1, 2005  
16 (b) By October 1, 2005, the Department of Revenue shall report to the governor and  
17 the legislature concerning whether the operation of the pilot project authorized under this  
18 section serves a public purpose, such as by reducing state expenditures for welfare payments  
19 because of an increase in child support money received by custodial parents who might  
20 otherwise have been eligible for additional cash assistance from the state, even though the  
21 state gives up the right to pursue some or all of a debt that may have been owed to the state.  
22 The report must include a recommendation as to whether or not the pilot project should  
become permanent.

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

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110400  
JUNEAU, ALASKA 99811-0400  
TELEPHONE: (907) 465-2300  
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March 8, 2004

The Honorable John Harris, Co-Chair  
and  
The Honorable Bill Williams, Co-Chair  
House Finance Committee  
Alaska State Legislature  
Juneau, Alaska

Re: HB 514 Child Support Enforcement / Crimes.

Dear Representative Harris and Representative Williams:

The Department of Revenue appreciates Speaker Kott's introduction of legislation intended to assist the Child Support Enforcement Division's (CSED) efforts to collect the nearly \$600 million in child support arrearages. The administration supports several of the provisions in CSHB 514(JUD), but opposes and offers recommendations pertaining to Section 12.

The administration opposes Section 12, subsection (f). As illustrated in the attached March 3, 2004 Memorandum by Legislative Legal Counsel, the current language pertaining to peace officer powers proposes to substantially increase the duties of CSED investigators to enforce all state laws, at all times without limitation.

The administration and CSED are committed to the safety and security of its employees and clients and to the confidentiality of information in CSED's possession. I am attaching the CSED policy (Number 042) pertaining to visitors in the workplace. This policy sets forth rigorous security rules. Additionally, all CSED offices in Anchorage, with the exception of the Director's Office, are secured by a card key entry system, which complements extensive physical safety measures and emergency procedures, and is in addition to the overall Atwood Building security measures. The CSED offices in Juneau, Fairbanks and Wasilla also have specific security measures and procedures.

CSED Investigators are commissioned as Special Officers by the Alaska Department of Public Safety *to assist* the Alaska State Troopers, for the limited purpose of service of search warrants on financial institutions, government agencies and/or private employers, only for suspected non-support cases being worked *with* the Department of Law. The focus of nonsupport cases is on the gathering of documentary evidence from financial institutions and employers, and not focused on interactions with the obligor. The building of nonsupport cases is a multi-agency coordinated effort. This coordination assures the safety of CSED investigators, as well as the efficiency of investigating cases that lead to collections in civil cases and convictions in criminal cases. CSED investigators, working with Alaska State Troopers and the Department of Law, are directed to *never* place themselves in a position of risk to themselves or to others. This administration strongly believes that while collection of child support is extremely important to thousands of Alaskan children, *no* nonsupport case, civil or criminal, felony or misdemeanor, is ever worth risking human lives.

House Finance Committee  
March 6, 2004  
CSHB 514(JUD)

The administration respectfully requests deletion of all language pertaining to peace officer powers for CSED investigators.

Additionally, the administration is concerned that the present language in Section 12, subsections (g) – (i) (pertaining to compromising of state owed child support arrearage) has constitutional problems.

I am attaching a copy of a memorandum from the Department of Law, discussing those constitutional problems. I am also attaching the current CSED policy (Number 010) pertaining to settlement offers. This written policy has been in place since 1999, and sets forth not only the policy, but also the careful procedures CSED personnel must adhere to in order to administer settlement offers and protect the legal rights of all parties, including the State of Alaska.

The Department of Revenue has been working during the past year to establish a pilot project to create an incentive for obligors with poor payment histories to seek work and make payments. The project proposal is currently in draft status, and has not yet been fully developed.

Rather than codification of a preliminary work draft that needs legal analysis, the Department of Revenue prefers that HB 514 not contain statutory language pertaining to compromising of state owed arrearages, and that the department be given the requisite amount of time to continue its present efforts to develop a pilot program that meets the intent and all constitutional safeguards. Alternatively, the Department of Revenue respectfully suggests that if the Legislature wishes that HB 514 contain language pertaining to compromising of state owed child support arrearages, that the Department be instructed to formulate a pilot project and thereafter report to the Legislature.

Thank you for your consideration of this important legislation and to this request to amend CSHB 514(JUD). Please let me know if you need further information. My direct line is 465-2302.

Very truly yours,



Landa B. Bailly  
Special Assistant to  
Commissioner Corbus

Attachments: As stated

cc: Speaker Pete Kott w/ attachments  
Representative Kevin Meyer w/ attachments  
Representative Mike Chenault w/ attachments  
Representative Richard Foster w/ attachments  
Representative Mike Hawker w/ attachments  
Representative Bill Stoltze w/ attachments  
Representative Eric Croft w/ attachments  
Representative Reggie Joule w/ attachments  
Representative Carl Moses w/ attachments

## Child Support Enforcement Division Director's Policies

Settlement Offers	Page 1 of 4	Policy Number: 010
	Issued by: Barbara Miklos, Director	
	Issued: June 26, 2001	
	Effective: June 26, 2001	
Note: This policy was originally issued on February 8, 1999 as policy number 22-98. It was reissued and renumbered when all policies were updated in 2001.		

### DEFINITIONS

*Child support arrears* For purposes of this policy, child support arrears include only the debt owed to the State of Alaska, not the debt owed to the custodial parent or to another state. (If debt is owed to another state, refer the obligor to that state.)

### POLICY

CSED will consider all reasonable offers from obligors to settle child support arrears owed to the State of Alaska. All settlement offers must have final approval of the Assistant Attorney General assigned to the case.

### PROCEDURES

#### I. What constitutes a reasonable offer?

CSED will consider an obligor's written settlement offer if:

- A. The offer is reasonable, based on a review of the obligor's current financial statement and prior year's tax return;
- B. Settling for an amount that is less than what is owed for past public assistance is in the best interest of the children;
- C. No payment is to be made on state debt if the custodial parent is owed money and is not on public assistance.

(Note: If the obligor or the obligor's attorney wants to discuss a settlement for the debt owed to the custodial parent, refer them directly to the custodial parent or that parent's representative. The settlement of the debt owed to the custodial parent must be approved by the court. If there are domestic violence issues, please staff with your supervisor.)

- D. The offer includes a promise to pay on-going support, if applicable, in a timely manner from the date the offer is accepted until the child is emancipated; and

- E. The obligor will sign a confession of judgment, which allows the amount that was forgiven in the settlement to be reinstated without further legal proceedings if the obligor violates the terms of the settlement.

**II. What is the process of negotiation and settlement?**

- A. Upon receiving a written settlement offer from the obligor, the Child Support Specialist I assigned to the case must:

1. Review the terms of the obligor's settlement offer, which must include:
  - a. The amount offered to settle the debt;
  - b. A promise to pay the debt owed to the custodial parent, either in full or according to a settlement reached by the parents (see section 1c, above);
  - c. The terms of payment for the state debt and the debt owed to the custodial parent, i.e. lump sum or installment;
  - d. An agreement to sign a confession of judgment (see section 1e above); and
  - e. A promise to keep on-going child support obligations current.
2. Review the facts in the case, including:
  - a. The effective date of the support order;
  - b. Whether there are pre-order arrears in the case;
  - c. How much of the arrears is interest or principal;
  - d. Whether the support order was established by default;
  - e. The circumstances of the default;
  - f. Whether the child moves between the parents;
  - g. Whether there has been a history of domestic violence between the parties;
  - h. The history of the obligor's efforts to pay on-going child support and arrears;
  - i. Whether other CSED cases with debts to custodial parents should be considered;
  - j. Whether the obligor has evaded service of process, fought collection efforts, or withheld financial information; and
  - k. Whether the obligor continues to deny paternity.

3. Request a manual spreadsheet audit in the case to verify the monthly child support amount (if applicable) and the amount owed in arrears, and make a recommendation regarding the obligor's settlement offer using the CSED Settlement Offer Coordination Form (04-1889).
  4. Consult with the Child Support Specialist II and discuss the obligor's offer, the facts in the case, and the Child Support Specialist I's recommendation.
  5. Let the obligor know when the Child Support Specialist II will contact the obligor with CSED's response to the initial offer. (The Child Support Specialist I should not communicate to the obligor any position regarding the offer. The Child Support Specialist II will communicate and negotiate with the obligor regarding the settlement.)
- B. The Child Support Specialist II should discuss the case and the recommendation with the Child Support Specialist I and determine whether to:
1. Accept the offer presented by the obligor;
  2. Decline the offer;
  3. Enter into negotiations with the obligor by making a counter-offer for the state debt only. (A counter-offer occurs when CSED rejects the terms of the obligor's offer and proposes a new offer. If CSED accepts the obligor's offer but adds new conditions to the offer, this is a counter-offer.)
- C. If appropriate, the Child Support Specialist II may begin preliminary settlement negotiations with the obligor.
1. The obligor must be told that case enforcement actions will continue during settlement negotiations. If CSED has garnished the obligor's PFD or insurance settlement and reduced the arrears, the Child Support Specialist II should clarify with the obligor whether payments received through enforcement actions are included in the offer.
  2. If offers and counter-offers do not produce a final agreement to settle, the Child Support Specialist II should document the outcome on the Settlement Offer Coordination Form and make a note in the case history. No other action is required.
  3. If the negotiations produce a provisional agreement, the Child Support Specialist II should document the terms on the Settlement Offer Coordination Form and send the case and the recommendation to the Child Support Specialist III.
  4. If the Child Support Specialist III declines the offer, the Child Support Specialist II must communicate that decision to the obligor. The decision should be documented on the Settlement Offer Coordination Form and a note entered in the case history. No other action is required.

5. If the Child Support Specialist III accepts the settlement agreement, the agreement will be sent to the appropriate Assistant Attorney General for final approval.

**III. How long should settlement negotiations continue?**

As long as the obligor is making a good faith effort to fashion acceptable terms for settlement, and response deadlines are met, negotiations between CSED and the obligor should continue.

**IV. Unusual Circumstances**

If the case is unusual, consult with the Child Support Manager for help with negotiations or review.

Date

6/26/2001

Barbara Miklos

Barbara Miklos, Director  
Child Support Enforcement Division

## CSED Settlement Offer Coordination Form

Obligor's Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

1. Obligor's offer on state debt only: \$ \_\_\_\_\_  
Date offer received: \_\_\_\_\_  
Last day to respond to offer: \_\_\_\_\_

2. As of (date) \_\_\_\_\_ Amount owed to state: \$ \_\_\_\_\_

3. As of (date) \_\_\_\_\_ Amount owed to custodial parent: \$ \_\_\_\_\_

4. Date of last payment: \_\_\_\_\_ Amount: \$ \_\_\_\_\_  
Ongoing obligation: \$ \_\_\_\_\_

5. Occupation/Employment/Assets of Obligor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. CSS I Recommendation  Approve  Disapprove  
\_\_\_\_\_  
\_\_\_\_\_

7. CSS II Recommendation  Approve  Disapprove  
\_\_\_\_\_  
\_\_\_\_\_

8. CSS III Recommendation  Approve  Disapprove  
\_\_\_\_\_  
\_\_\_\_\_

9. Recommended Counter-Offer \_\_\_\_\_  
\_\_\_\_\_

10. Attorney General's Office  Approve  Disapprove  
\_\_\_\_\_  
\_\_\_\_\_

For additional guidance see CSED Director's Policy No. 010, Settlement Offers  
Attachments: Obligor's written offer  
Manual Spreadsheet Audit

## Child Support Enforcement Division Director's Policies

Visitors in the Workplace	Page 1 of 5	Policy Number: 042
	Issued by: John Main, Director	
	Issued: October 24, 2003	
	Effective: October 24, 2003	

### BACKGROUND

The Child Support Enforcement Division is committed to providing a professional workplace that is secure and free from distractions. To ensure the safety and security of CSED employees as well as the security of confidential information that is available in electronic and hard copy form throughout CSED, physical access to the CSED workplace by employees, customers, and all visitors is restricted and carefully monitored. CSED employees are responsible for complying with this policy and all other policies that are intended to ensure the confidentiality of information and the safety of the workplace.

### DEFINITIONS

**Business Visitors** Business visitors are all persons who come to the CSED workplace for general business purposes unrelated to individual (personal) child support matters and who are not employed by CSED. This includes employees of other divisions and departments of the State of Alaska, employees of the federal government or other child support entities, contractors, consultants, vendors, and maintenance or janitorial staff. For example, business visitors:

- provide service for CSED equipment or systems (e.g., copiers, printers, postage machines, mail equipment, computer equipment, wiring);
- provide contract services for CSED (e.g., couriers, process servers, file storage company personnel, office supply vendors, programmers);
- provide contract or staff services for the building (e.g., maintenance workers, construction workers, janitors, and vending machine suppliers);
- provide training, consulting, or auditing services for CSED (e.g., contract trainers and consultants, trainers from other state divisions or departments, state and federal auditors, personnel from the IRS, the Department of Health and Human Services, or other federal entities).

**Common Areas (Public and Non-Public)** Common public areas are those to which the public has general access (e.g., the customer service lobby, the reception area in the director's office, the public restrooms, and break rooms that are accessible without going through secured doors). Common non-public areas include the break rooms and vending machine areas that cannot be reached without passing through secured doors, and conference or meeting rooms. The CSED computer training room (Room 312) and the second floor conference room (Room 200), which are frequently used by non-CSED personnel, are behind secured doors and are not considered common public areas.

**Customers** Customers are persons who are at or in the CSED workplace specifically for the purpose of doing business in child support cases, for example as parties, agents of parties, attorneys, or employers.

**Employees** CSED employees are those persons who are employed by the State of Alaska as employees or volunteers in the Division. Employees of the Department of Revenue and employees from the Collections and Support Division of the Department of Law are considered CSED employees for purposes of this policy. Persons who are employed by CSED contractors (for example, system programmers), including those who work on long-term projects and whose principal place of business is in the CSED workplace, are not CSED employees – they are considered long-term business visitors. Former CSED employees are visitors unless they are at CSED as customers or as business visitors.

**Enhanced Security Areas** Certain areas within the CSED workplace are subject to enhanced security restrictions due to the nature of the work, the equipment, or the information in the area. These areas include the State Disbursement Unit (SDU), Investigations, New Hire/Locate, the File Center, and the Systems Support (computer) offices, computer equipment rooms, LAN/Server rooms, printer rooms, and wire/cable rooms.

**Minors** For purposes of this policy, a minor is a person under the age of 18 who is not a customer, an employee, or a business visitor.

**Visitors** Persons who are at or in the CSED workplace for purposes unrelated to child support business are considered visitors. For example, friends, relatives, spouses, children, and dependents of employees are visitors, unless they are at CSED as customers or business visitors. Former CSED employees are visitors unless they are at CSED as customers or as business visitors.

## POLICY

### I. Responsibility and Acknowledgement

All CSED employees are responsible for understanding and complying with this policy. Questions, violations, or exceptions should be brought to the attention of a supervisor or a manager. All CSED employees must sign an acknowledgment of this policy. By reading and signing the acknowledgment, employees agree to abide by it. Any violation of this policy may result in disciplinary action.

### II. Business Visitors

#### A. Approvals and Locations

1. In general, business visitors must report to the Director's office. In certain circumstances, business visitors may report to the office, to the customer service center on the third floor, or to the employee with whom they are conducting business. For example:
  - Business visitors may report to the customer service lobby. The customer service employees will contact the employee who is responsible for working with the business visitor. That employee is responsible for notifying the Director's office that the business visitor is on the premises.
  - When trainers arrive early, they may report directly to the Training Manager. The Training Manager is responsible for notifying the Director's office that the trainer (the business visitor) is on the premises.

- When file center equipment technicians arrive to service mail equipment, they may report directly to the file center. The file center is responsible for notifying the Director's office that the technicians are on the premises.
  - Long term business visitors, such as system programmers whose principal place of business is the CSED workplace and whose use of CSED equipment and computers is essential to their daily work, are not required to report to the Director's office on an individual basis. The contractor by whom they are employed is responsible for coordinating and reporting their presence.
2. Business visitors are allowed only in those locations within CSED that are relevant to the business they are conducting.

B. Time and Duration

1. Business visitors are allowed in the CSED workplace only between the hours of 8:00 a.m. and 5:00 p.m. unless it is necessary for them to conduct their business at another time (for example, construction or building maintenance, set-up for training sessions, programmers, etc.)
2. Business visitors may not remain in the CSED workplace any longer than necessary to complete their business.

C. Secure Doors and Access Cards

1. Business visitors may not prop open doors or give other persons access to the workplace unless they have been specifically authorized to do so (for example, during after-hours construction or maintenance projects, or as related to computer programming).
2. Business visitors will be issued access cards by the Director's office as needed. If they are not issued cards, the Director's office will make arrangements for the business visitors to be escorted or gain access in any other appropriate manner.

D. Computer Access

Business visitors should not have access to CSED computers unless such access is necessary for them to accomplish their business with CSED. The employees with whom they are working are responsible for ensuring that the business visitors use CSED computers only to the extent necessary.

III. Visitors

A. Approvals and Locations

1. All visitors to the CSED workplace must be approved by the manager or supervisor of the employee with whom they are visiting (the "sponsoring employee") or by the Director's office. Visitors who wish to enter an enhanced security area must be specifically approved by the manager of that area.

2. Visitors must be accompanied by their sponsoring employees at all times except when they are in common public areas. If the visitors are in non-public areas, they must be within sight and sound of the sponsoring employee. They may not wander through or be in the workplace unescorted.
3. Employees must not assume that visitors who are familiar to them (for example, the spouses, children, relatives, or partners of other employees) are authorized to be on the premises. Visitors must be admitted only by their sponsoring employee, and must be approved by that employee's supervisor or manager. Because of the possibility of workplace violence, employees should report any suspicious or troubling circumstances regarding the presence of visitors to their supervisors immediately. Also, employees should notify their supervisors if they are parties to a protective order.

B. Time and Duration

1. Visitors are allowed in the CSED workplace only between the hours of 8:00 a.m. and 5:00 p.m. Visitors are not allowed in the workplace after business hours or on weekends without the approval of a manager or the Director.
2. Visits should be brief in duration and may not interfere with the employee's work hours or work performance.

C. Secure Doors and Access Cards

1. The sponsoring employee must escort the visitor through secured doors. Doors may not be propped open for visitors.
2. A visitor may not use the sponsoring employee's or any other employee's access card. A visitor may not be in possession of an access card other than one that is specifically assigned to the visitor by the Director's office.

D. Confidentiality and Computer Access

The visitor's sponsoring employee must ensure that the visitor does not have access to any confidential information. Visitors are not expected to need access to CSED computers. If a visitor uses a CSED employee's computer, it must be with the consent of the employee's supervisor and only under the direct supervision of the employee.

E. Minors

Although the workplace is not to be used as a child care or day care facility, a minor who is the child, relative, foster child, or who is otherwise in the care of a CSED employee, may visit the workplace when necessary with the permission of the employee's supervisor. Minors must be in the sight and sound of the sponsoring employee at all times.

F. Special Events

If a visitor is present for a special event such as "Bring Your Children to Work Day" or a retirement party, the visitor must be accompanied by the sponsoring employee or by another employee who is coordinating the event or acting as chaperone or sponsor.

#### IV. Customers

##### A. Location

Customers may be in the common public areas of the CSED workplace. If it is necessary for customers to be in non-public areas such as meeting or conference rooms, the customers must be in the presence of a CSED employee at all times.


##### B. Time

Customer assistance is available in the CSED workplace during business hours (8:00 a.m. – 5:00 p.m.) If it is necessary to provide service to a customer in the workplace during other hours, the employee who is assisting the customer should notify a supervisor.

##### C. Confidentiality and Computer Access

Customers are generally not expected to be in any area of CSED where they would have access to confidential information or a CSED computer. If they are in such an area, it is the responsibility of the employees who are assisting the customers to ensure that the customers do not have access to confidential information from their own files or from any file, and do not have access to a CSED computer except to the extent that it is lawful, appropriate, and necessary for the customers to use the computer to accomplish their business with CSED.

10-24-03  
Date

  
\_\_\_\_\_  
John Main, Director  
Child Support Enforcement Division

# Alaska State Legislature

*Session: (Jan-May)*  
State Capitol, Room 208  
Juneau, AK 99801-1182  
(907) 465-3777  
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**Pete Kott**  
Speaker of the House

## SPONSOR STATEMENT

### House Bill 514

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

House Bill 514 has been introduced as an omnibus bill to help the Child Support Enforcement Division better serve the parents and children of Alaska. There are seven changes to the child support statutes. Each piece of this legislation attempts to remedy problems the agency has encountered over many years.

#### **Making Criminal Nonsupport a felony**

Thirty-three states have a felony criminal nonsupport law. Currently in Alaska, the crime of criminal nonsupport is a Class A Misdemeanor.

The total outstanding arrearages for child support cases in the Alaska Child Support Enforcement Division totals \$583,434,030. Currently, there are 14,946 cases having either arrearages greater than \$10,000 or no payments for 24 months or more. Not all these cases would qualify for criminal nonsupport charges. Owing a large amount of child support doesn't make an individual a criminal. The arrears owed are only one factor of many taken into consideration when charging a nonpaying parent with criminal nonsupport.

This legislation would follow the lead of the 33 other states and federal government and make criminal nonsupport a felony, giving the agency another tool to deal with the most egregious cases.

### **Giving CHILD SUPPORT ENFORCEMENT DIVISION authority to compromise state debt through settlements or approved payment plans**

Federal government is concerned with the ever increasing child support debt owed. The debt accumulated is to (1) the custodial parent, (2) to the state, and (3) the Federal government. Currently, there is \$90 billion owed throughout the nation. Alaska's share of this debt is approximately \$600 million. Of the \$600 million, \$300 million is owed to custodial parents, and \$300 million is owed to the State of Alaska and the Federal government.

In 2002, the Office of Child Support Enforcement (OCSE) in Washington, DC commissioned a study of the \$90 billion owed in child support throughout the nation. The study completed found that approximately 70% of the child support owed is by persons making less than \$10,000 a year, and that if the income was raised to \$20,000 the percentile is raised to 84%.

There are many nonpaying non-custodial parents who want to pay, but because the debt owed is so overwhelming they give up and make no payments at all. This legislation does not create a giveaway program, but rather provides a way to bring those needing a helping hand an opportunity to be responsible for their children again. The consistency of payments they make over a period of time would earn them the ability or allow them to seek a reduction in their child support arrearages.

"It is not the one payment a year that will help those parents stay off welfare, but the consistent monthly child support on which the custodial parent can rely," said Commissioner Cherie Heller, Office of Children Support Enforcement, Washington, DC.

### **Allowing Paternity and child support establishment for rape and incest victims if they want to pursue it**

Under current statute, if a victim of rape or incest requests the Child Support Enforcement Division to establish paternity and a monthly child support order, the Child Support Enforcement Division is prohibited. In this, the State of Alaska penalizes the victim again. This legislation would allow the Child Support Enforcement Division to establish paternity and seek a child support order only if the victim requests it.

### **Adopting Federal changes to modification of child support orders**

This legislation provides necessary changes in Alaska statutes to ensure state law is consistent with federal funding laws. This Alaska statute revision ensures the Child Support Enforcement Division's compliance with state plan requirements and ensures federal funds to Alaska. Federal law (42 USC 666) requires support orders be modified whether or not there has been a material change in circumstances if more than three years have passed since the order was issued or modified.

Failure of this legislation to pass this year potentially places the State of Alaska in jeopardy of significant losses in federal funding for the Child Support Enforcement Division and the Temporary Aid to Needy Family (TANF) block grants.

# MEMORANDUM

State of Alaska  
Department of Law

To: Landa Baily  
Commissioner's Office  
Department of Revenue

Date: March 5, 2004

File No: n/a

Tel. No.: (907) 269-5228

Fax: (907) 278-3458

From: Diane Wendlandt  
Assistant Attorney General

Subject: Issues Raised by Subsections  
(g) – (i), Section 12, HB 514

## *I. Introduction and Short Answer*

You have asked me to identify the constitutional issues raised by subsections (g) through (i) of section 12 of House Bill 514. These provisions would authorize the child support agency to forgive child support owed to the state. As discussed below, there are several issues that could be of concern. Although some of these issues could be addressed during the implementation process, the public purpose of the legislation should be addressed prior to passage of the bill.

## *II. Issues of Concern*

### *A. Public Purpose*

Unlike a typical settlement – where disputed issues are resolved or a lump sum payment is accepted on a debt that would otherwise be difficult to collect – the program proposed by this bill would create a general forgiveness program. CSED would be allowed to forgive a debt owed to the state if the delinquent parent met program standards developed by the agency. In effect, the agency would be giving away a state asset – the right to collect on a valid and enforceable judgment. Use of public funds or public assets must serve a public purpose and the means must be rationally related to that purpose.

As I understand the program, by exchanging arrears forgiveness for consistent payments of ongoing child support, the proponents of this bill hope to provide an incentive for obligors with poor payment histories to seek work and to make payments. When more consistent payments are made, custodial parents and children are less likely to need public assistance.

To date, we have not seen any data that supports the claim that reducing arrears under this type of program results in a better payment record and reduction of public assistance. The agency may want to consider contacting other states with forgiveness programs to determine what their experience has been. In addition, creating a pilot project, rather than full authorization, would allow the agency to experiment with the program and determine whether there truly are benefits.

In the absence of hard data, it could be said that reducing arrears in this manner is *not* in the public interest. Under Civil Rule 90.3, child support awards are supposed to be based on an obligor's ability to pay. The Alaska Supreme Court has said that the burden is on the obligor to seek a modification promptly if the amount set does not reflect the parent's ability to pay. Therefore, the proposed program would benefit those people who have not paid in the past according to their ability or who have failed to seek a modification if the order is too high. On the reverse side, the proposed program would penalize parents who paid consistently in the past and thus owe no arrears.

Although the federal agency responsible for overseeing state child support programs has approved compromise programs in general, that agency has repeatedly cautioned states against creating a disincentive for parents to pay support in a timely fashion through the possibility of a debt forgiveness in the future. In written guidance to the states, the federal agency noted that "States should use caution not to send a message that obligors can ignore support obligations because of the possibility that the State may eventually accept less than the full amount owed in satisfaction of the debt." OCSE PIQ-99-03.

*B. Equal Protection*

Implementing a program of this nature will require the agency to walk a fine line between unconstitutional distinctions between classes of delinquent parents and a constitutional challenge based on arbitrary application of the statute.

The legislation as currently drafted leaves most implementation decisions to the agency. In proposed section (g), the agency is required to adopt regulations establishing procedures and standards. The only standard set by the legislation is that the delinquent parent must show that he or she is employed, in a job training program, or enters an agreement for an alternative payment procedure. For parents who enter an alternative payment agreement, the parent must make minimum monthly payments for at least 10 months each calendar year unless the agency finds good cause to waive the requirement. For all other parents (those who are employed or enrolled in a training program), there is no requirement that they make consistent payments in order to continue to qualify for the program.

This leaves the agency with very broad discretion in how the program is implemented. If this discretion were not limited through appropriate regulations, the agency's application of the law could be subject to challenge as arbitrary. At worst, the agency could be accused of favoritism in deciding who will qualify and who will not.

On the other hand, if the agency establishes specific standards allowing some parents to qualify and excluding others, the agency will need to show that those distinctions are reasonably related to a legitimate purpose. For example, if the agency chooses to include only those parents who owe more than \$5,000, the agency will need to explain why it is reasonable to exclude a parent who only owes \$4,500. Likewise, if the agency's purpose is to encourage payment by parents with particularly poor payment histories, the agency might include only those parents who have failed to make a payment in the past 24 months. Although this might seem to be a

Landa Baily  
Commissioner's Office, Revenue

March 5, 2004  
Page 3 of 3

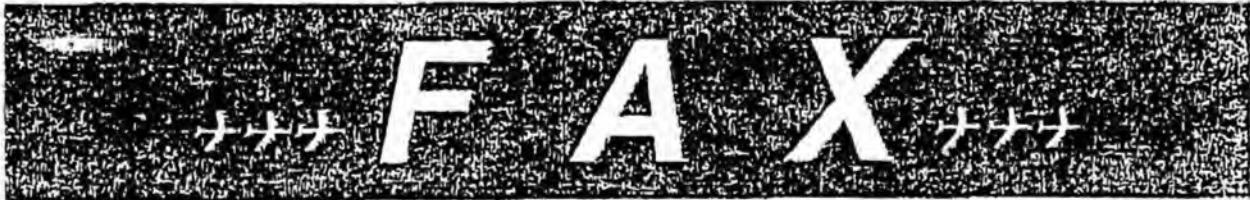
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Another option would be for the agency to look at the merits of each case to determine whether a parent should be permitted to participate. For example, the agency could look to the reason for the parent's failure to pay in the past, the parent's current financial situation, and other circumstances. This approach also makes sense, but if not carefully circumscribed, could lead to the charge of arbitrariness, discussed above. In addition, this type of program more closely resembles a true settlement or compromise. Under Alaska law, it is the role of the Attorney General "to bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection or revenue." AS 44.23.020.

### *III. Recommendations*

We believe that the provisions of subsections (g) through (i) of section 12 of this bill, authorizing the agency to create an arrears forgiveness program, could present legal issues. Some of these issues might be resolved during the implementation process. However, given the legislature's constitutional role in expenditures and appropriations, the public purpose issue should be addressed during the legislative process. Further study of other state's programs and the authorization of a pilot program could greatly assist in resolving this issue.

cc: David Marquez, Department of Law, Legislation and Regulations Section



State of Alaska  
Department of Revenue  
**Office of the Commissioner**

P.O. Box 110400, Juneau, Alaska 99811-0400  
FAX Number: (907) 465-2389 Phone Number: (907) 465-2300

TO: Roxanne Turner DATE: 3/15/04  
House Finance FAX NUMBER: 6813.

FROM: Linda Bailey Total # of pages including cover 4

*Legal Memorandum  
Dept of Law / Diane Wendlandt  
HB 514 CSED / Compromising  
State owed arrears.  
LB*

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Department of Law**

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Department of Revenue

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Landa Baily  
Commissioner's Office, Revenue

March 5, 2004  
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Landa Baily  
Commissioner's Office, Revenue

March 5, 2004  
Page 3 of 3

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cc: David Marquez, Department of Law, Legislation and Regulations Section

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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Juneau, Alaska 99801-1182  
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## MEMORANDUM

March 2, 2004

**SUBJECT:** Child Support Enforcement  
(CSHB 514(JUD) (Work Order No. 23-LS1639U))

**TO:** Representative Pete Kott  
Attn: John Main

**FROM:** Jean M. Mischel  
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Clarifies elements for criminal nonsupport and deletes the reference to the age of the child owed the support. Sec. 3 adds a definition of "child" which reinserts age considerations.

**Section 2.** Adds a reference in the misdemeanor penalty section for criminal nonsupport to the new felony crime added in this bill.

**Section 3.** Establishes a class C felony for certain circumstances involving criminal nonsupport. Replaces a cross reference to a loss or restriction of a recreational license as an additional criminal penalty. Adds definitions of "child," including a person who is over age 18 when there is a valid support order; a definition of "child support"; and a definition of "without lawful excuse" to incorporate the judicial holding pertaining to the ability to pay in Taylor v. State 710 P.2d 1019 (1985).

**Section 4.** Establishes a felony of aiding the nonpayment of child support in the first degree for circumstances related to felony nonsupport in section 3. Adds cross-reference to a loss or restriction of a recreational license as an additional penalty.

**Section 5.** Makes previous crime of aiding the nonpayment of child support a second degree crime. Also adds a requirement that the defendant's withholding of information or participation in a scheme to help someone else avoid paying child support must have been done "unreasonably." The addition of the term "unreasonably" may create an ambiguity in the law, subjecting the prosecution for this crime to constitutional challenge.

Representative Pete Kott

March 2, 2004

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**Section 6.** Adds "second degree" to the existing misdemeanor penalty provision for aiding the nonpayment of child support.

**Section 7.** Adds cross-reference to a loss or restriction of a recreational license as an additional penalty for aiding the nonpayment of child support. Adds cross-reference to definitions of "child" and "child support."

**Section 8.** Changes the time period for loss or restriction of a recreational license as a penalty for criminal nonsupport.

**Section 9.** Adds to the penalty for aiding criminal nonsupport in the first and second degree the loss or restriction of a recreational license for up to one year. (This is the material cross-referenced in secs. 4 and 7).

**Section 10.** Adds a new subsection to the jurisdiction of the superior court pertaining to child support orders.

**Section 11.** Adds to the authority for the agency to issue an order or request a court order in arrearage cases to require a payment plan or work activities for an obligor whose child is the subject of an application for agency aid in collecting the arrearage.

**Section 12.** Adds new subsections authorizing the agency to 1) employ peace officers who may carry a firearm when specified training is completed and who may exercise peace officer powers for the "protection in the line of duty"; 2) adopt regulations and to forgive a child support obligation through various mechanisms including an agreement; 3) enter into agreements under specific minimum requirements; and 4) set the amount of forgiveness of a child support arrearage as specified.

**Section 13.** Adds circumstances in which the agency may order paternity testing in cases involving incest or rape.

**Section 14.** Deletes "so entered" for support orders subject to enforcement by the agency. This change has the effect of avoiding a limitation on enforcement in this section to only court orders.

**Section 15.** Adds cross-reference to 42 U.S.C. 666 for periodic modification of child support orders without showing of changed circumstances.

**Section 16.** Describes indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure necessitated by sec. 15 of the bill.

**Section 17.** States that a 2/3 vote is not required for amendment to Rule 90.3.

Representative Pete Kott

March 2, 2004

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**Section 18.** Describes the applicability of the class C felonies established in this bill as pertaining to violations occurring on or after the effective date of the act for certain long-term and high-dollar amount arrearages.

**Section 19.** Provides an effective date for the bill.

If I may be of further assistance, please advise.

JMM:med

04-254.med

# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
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February 26, 2004

Representative Lesil McGuire  
Chair, House Judiciary Committee  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801

Re: *House Bill 514 – Child Support*

Dear Representative McGuire:

At the hearing of the House Judiciary Committee, held on Monday, February 23, 2004, a question was raised concerning the standards used by courts to determine whether a parent's failure to pay support is "without lawful excuse" for the purpose of establishing liability for criminal nonsupport. As was discussed at the hearing, the statute does not define "lawful excuse." Courts generally address this issue as a question of fact for the jury to resolve. However, in general, the "lawful excuse" analysis relates primarily to whether the delinquent parent has the ability to pay child support. In many cases, the answer to this question can turn on whether the parent is voluntarily unemployed or underemployed. Thus, a second question was raised concerning the standards for determining whether a parent is voluntarily unemployed or underemployed.

*A. Voluntary Unemployment or Underemployment in Civil Litigation.*

Voluntary unemployment is a concept generally raised in civil litigation to establish or modify a child support order. Under Civil Rule 90.3, a "court may calculate child support based on a determination of the potential income of a parent who voluntarily and unreasonably is unemployed or underemployed." See Alaska R. Civ. P. 90.3(a)(4).

Thus, there are two prongs to the finding of voluntary unemployment (or underemployment): (1) the unemployment must be voluntary, and (2) it must be unreasonable under all of the circumstances. As the court explained in *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998):

Not every voluntary act that has negative economic consequences amounts to voluntary unemployment. The commentary to Rule 90.3 strongly suggests that, to be considered voluntarily unemployed, a parent must engage in voluntary conduct for the purpose of becoming or remaining unemployed. Thus, the commentary advises that the imputed earnings of voluntarily unemployed parents should be based on their "potential income" and "job opportunities." This wording obviously presupposes that some prospect of earning income or some opportunity to find employment actually exists.

*Bendixen*, 962 P.2d at 172.

Because this is such a fact-intensive enquiry and because each case presents a unique set of facts, it is difficult to define specific facts which will automatically give rise to or negate a finding of voluntary unemployment. However, some general rules and common fact patterns do emerge from the case law. For example, evidence of bad faith is not required to establish voluntary unemployment. See *Kowalski v. Kowalski*, 806 P. 2d 1368, 1370 (Alaska 1991). Likewise, the fact that a parent has no history of prior earnings does not preclude a finding of voluntary unemployment:

Although prior employment can be an important factor in measuring underemployment, our cases do not suggest that it is an indispensable element. To the contrary, the relevant inquiry under Civil Rule 90.3 is simply whether a parent's current situation and earnings reflect a voluntary and unreasonable decision to earn less than the parent is capable of earning.

See *Beaudoin v. Beaudoin*, 24 P.3d 523, 528 (Alaska 2001).

As the Court pointed out in *Beaudoin*, 24 P.3d at 530, "[a]n important reason – if not the chief reason – for imputing income to a voluntarily underemployed parent is to goad the parent into full employment by attaching an unpleasant consequence (a mounting child support debt or, in certain cases of shared custody, a reduced child support payment) to continued inaction." See *Beaudoin*, 24 P.3d at 530.

The following is a list of Alaska Supreme Court decisions in which the court discusses voluntary unemployment or underemployment. As noted above, these cases do not (and, by the nature of the enquiry, cannot) provide simple guidelines for deciding whether a parent is voluntarily underemployed. They do, however, provide useful guidance for analyzing individual cases.

1. *Pattee v. Pattee*, 744 P.2d 658 (Alaska 1987). The court held that it was an abuse of discretion for the trial court, without considering all of the circumstances, to base its child support order on the existing income of a non-custodial father who voluntarily quit a well-paying job to return to school. The judge should have considered the nature of and reasons for the changes and then determined whether, under all the circumstances, the support amount should be reduced.
2. *Patch v. Patch*, 760 P.2d 526 (Alaska 1988). The court affirmed a trial court's finding of voluntary unemployment where the father was suspended temporarily due to the suspension of his driver's license. Even though the suspension was not voluntary, the court must still consider all of the circumstances, including the fact that the suspension was temporary and the father had other sources of income available to him.
3. *Nass v. Seaton*, 904 P.2d 412 (Alaska 1995). The court held that a finding of voluntary unemployment was proper where self-employed machinist did not have a shop, did not advertise, did not list a business phone, and was selective in work he did and for whom he worked.
4. *Dunn v. Dunn*, 952 P.2d 268 (Alaska 1998). The court held that the trial court did not err when it imputed potential income, based on a finding of voluntary unemployment, where obligor had significant investments and was able to work but chose not to do so.
5. *Robinson v. Robinson*, 961 P.2d 1000 (Alaska 1998). Where the obligor testified that he could make three times as much if he had mechanic's tools and the obligor had property that could be used as collateral to buy these tools, his failure to seek a loan could be considered voluntary underemployment.

6. *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998). Incarceration does not constitute voluntary unemployment.
7. *Maloney v. Maloney*, 969 P.2d 1148 (Alaska 1998). Voluntary retirement from the military was not considered voluntary unemployment where the parent had a reasonable expectation of employment opportunities outside of the military.
8. *Lacher v. Lacher*, 993 P.2d 413 (Alaska 1999). Trial court did not err in imputing income to parent based on her past earnings and college degree. Court found that parent was voluntarily unemployed and could earn \$11 per hour if she chose to work.
9. *Beaudoin v. Beaudoin*, 24 P.3d 523 (Alaska 2001). The father established a prima facie case that the mother, who was no longer the primary custodian of the children, was capable of obtaining gainful employment and was choosing not to work. The fact that the mother had no history of prior earnings or employment did not preclude a finding of voluntary underemployment.
10. *Fernau v. Rowdon*, 42 P.3d 1047 (Alaska 2002). The court found that mother was not voluntarily unemployed when she had been a homemaker for many years and decided to go back to school for job training so that she could be self-sufficient after the divorce.
11. *Olmstead v. Ziegler*, 42 P.3d 1102 (Alaska 2002). The trial court properly found that an attorney who quit private practice to become a teacher was voluntarily unemployed.
12. *Azeltine v. O'Neill*, MO&J, 2002 WL 31151365 (Alaska Sept. 25, 2002). The trial court did not err when it found that the obligor's voluntary change of career (from a \$60,000 per year contracting - business to a \$17,000 per year job in holistic health care) was not reasonable in light of his obligations to his family.
13. *Cederstrom v. Rosevear*, MO&J, 2002 WL 31630859 (Alaska Nov. 20, 2002). The court affirmed the trial court's refusal to find the parent with the larger percentage of custody unreasonably underemployed where the parent had voluntarily chosen to forego higher paying work in order to spend more time with the children.
14. *Rus v. Dunn*, MO&J (Alaska Feb. 12, 2003). The court affirmed the trial court's finding that the father was voluntarily and unreasonably underemployed where (1) he had a history of earning substantially more money; (2) he chose to leave commercial fishing and environmental clean-up industry; (3) his job search efforts were minimal; (4) he had not put substantial time into his new remodeling business and had spent significant amounts of time working on girlfriend's home for no monetary compensation.

As these cases suggest, the range of factual scenarios that can raise issues of voluntary unemployment or underemployment is quite broad. Whether the parent's employment decisions are reasonable under the facts of a particular case can be determined only by reviewing the totality of the circumstances in that case.

B. "Without Lawful Excuse" in Prosecutions for Criminal Nonsupport.

The two-prong analysis used in civil matters is not applicable in the prosecution of criminal nonsupport cases. Although the scenarios presented in the civil matters do provide an excellent sample of situations and facts that occur in child support situations, there are distinct differences between civil and

criminal nonsupport cases. However, like civil cases, these criminal cases are very fact-oriented. As a result, the question of whether a defendant has a "lawful excuse" that justifies not paying a monthly child support obligation is a question for the jury to decide. In a criminal trial, the judge determines what the appropriate law is. The jury determines all questions of fact. It is the jury who hears and receives all the evidence in a case. It is their collective decision to make after weighing the veracity of the evidence, the witnesses, and any physical evidence.

The controlling criminal case law is found in *Taylor v. State*, 710 P.2d 1019 (Alaska App. 1985). In *Taylor* the defendant was convicted of multiple counts of criminal nonsupport in a non-jury trial. Taylor had been married and divorced with two children born during the marriage. He was ordered to make monthly child support payments in the amount of \$450. Between April 1983 and March 1984, Taylor made only one child support payment. The undisputed evidence showed that he had earned \$42,000 during that time. Taylor appealed his conviction. The appellate court's opinion addresses several areas that were explored by members of the House Judiciary Committee's discussion on May 23, 2004.

First, the court in *Taylor* focused directly on the meaning of the statutory phrase "without lawful excuse." The court explained that "this language simply refers to the accuser's financial ability to pay. Our reading of this statutory language does no more than follow sound precedent established by the Alaska Supreme Court in *Johansen v. State*, 401 P.2d 759, 766-69 (Alaska 1971)." *Taylor*, 710 P.2d at 1020. Furthermore, the court established that it is the state's burden to prove that the defendant either had the financial ability to pay child support, which Taylor did, or that the defendant could have obtained the funds through reasonable efforts. *Id.*

Second, the defendant in *Taylor* argued that the term "without lawful excuse" was impermissibly vague and that he did not have sufficient notice of the "precise conduct the criminal nonsupport statute purport[ed] to prohibit." The court found that:

the statute, as construed, affords adequate notice of the conduct it prohibits, so that reasonable people need not guess at its meaning. In any event, Taylor's conduct in this case – failure to pay court-ordered support over a twelve-month period without any apparent effort to seek modification of the court's child support order – would clearly fall within the core of the prohibited conduct, as to which there would be little basis for disagreement.

*Taylor*, 710 P.2d at 1022.

Third, the court identifies the appropriate level of criminal intent necessary for the offense of criminal nonsupport. As with other criminal statutes, if the culpable mental state is not specifically set out in the statute language, then the definitions contained in AS 11.81.900 are applicable. Quoting AS 11.81.610(b), the court found:

[I]f a provision of law defining an offense does not prescribe a culpable mental state the culpable mental state that must be proved with respect to  
(1) conduct is "knowingly"; and  
(2) a circumstance or a result is "recklessly."

*Taylor*, 710 P.2d at 1022. Alaska Statute 11.81.900(a)(1) defines "knowingly" as:

[A] person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually

believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance.

Recklessly is defined in AS 11.81.900(a)(3) as:

[A] person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk.

When the correct culpable mental state is applied to the offense of Criminal Nonsupport the result below follows:

Under AS 11.51.120(a), failure to provide support would be classified as conduct, while financial ability or inability to pay would be classified a surrounding circumstance. Thus, application of AS 11.81.600(b) leads to the conclusion that the offense of criminal nonsupport requires proof of a knowing failure to provide support accompanied by a reckless disregard for ability to pay.

*Taylor*, 710 P.2d at 1022.

Four, at first blush it may appear that "without a lawful excuse" would be an affirmative defense to a charge of criminal nonsupport. However, the *Taylor* court explained in a footnote that while this may be true in civil proceedings (which the underlying *Johansen* case was), it is not true in criminal cases:

The *Johansen* court decided to allocate to the defendant the burden of proof on the issue of inability to pay. The court regarded the issue as an affirmative defense, which the defendant was required to establish by a preponderance of the evidence. See *Johansen v. State*, 491 P.2d at 766-67. The court reached this result, however, based in part on the civil nature of the contempt proceedings. . . .

*Id.* at 1023. The court then explained the appropriate application in criminal nonsupport cases. The burden of proof remains with the state and is never transferred to the defendant.

In the present case, by contrast, the offense charged is clearly a criminal one. It is being prosecuted by the state and not by the accused's spouse. AS 11.51.120 [Criminal Nonsupport] clearly incorporates the lack of a "lawful excuse" as an element of the offense of criminal nonsupport. Had it desired to do so, the legislature could readily have designated inability to pay as a defense or as an affirmative defense. It did not do so. Under these circumstances, we believe the state must shoulder the burden of proving the element of ability to pay and that this element must be proved beyond a reasonable doubt.

*Id.* at 1023.

Finally, in *Taylor*, the court identified what is required for a prima facie showing of criminal nonsupport. "We hold, however, that in criminal nonsupport prosecutions under AS 11.51.120, proof of failure to make court-ordered support payments will, at the very least, suffice to establish a *prima facie* case of nonsupport." *Taylor* at 1022.

In summary, the court in *Taylor* provided valuable tools to a criminal jury when they deliberate the question of what is a "unlawful excuse" in the criminal nonsupport context. The civil cases discussing


voluntary unemployment may also provide useful guidance in your deliberation of this issue. However, one must be cautious when applying civil standards in the context of a criminal prosecution.

I hope that this discussion assists the committee in its review of House Bill 514. Please feel free to contact us if you have questions about the issues discussed in this letter.

Sincerely,

GREGG D. RENKES  
ATTORNEY GENERAL

By:

  
David Marquez  
Assistant Attorney General

### **Making Aiding and Abetting nonpayment of child support a felony**

There are individuals, whether relatives or friends, who believe they are helping the individual (through their sense of fairness) by providing "under the table" employment opportunities when instead they are harming the children most of all.

If the crime of criminal nonsupport is raised to the level of a Class C felony, it is reasonable that the crime of aiding and abetting the nonpayment of child support should be raised as well. Raising this crime to a felony sends a clear and convincing message to those individuals who have their own sense of justice and help people skirt the law.

### **Giving the courts statutory authority**

This legislation gives the courts statutory authority to issue orders pertaining to requiring non-custodial parents to pay child support payments according to an approved payment plan; ordering them to seek work unless incapacitated; and/or requiring them to complete and submit applications for Permanent Fund Dividend.

Because there is not yet a clear defined authority to do so, there is one judicial jurisdiction within the State of Alaska that will not issue these orders. This legislation corrects that situation.

### **Giving CHILD SUPPORT ENFORCEMENT DIVISION investigators the power of peace officers when enforcing child support laws.**

This legislation would help protect those who investigate the criminal aspect of child support laws. Child support laws deal with money and children, both of which raise the emotions of those involved. The majority of cases are civil. However, there are a number of cases that are criminal in nature.

The Child Support Enforcement Division investigators have, and continue to be, threatened, followed, and placed in danger without the ability to defend themselves or others while performing their investigations. They have to interview individuals who have violent criminal backgrounds including murder, rape, assault, etc. while trying to perform their duties. The situations are so potentially dangerous the Child Support Enforcement Division has issued the investigators bulletproof vests for protection, but they haven't yet been afforded the ability to defend themselves.

By their position descriptions they are required to respond to all threats to the agency and its staff. The Child Support Enforcement Division investigators are commissioned by the Department of Public Safety as "Limited Special Officers Alaska State Troopers" to perform their duty. When the investigators show this identification and badge to an individual in the performance of their duty, it is presumed they are armed, even though they aren't.

This legislation will help correct that problem.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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State Capitol  
Juneau, Alaska 99801-1182  
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## MEMORANDUM

March 2, 2004

**SUBJECT:** Peace Officer Powers of Child Support Investigators in  
CSHB 514(JUD) (Work Order No. 23-LS1639/U)

**TO:** Representative Lesil McGuire  
Attn: Vanessa Tondini

**FROM:** Gerald P. Luckhaupt *GLP*  
Legislative Counsel

You have asked if the Committee's change to the language relating to the peace officer powers of child support investigators might have unintentionally broadened those powers.<sup>1</sup>

In HB 514, AS 25.27.020 was amended to add a new subsection relating to the authority of child support investigators:

- (f) The agency may employ investigators who may exercise the power of peace officers when those powers are specifically granted by the agency to that investigator. **Peace officer powers granted by the agency under this subsection may be exercised only when necessary for the enforcement of child support laws and regulations.** An investigator granted and who is exercising peace officer powers under this subsection may carry a firearm only if the investigator
- (1) has completed at some time a peace officer training academy program approved by the commissioner of public safety; and
  - (2) has met annual firearm certification requirements that are equivalent to those required by the Department of Public Safety.

The Committee changed the highlighted language to the following:

- (f) The agency may employ investigators who may exercise the power of peace officers when those powers are specifically granted by the agency to that investigator. **Peace officer powers granted by the agency under this subsection may be exercised for protection in the line of duty.** An

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<sup>1</sup> Jean Mischel referred your question to me for response.

Representative Lesil McGuire

March 2, 2004

Page 2

investigator granted and who is exercising peace officer powers under this subsection may carry a firearm only if the investigator

- (1) has completed a peace officer training academy program; and
- (2) has met annual firearm certification requirements that are equivalent to those required by the Department of Public Safety.

The first sentence of proposed AS 25.27.020(f) in HB 514 allowed the agency to grant child support investigators peace officer powers. The second sentence of that subsection in HB 514 limited the exercise of those peace officer powers to "only when necessary for the enforcement of child support laws and regulations." Under CSHB 514(JUD) the grant of authority remains the same in the first sentence. The second sentence of AS 25.27.020(f) of CSHB 514(JUD) no longer contains a limitation on the exercise of those powers granted in the first sentence. In my opinion, the second sentence of AS 25.27.020(f) does not provide a limitation on the peace officer powers of child support investigators but merely provides an additional observation that child support investigators may exercise their peace officer powers for "protection in the line of duty."<sup>2</sup> Under CSHB 514(JUD) it appears that, if granted by the agency, child support investigators have peace officer powers that are not limited in any manner. Thus, these investigators may be able to generally enforce state laws, including traffic laws, at all times without limitation.

If it was the Committee's intention to only provide child support investigators with limited peace officer powers then the first two sentences of AS 25.27.020(f) in the original bill reflect the legislature's most recent actions in this regard.<sup>3</sup> If it was the Committee's intention to merely give child support investigators the authority to carry firearms for self-defense or personal protection while on duty,<sup>4</sup> then this could be accomplished by allowing the investigators to obtain concealed handgun permits under AS 18.65.700 - 18.65.790 and allowing them to carry those handguns while on duty.

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<sup>2</sup> It is not clear who is to be protected in the line of duty. Does this statement refer to the child support investigator as in "the child support investigator may exercise peace officer powers for self-protection in the line of duty" or does it refer to third persons as in "the child support investigator may exercise peace officer powers for the protection of persons in the line of duty"?

<sup>3</sup> AS 04.06.110 gives limited peace officer powers to ABC officers. The first two sentences of proposed AS 25.27.020(f) of HB 514 follow the form of this statute.

<sup>4</sup> And not to give those investigators the authority to make arrests, conduct warrantless searches, and execute search warrants, among other peace officer powers.

# LEGISLATIVE RESEARCH REPORT

DECEMBER 17, 2003



REPORT NUMBER 04.070

## CRIMINAL NONSUPPORT OF CHILDREN

PREPARED FOR REPRESENTATIVE PETE KOTT

BY PATRICIA YOUNG, MANAGER

You wished to know if any states classify a parent's failure to support his or her children as a felony offense.

The attached table shows information on each state's law in regard to nonsupport of children. Searching on Lexis, we identified 13 states that classify nonsupport as a felony offense.<sup>1</sup> Laws in an additional 20 states specify that the offense is either a misdemeanor or a felony depending on factors such as the amount of unpaid support obligation, duration of the failure to pay support, and the number of prior convictions for nonsupport.<sup>2</sup> Alaska is among 11 states that classify the nonsupport of children as a misdemeanor offense.<sup>3</sup>

Please note that sentencing, even for similar classifications, varies significantly across jurisdictions. We include examples of state laws specifying classification as a felony and identifying associated penalties as Attachment A; we include examples of laws with graduated classifications and associated penalties as Attachment B.

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I hope you find this information to be useful. Please let me know if you have questions or need additional information.

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<sup>1</sup> States that classify nonsupport as a felony offense are Arizona, Colorado, Idaho, Indiana, Iowa, Kansas, Massachusetts, Michigan, Mississippi, New Mexico, North Dakota, Oregon, and Texas.

<sup>2</sup> States with graduated the classification of the offense depending on factors such as severity, duration, or number of prior convictions are Arkansas, Delaware, Florida, Georgia, Illinois, Kentucky, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, West Virginia, and Wisconsin.

<sup>3</sup> States that classify nonsupport as a misdemeanor offense are Alabama, Alaska, California, Hawaii, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, Washington, and Wyoming.

**Table One: State Classification of Criminal Nonsupport**

State	Citation	Crime Classification
Alabama	Ala. Code § 13A-13-4	Class A Misdemeanor
Alaska	AS § 11.51.120	Class A Misdemeanor
Arizona	ARS § 25-511	Class 6 Felony
Arkansas	ACA § 5-26-401	Class A Misd - Class B Felony
California	Cal. Penal Code § 270	Misdemeanor
Colorado	CRS 14-6-101	Class 5 Felony
Connecticut	Conn. Gen. Stat. § 53-304	Contempt of Court
Delaware	11 Del. Code § 1113	Class B Misd - Class G Felony
District of Columbia	DC Code § 46-225.02	Criminal Contempt
Florida	FS § 827.06	1st Degree Misd - 3rd Degree Felony
Georgia	OCGA § 19-10-1	Misd - Felony
Hawaii	HRS § 709-903	Misdemeanor
Idaho	Idaho Code § 18-401	Felony
Illinois	750 ILCS 16/5	Class A Misd - Class 4 Felony
Indiana	Ind. Code Ann. § 35-46-1-5	Class D Felony - Class C Felony
Iowa	Iowa Code § 726.5	Class D Felony
Kansas	KSA § 21-3605	Level 10 Nonperson Felony
Kentucky	KRS § 530.05	Class A Misd - Class D Felony
Louisiana	La. RS 14:74	Criminal Neglect
Maine	17-A M.R.S. § 552	Class E Crime
Maryland	Md. Fam. Law Code Ann. § 10-203	Misdemeanor
Massachusetts	ALM GL ch. 273 § 15	Felony
Michigan	MCL § 750.165	Felony
Minnesota	Minn. Stat. § 609.375	Misd - Felony
Mississippi	Miss. Code Ann. § 97-5-3	Felony
Missouri	§ 568.040 R.S.Mo	Class A Misd - Class D Felony
Montana	Mont. Code Ann. § 45-5-621	Nonsupport; Aggravated Nonsupport
Nebraska	R.R.S. Neb. § 28-706	Class II Misd - Class IV Felony
Nevada	NRS § 201.020	Misd - Category C Felony
New Hampshire	62 NHRSA 639:4	Class A Misd - Class B Felony
New Jersey	NJ Stat. § 2C:24-5	4th Degree Crime
New Mexico	NM Stat. Ann. § 30-6-2	4th Degree Felony
New York	NY CLS Penal § 260.05 -06	Class A Misd - Class E Felony
North Carolina	NC Gen. Stat. § 14-322	Misdemeanor
North Dakota	ND Cent. Code § 14-07-15	Class C Felony
Ohio	ORC Ann. 2919.21	1st Degree Misd - 4th Degree Felony
Oklahoma	21 Okl. St. § 852	Misd - Felony
Oregon	ORS § 163.555	Class C Felony
Pennsylvania	18 P.S. § 4731	Misdemeanor
Rhode Island	RI Gen.Laws § 11-2-1 & 11-2-1.1	Misd - Felony
South Carolina	SC Code Ann. § 20-7-90	Misdemeanor
South Dakota	SD Cod. Laws § 25-7-16	Class 1 Misd - Class 6 Felony
Tennessee	Tenn. Code Ann. § 39-15-101	Class A Misd - Class E Felony
Texas	Tex. Penal Code § 25.05	State Jail Felony
Utah	Utah Code Ann. § 76-7-201	Class A Misd - 3rd Degree Felony
Vermont	15 V.S.A. § 202	unspecified
Virginia	Va. Code Ann. § 20-61	Misdemeanor
Washington	ARCW § 26.20.035	Gross Misdemeanor
West Virginia	W.Va. Code § 61-5-29	Misd - Felony
Wisconsin	Wis. Stat. § 948.22	Class A Misd - Class I Felony
Wyoming	Wyo. Stat. § 20-3-101	Misdemeanor

NOTES: States that graduate the offense from a misdemeanor to a felony do so depending on factors such as the amount of unpaid support obligation, duration of the failure to pay support, and the number of prior convictions for nonsupport.  
 SOURCES: Lexis search of state statutes

## **Attachment A**

Idaho Code § 18-401 (2003)  
Burns Indiana Code Ann. § 35-46-1-5 (2003)  
Michigan Comp. Laws Ann. § 750.165 (2003)  
Mississippi Code Ann. § 97-5-3 (2004)

**Idaho—Idaho Code § 18-401 (2003)**

§ 18-401. Desertion and nonsupport of children or spouse

Every person who:

(1) Having any child under the age of eighteen (18) years dependent upon him or her for care, education or support, deserts such child in any manner whatever, with intent to abandon it;

(2) Willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his or her child or children, or ward or wards; provided however, that the practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to be a violation of the duty of care to such child;

(3) Having sufficient ability to provide for a spouse's support, or who is able to earn the means for such spouse's support, who willfully abandons and leaves a spouse in a destitute condition, or who refuses or neglects to provide such spouse with necessary food, clothing, shelter, or medical attendance, unless by the spouse's misconduct he or she is justified in abandoning him or her;

**Shall be guilty of a felony and shall be punishable by a fine of not more than five hundred dollars (\$ 500), or by imprisonment for not to exceed fourteen (14) years, or both.**

HISTORY: I.C., § 18-401, as added by 1972, ch. 336, § 1, p. 844; am. 1972, ch. 381, § 8, p. 1089; am. 2000, ch. 294, § 1, p. 1008.

Indiana—Burns Ind. Code Ann. § 35-46-1-5 (2003)

§ 35-46-1-5. Nonsupport of a child

(a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a **Class D felony**. **However, the offense is a Class C felony if the total amount of unpaid support that is due and owing for one (1) or more children is at least fifteen thousand dollars (\$ 15,000).**

(b) It is a defense that the child had abandoned the home of his family without the consent of his parent or on the order of a court, but it is not a defense that the child had abandoned the home of his family if the cause of the child's leaving was the fault of his parent.

(c) It is a defense that the accused person, in the legitimate practice of his religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to his dependent child.

(d) It is a defense that the accused person was unable to provide support.

HISTORY: IC 35-46-1-5, as added by Acts 1976, P.L. 148, § 6; 1977, P.L. 340, § 88; 1978, P.L. 144, § 9; P.L.213-1996, § 4; P.L.123-2001, § 4.

**Michigan—MCL § 750.165 (2003)**

§ 750.165. Refusing to support wife or children as required by court order; violation as felony; penalty; exception; suspension of sentence; bond; "state disbursement unit" or "SDU" defined.

Sec. 165. (1) Refusing to support wife or children as required in decree of separate maintenance or divorce or order of court-If the court orders an individual to pay support for the individual's former or current spouse, or for a child of the individual, and the individual does not pay the support in the amount or at the time stated in the order, the individual is **guilty of a felony punishable by imprisonment for not more than 4 years or by a fine of not more than \$2,000.00, or both.**

(2) This section does not apply unless the individual ordered to pay support appeared in, or received notice by personal service of, the action in which the support order was issued.

(3) The court may suspend the sentence of an individual convicted under this section if the individual files with the court a bond in the amount and with the sureties the court requires. At a minimum, the bond must be conditioned on the individual's compliance with the support order. If the court suspends a sentence under this subsection and the individual does not comply with the support order or another condition on the bond, the court may order the individual to appear and show cause why the court should not impose the sentence and enforce the bond. After the hearing, the court may enforce the bond or impose the sentence, or both, or may permit the filing of a new bond and again suspend the sentence. The court shall order a support amount enforced under this section to be paid to the clerk or friend of the court or to the state disbursement unit.

(4) As used in this section, "state disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

HISTORY: Act 328, 1931, p 624; eff September 18, 1931.

**Mississippi—Miss. Code Ann. § 97-5-3 (2004)**

§ 97-5-3. Desertion or nonsupport of child under age eighteen

Any parent who shall desert or wilfully neglect or refuse to provide for the support and maintenance of his or her child or children, including the natural parent of an illegitimate child or children wherein paternity has been established by law or when the natural parent has acknowledged paternity in writing, while said child or children are under the age of eighteen (18) years shall be **guilty of a felony and, on conviction thereof, shall be punished for a first offense by a fine of not less than One Hundred Dollars (\$ 100.00) nor more than Five Hundred Dollars (\$ 500.00), or by commitment to the custody of the Department of Corrections not more than five (5) years, or both; and for a second or subsequent offense, by a fine of not less than One Thousand Dollars (\$ 1,000.00) nor more than Ten Thousand Dollars (\$ 10,000.00), or by commitment to the custody of the Department of Corrections not less than two (2) years nor more than five (5) years, or both, in the discretion of the court.**

HISTORY: SOURCES: Codes, 1930, § 861; Laws, 1942, § 2087; Laws, 1928, Ex. ch. 89; Laws, 1962, ch. 311; Laws, 1995, ch. 533, § 1, eff from and after July 1, 1995.

## **Attachment B**

Arkansas Code Ann. § 5-26-401 (2003)  
750 Illinois Comp Stat. 16/15 (2003)  
Nevada Rev. Stat. §201.020 (2003)  
62 New Hampshire Rev. Stat. Ann. § 639:4 (2003)

**Arkansas—A.C.A. § 5-26-401 (2003)**

**§ 5-26-401. Nonsupport**

(a) A person commits the offense of nonsupport if he or she fails to provide support to:

(1) His or her spouse who is physically or mentally infirm, or financially dependent; or

(2) His or her legitimate child who is less than eighteen (18) years old; or

(3) His or her illegitimate child who is less than eighteen (18) years old and whose parentage has been determined in a previous judicial proceeding; or

(4) His or her dependent child who is physically or mentally infirm.

(b) (1) Nonsupport is a Class A misdemeanor, except that it is a Class D felony if:

(A) (i) The person leaves or remains without the State of Arkansas for more than thirty (30) days while a current duty of support is unpaid.

(ii) Provided, it is an affirmative defense to a charge under this section that the defendant did not leave or remain outside the state with the purpose of avoiding the payment of support;

(B) The person has previously been convicted of nonsupport; or

(C) The person owes more than two thousand five hundred dollars (\$ 2,500) in past-due child support, pursuant to a court order or by operation of law, and the amount represents at least four (4) months of past-due child support.

(2) Nonsupport is a Class C felony if the person owes more than ten thousand dollars (\$ 10,000) but less than twenty-five thousand dollars (\$ 25,000) in past-due child support, pursuant to a court order or by operation of law.

(3) Nonsupport is a Class B felony if the person owes more than twenty-five thousand dollars (\$ 25,000) in past-due child support, pursuant to a court order or by operation of law.

(c) The court may direct that a fine imposed upon conviction of nonsupport or a bond forfeited in connection with a prosecution for nonsupport be paid for the support and maintenance of the person entitled to support.

(d) The municipal courts located in a county having a population in excess of two hundred thousand (200,000) inhabitants shall cause a warrant of arrest to be issued upon affidavit of a spouse or any person who is responsible for maintenance of dependent children which states that nonsupport has taken place.

(e) Any person found guilty of nonsupport shall also be responsible for the court costs and administrative costs incurred by the court.

(f) The state may take judgment against any defendant convicted of nonsupport for all moneys expended by any state agency for the support and maintenance of the person with respect to whom the defendant had a duty to support.

(g) It is an affirmative defense to prosecution under this section that the defendant had just cause to fail to provide the support.

HISTORY: Acts 1975, No. 280, § 2405; 1983, No. 174, § 1; A.S.A. 1947, § 41-2405; Acts 1997, No. 1282, § 1; 1999, No. 1484, § 1.

**Illinois—750 ILCS 16/15 (2003)**

**§ 750 ILCS 16/15. Failure to support**

Sec. 15. Failure to support. (a) A person commits the offense of failure to support when he or she:

(1) willfully, without any lawful excuse, refuses to provide for the support or maintenance of his or her spouse, with the knowledge that the spouse is in need of such support or maintenance, or, without lawful excuse, deserts or willfully refuses to provide for the support or maintenance of his or her child or children in need of support or maintenance and the person has the ability to provide the support; or

(2) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than \$ 5,000, and the person has the ability to provide the support; or

(3) leaves the State with the intent to evade a support obligation required under a court or administrative order for support, if the obligation, regardless of when it accrued, has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than \$ 10,000; or

(4) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than one year, or is in arrears in an amount greater than \$ 20,000, and the person has the ability to provide the support.

(a-5) Presumption of ability to pay support. The existence of a court or administrative order of support that was not based on a default judgment and was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

(b) Sentence. A person convicted of a first offense under subdivision (a)(1) or (a)(2) is guilty of a Class A misdemeanor. A person convicted of an offense under subdivision (a)(3) or (a)(4) or a second or subsequent offense under subdivision (a)(1) or (a)(2) is guilty of a Class 4 felony.

(c) Expungement. A person convicted of a first offense under subdivision (a)(1) or (a)(2) who is eligible for the Earnfare program, shall, in lieu of the sentence prescribed in subsection (b), be referred to the Earnfare program. Upon certification of completion of the Earnfare program, the conviction shall be expunged. If the person fails to successfully complete the Earnfare program, he or she shall be sentenced in accordance with subsection (b).

(d) Fine. Sentences of imprisonment and fines for offenses committed under this Act shall be as provided under Articles 8 and 9 of Chapter V of the Unified Code of Corrections [730 ILCS 5/5-8-1 et seq. and 730 ILCS 5/5-9-1 et seq.], except that the court shall order restitution of all unpaid support payments and may impose the following fines, alone, or in addition to a sentence of imprisonment under the following circumstances:

(1) from \$ 1,000 to \$ 5,000 if the support obligation has remained unpaid for a period longer than 2 years, or is in arrears in an amount greater than \$ 1,000 and not exceeding \$ 10,000;

(2) from \$ 5,000 to \$ 10,000 if the support obligation has remained unpaid for a period longer than 5 years, or is in arrears in an amount greater than \$ 10,000 and not exceeding \$ 20,000; or

(3) from \$ 10,000 to \$ 25,000 if the support obligation has remained unpaid for a period longer than 8 years, or is in arrears in an amount greater than \$ 20,000.

(e) Restitution shall be ordered in an amount equal to the total unpaid support obligation as it existed at the time of sentencing. Any amounts paid by the obligor shall be allocated first to current support and then to restitution ordered and then to fines imposed under this Section.

(f) For purposes of this Act, the term "child" shall have the meaning ascribed to it in Section 505 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/101 et seq.].

**HISTORY:**

Source: P.A. 91-613, § 15; 92-876, § 915.

**Nevada—NRS § 201.020 (2003)**

§ 201.020. Penalties; jurisdiction

1. Except as otherwise provided in subsection 2, a person who knowingly fails to provide for the support of his:

(a) Spouse or former spouse;

(b) Minor child; or

(c) Child who upon arriving at the age of majority is unable to provide support for himself because of his infirmity, incompetency or other legal disability that was contracted before he reached the age of majority, as ordered by a court, is guilty of a misdemeanor.

2. A person who violates the provisions of subsection 1 is guilty of a category C felony and shall be punished as provided in NRS 193.130 if:

(a) His arrearages for nonpayment of the child support or spousal support ordered by a court total \$ 10,000 or more and have accrued over any period since the date that a court first ordered the defendant to provide for such support; or

(b) It is a second or subsequent violation of subsection 1 or an offense committed in another jurisdiction that, if committed in this state, would be a violation of subsection 1, and his arrearages for nonpayment of the child support or spousal support ordered by a court total \$ 5,000 or more and have accrued over any period since the date that a court first ordered the defendant to provide for such support.

3. A prosecution for a violation of subsection 1 may be brought in a court of competent jurisdiction in any county in which:

(a) A court has issued a valid order for the defendant to pay child support or spousal support;

(b) The defendant resides;

(c) The custodial parent or custodian of the child for whom the defendant owes child support resides;

(d) The spouse or former spouse to whom the defendant owes spousal support resides; or

(e) The child for whom the defendant owes child support resides.

HISTORY: 1923, p. 287; CL 1929, § 10516; 1965, p. 1440; 1967, p. 474; 1969, p. 271; 1979, p. 1284; 1983, p. 1878; 1995, ch. 443, § 79, p. 1196; 1999, ch. 291, § 4, p. 1208; 1999, ch. 638, § 3, p. 3568; 2001, ch. 10, § 137, p. 278.

**New Hampshire—RSA 639:4 (2003)**

§ 639:4. Non-Support

I. A person is guilty of non-support if such person knowingly fails to provide support which such person is legally obliged to provide and which such person can provide to a spouse, child or other dependent. The fine, if any, shall be paid or applied in whole or in part to the support of such spouse, child or other dependent as the court may direct.

II. In this section, non-support shall be:

(a) A class B felony if the arrearage of support has remained unpaid for a cumulative period of more than one year;

(b) A class B felony if the amount of the arrearage is more than \$ 10,000;

(c) A class B felony if the obligor has been previously convicted of non-support under this section or if the obligor has been convicted of a similar criminal nonsupport offense in another state and the arrearage of support in this state has remained unpaid for a cumulative period of more than one year; or

(d) A class A misdemeanor in all other cases.

HISTORY: 1971, 518:1. 1977, 588:14, eff. Sept. 16, 1977. 1999, 327:1, eff. Jan. 1, 2000.