

HB

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# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 514  
 ( ) 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>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						
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)

State civil liability exposure and the amount Risk Management might ultimately pay in future liability claims could be significantly impacted by the proposed AS 25.27.020(f) enabling CSED investigators to exercise powers of peace officers including carrying firearms.

The authority to carry firearms in the performance of duty is one of, if not the highest, liability risk activity of all state agency operations. The use of deadly force with its inherent ability to inflict catastrophic injury has the potential to generate enormous tort liability exposure. The state paid its largest individual personal injury claim of \$7.3 million (not including significant defense costs) for settlement of neck down paralysis of an individual (later discovered to be unarmed) shot after apparently failing to respond to a trooper's command.

Prepared by: Brad Thompson, Director Phone 465-5723  
 Division: Risk Management Date/Time 2/23/04 8:16 AM  
 Approved by: Mike Miller, Commissioner Date 2/23/2004  
 Agency: Department of Administration

**FISCAL NOTE**

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

**BILL NO. HB 514**

**ANALYSIS CONTINUATION**

It is arguably less likely that any action by an individual child support enforcement agency investigator should evolve into such a serious incident, yet the state has paid less significant damages for alleged improper use of a weapons arising from confrontations escalating from routine traffic stops.

Should this statutory change be implemented, it is strongly urged the required minimum level of experience be the same required of all other state police professionals (Alaska Police Standards Council) and that significant effort be first committed to the development of policies and procedures for the training, monitoring and supervision of all investigators before permission is actually granted under this new authority to carry firearms.

No actual cost is explicitly presented but, in future fiscal years, Risk Management's liability premium assessments to the Department of Revenue will reflect any costs actually realized by this new exposure as premiums charged each agency are developed from actual claims expenses incurred.

The extent of such cost is difficult to forecast due to the uncertainty of claim that may be filed, the severity of damages that could be awarded, or the amount of litigation costs incurred defending future liability claims related to this new activity. The fiscal impact is indeterminate for a low frequency yet potentially high severity risk.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB514-ACS-TC-2-24-04  
 () Publish Date: \_\_\_\_\_

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>	*	*	*	*	*	*

<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						
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: HB514-LAW-CDCO,T&W  
 Bill Version: HB514  
 () Publish Date: \_\_\_\_\_

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>	*****	*****	*****	*****	*****	*****

<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 Interagency Receipts						
1141 RCA Receipts						
<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)

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. 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**

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

**BILL NO. HB 514** \_\_\_\_\_

**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.

# LEGAL SERVICES

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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   
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.

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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04-251.med

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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.

# STATE OF ALASKA

## DEPARTMENT OF LAW OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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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*, 491 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 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 the 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

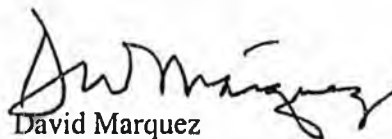
voluntary unemployment may also provide useful guidance in your deliberation of this issue. However, one must be cautious when applying civil standards in the context of a criminal prosecution.

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

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



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## House Judiciary Committee

### Memorandum

**To:** Jean Mischel, Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** March 1, 2004  
**Re:** CS Request

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Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1639AS, HB 514, incorporating the attached two amendments. The bill was passed out of committee on Friday. In addition, the committee would like a quick legal opinion regarding whether or not the language change from "for the enforcement of child support laws and regulations" to "for protection in the line of duty" on Page 5, Line 1 of the "S" version of the bill would unintentionally or improperly broaden the investigators' enforcement powers similar to the situation stated in the attached legal memo dated April 19, 1999. The intent of that change of language was only to clarify that the power to carry a weapon was for the purpose of protection and not to "go after or shoot dead beat dads." Please advise if you believe the current language needs to be amended.

If you have any questions, please call me at 4990. Thank you very much!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

AMENDMENT NO. 3 - PASSED  
TO HB 514

BY REPRESENTATIVE GRUENBERG

Page 4 following line 9: Insert new bill section to read:

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

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

Renumber bill sections and bill section references accordingly.

conceptual  
AMENDMENT NO. 4 - PASSED  
TO HB 514

BY REPRESENTATIVE GRUENBERG

Page 3 following line 10: Insert a new subsection to read:

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

Page 4 following line 9: Insert new bill sections to read:

\*Sec. 8. AS 11.51.122 is amended to add a new subsection to read:

(f) In addition to the provisions of (a)-(e) of this section, aiding the nonpayment of child support in the second degree is punishable by loss or restriction of a recreational license as provided in AS 12.55.139.

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

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

Renumber bill sections and bill section references accordingly.

23-LS1639S  
Mischel  
2/26/04

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

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

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES KOTT, Coghill, 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 \* Sec. 5. AS 11.51.122(a) is amended to read:

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

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

17 (2) intentionally and unreasonably

18 (A) withholds information about the residence or employment  
19 of the obligor when that information is requested by a child support  
20 enforcement agency;

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

26 (C) participates in a commercial, business, or employment  
27 arrangement with the obligor, knowing at the time that the arrangement is  
28 made that it will allow the obligor to avoid paying all or some of the support  
29 when it is due or to avoid having a lien placed on assets for the payment of  
30 delinquent support; receipt of a substantial asset for less than fair market value  
31 from an obligor after the obligor's support order has been established

1 constitutes a rebuttable presumption that the person receiving the asset knew  
2 that the transfer would allow the obligor to avoid paying all or some of the  
3 support or to avoid having a lien placed on the asset.

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

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

7 \* Sec. 7. AS 11.51.122 is amended by adding a new subsection to read:

8 (e) In this section, "child" and "child support" have the meaning given in  
9 AS 11.51.120.

10 \* Sec. 8. AS 22.10.020 is amended by adding a new subsection to read:

11 (j) The superior court, in an action for divorce, separation, or child support,  
12 may issue orders to aid in the enforcement of child support, including orders requiring  
13 an individual who owes support under an order of support to

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

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

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

20 \* Sec. 9. AS 25.27.020(d) is amended to read:

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

28 \* Sec. 10. AS 25.27.020 is amended by adding new subsections to read:

29 (f) The agency may employ investigators who may exercise the power of  
30 peace officers when those powers are specifically granted by the agency to that  
31 investigator. Peace officer powers granted by the agency under this subsection may be

1 exercised for protection in the line of duty. An investigator granted and who is  
2 exercising peace officer powers under this subsection may carry a firearm only if the  
3 investigator

4 (1) has completed a peace officer training academy program; and

5 (2) has met annual firearm certification requirements that are  
6 equivalent to those required by the Department of Public Safety.

7 (g) The agency may forgive all or part of an arrearage owed to the state under  
8 AS 25.27.120 as provided under this subsection and under (i) of this section. The  
9 agency shall adopt regulations establishing procedures and standards for the  
10 forgiveness of all or part of an arrearage providing, at a minimum, that the forgiveness  
11 is based on satisfactory proof that the obligor

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

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

19 (3) enters into an agreement with the agency providing for alternative  
20 payment procedures if the agency determines that there are unusual circumstances  
21 justifying a waiver of income withholding and the terms of the agreement with the  
22 agency are met under (h) of this section.

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

29 (i) During each year in which an obligor complies with the requirements for  
30 forgiveness of an arrearage under (g) of this section and any regulations adopted by  
31 the agency, the agency may forgive 20 percent of the total arrearage owed to the state

1 under AS 25.27.120, including any interest owed on that part of the debt. For  
2 purposes of determining the amount of the forgiveness under this section, the  
3 arrearage amount is calculated as of the date the obligor is approved for participation  
4 in the forgiveness program.

5 \* Sec. 11. AS 25.27.040(b) is amended to read:

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

7 (1) involving incest or forcible rape, unless the mother of the child,  
8 or the mother's parent or legal guardian if the mother is a minor or incompetent,  
9 requests the establishment of paternity; in this paragraph, "forcible rape" means  
10 sexual assault in the first degree under AS 11.41.410 or a conviction under a law  
11 or ordinance from another jurisdiction with similar elements; "forcible rape"  
12 includes adjudications of delinquency for acts with elements similar to  
13 AS 11.41.410;

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

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

17 \* Sec. 12. AS 25.27.080(b) is amended to read:

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

21 \* Sec. 13. AS 25.27.190(e) is amended to read:

22 (e) Modification or termination of future periodic support payments may be  
23 ordered upon a showing of good cause and material change in circumstances. The  
24 adoption or enactment of guidelines or a significant amendment to guidelines for  
25 determining child support is a material change in circumstances, if the guidelines are  
26 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic  
27 modification of child support may be made without a showing of a material  
28 change in circumstances if the child support order being modified on the periodic  
29 basis has not been modified or adjusted during the three years preceding the  
30 periodic modification.

31 \* Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

7 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil  
8 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised  
9 under art. IV, sec. 1, Constitution of the State of Alaska, sec. 13 of this Act takes effect for  
10 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-  
11 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,  
12 Constitution of the State of Alaska.

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

15 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted  
16 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.  
17 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this  
18 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as  
19 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person  
20 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by  
21 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

28 \* **Sec. 17.** This Act takes effect July 1, 2004.

#B514

Gara

Amendment #1

WITHDRAWN

Insert at p. 2 line 25

after "efforts"

"and also includes any lawful  
~~and~~ excuse that is otherwise provided  
~~by~~ by law."

~~FAILED~~  
A#2 P. 2. L. 22  
Delete (2)

Conceptual  
AMENDMENT NO. 5 - FAILED  
TO HB 514

BY REPRESENTATIVE GRUENBERG

Page 3 following line 10: Insert a new subsection to read:

“(c) In addition to the provisions of (a) and (b) of this section, aiding the nonpayment of child support in the first degree is punishable by loss or restriction of a business license as provided in AS 12.55.139.

Page 4 following line 9: Insert new bill sections to read:

**\*Sec. 8.** AS 11.51.122 is amended to add a new subsection to read:

(f) In addition to the provisions of (a)-(e) of this section, aiding the nonpayment of child support in the second degree is punishable by loss or restriction of a business license as provided in AS 12.55.139.

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

(b) In addition to other penalties imposed for the offense of aiding the nonpayment of child support in the first degree under AS 11.51.121 and for the offense of aiding the nonpayment of child support in the second degree under AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed one year, a business license issued under AS 43.70.

Renumber bill sections and bill section references accordingly.

23-LS1639\Q  
Mischel  
2/24/04

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

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

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Coghill, 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

9 (1) under 18 years of age. the person fails without lawful excuse to  
10 provide support for the child; or

11 (2) under a valid court or administrative support order, the person  
12 fails without lawful excuse to provide support for the child.

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

14 (c) Except as provided in (d) of this section, criminal nonsupport is a class A

1           misdemeanor.

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

3           (d) Criminal nonsupport is a class C felony if the support the person failed to  
4           provide is monetary support required by a court or administrative order from this or  
5           another jurisdiction and, at the time the person failed without lawful excuse to provide  
6           the support,

7                   (1) the aggregate amount of accrued monetary arrearage is \$10,000 or  
8           more;

9                   (2) no payment has been made for a period of 24 months or more; or

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

12                           (A) the aggregate amount of accrued monetary arrearage is  
13                   \$5,000 or more; or

14                           (B) no payment has been made for a period of six months or  
15           more.

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

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

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

23                   (1) has an aggregate amount of accrued monetary arrearage of \$10,000  
24           or more;

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

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

28                           (A) has an aggregate amount of accrued monetary arrearage of  
29                   \$5,000 or more; or

30                           (B) has not made a payment for a period of 24 months or more.

31           (b) Aiding the nonpayment of child support in the first degree is a class C

1 felony.

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

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

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

8 (2) intentionally

9 (A) withholds information about the residence or employment  
10 of the obligor when that information is requested by a child support  
11 enforcement agency;

12 (B) being an employer of the obligor, withholds information  
13 about the eligibility of the obligor's children for coverage under the employer's  
14 health insurance plan or about the cost of the coverage of the children under  
15 the plan when that information is requested by a child support enforcement  
16 agency; or

17 (C) participates in a commercial, business, or employment  
18 arrangement with the obligor, knowing at the time that the arrangement is  
19 made that it will allow the obligor to avoid paying all or some of the support  
20 when it is due or to avoid having a lien placed on assets for the payment of  
21 delinquent support; receipt of a substantial asset for less than fair market value  
22 from an obligor after the obligor's support order has been established  
23 constitutes a rebuttable presumption that the person receiving the asset knew  
24 that the transfer would allow the obligor to avoid paying all or some of the  
25 support or to avoid having a lien placed on the asset.

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

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

29 \* Sec. 7. 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. 8. 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  
11 RECEIVING ASSISTANCE UNDER AS 47.07, OR UNDER AS 47.25.310 -  
12 47.25.420 OR A SUCCESSOR PROGRAM,] to make payments according to an  
13 approved payment plan or, if the individual is not incapacitated, to participate in  
14 appropriate work activities.

15 \* Sec. 9. AS 25.27.020 is amended by adding new subsections to read:

16 (f) The agency may employ investigators who may exercise the power of  
17 peace officers when those powers are specifically granted by the agency to that  
18 investigator. Peace officer powers granted by the agency under this subsection may be  
19 exercised only when necessary for the enforcement of child support laws and  
20 regulations. An investigator granted and who is exercising peace officer powers under  
21 this subsection may carry a firearm only if the investigator

22 (1) has completed at some time a peace officer training academy  
23 program approved by the commissioner of public safety; and

24 (2) has met annual firearm certification requirements that are  
25 equivalent to those required by the Department of Public Safety.

26 (g) The agency may compromise a child support obligation, including interest  
27 payments, owed to the state under AS 25.27.130, without the assistance of agency  
28 counsel. If a debt is compromised under this subsection, the agency shall file a notice  
29 of the compromise with the appropriate agency, employer, or court through which the  
30 compromised order of support was being enforced. The agency shall adopt  
31 regulations establishing procedures and standards for compromises under this

1 subsection. The regulations must encourage compromises of support obligations in  
2 appropriate circumstances.

3 \* Sec. 10. AS 25.27.040(b) is amended to read:

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

5 (1) involving incest or forcible rape, unless the mother of the child,  
6 or the mother's parent or legal guardian if the mother is a minor or incompetent,  
7 requests the establishment of paternity; in this paragraph, "forcible rape" means  
8 sexual assault in the first degree under AS 11.41.410 or a conviction under a law  
9 or ordinance from another jurisdiction with similar elements; "forcible rape"  
10 includes adjudications of delinquency for acts with elements similar to  
11 AS 11.41.410;

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

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

15 \* Sec. 11. AS 25.27.080(b) is amended to read:

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

19 \* Sec. 12. AS 25.27.190(e) is amended to read:

20 (e) Modification or termination of future periodic support payments may be  
21 ordered upon a showing of good cause and material change in circumstances. The  
22 adoption or enactment of guidelines or a significant amendment to guidelines for  
23 determining child support is a material change in circumstances, if the guidelines are  
24 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic  
25 modification of child support may be made without a showing of a material  
26 change in circumstances if the child support order being modified on the periodic  
27 basis has not been modified or adjusted during the three years preceding the  
28 periodic modification.

29 \* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 INDIRECT COURT RULE AMENDMENT. Section 12 of this Act has the effect of

1 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying  
2 a support order.

3 \* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil  
6 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised  
7 under art. IV, sec. 1, Constitution of the State of Alaska, sec. 12 of this Act takes effect for  
8 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-  
9 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,  
10 Constitution of the State of Alaska.

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

13 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted  
14 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.  
15 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this  
16 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as  
17 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person  
18 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by  
19 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

26 \* **Sec. 16.** This Act takes effect July 1, 2004.

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Jean Mischel, Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** February 25, 2004  
**Re:** CS Request

---

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS01639U, HB 514, incorporating the changes specified on the attached bill text. There are a few places where we ask for you to use your discretion as to the best or most appropriate language. For example, Section 1, please choose which version you feel is clearest and most inclusive. Also, regarding Sections 3 and 4, please add the two additional elements to 11.51.120 and 121. The handwritten notes and reference to Taylor should hopefully make sense. Please replace Section 8 with the "new" version, except in addition please expand on the word "parent" to read "parent or guardian" or whatever language would cover someone who applied for services. Regarding Section 9, replace (g) with the "new" version and add (h). There are additional changes and additions written into the text of the bill that we could like in the new version. I hope you can make sense of this all! And of course make any other conforming changes that are necessary as a result of these changes. If you have any questions, please call me at 4990 or John Main at 8875.

We are planning to re-hear the bill Friday at 1:00 p.m., but it would be helpful to get the CS on Thursday, if possible, to distribute to committee members

Thank you very much!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

23-LS1639V  
Mischel  
2/21/04

JWD

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, Coghill, 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

9 (1) under 18 years of age, the person fails without lawful excuse to  
10 provide support for the child; or

11 (2) under a valid court or administrative support order, the person  
12 fails without lawful excuse to provide support for the child.

*Handwritten note:*  
R  
make next page

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

14 (c) Except as provided in (d) of this section, criminal nonsupport is a class A

Please pick which version  
is clearest and most  
inclusive and correct

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

(a) A person commits the crime of criminal nonsupport if [, BEING A PERSON LEGALLY CHARGED WITH THE SUPPORT OF A CHILD UNDER 18 YEARS OF AGE,] the person fails without lawful excuse to provide support for a child who is

(1) under 18 years of age for whom the person is legally charged with a duty of support: or

(2) 18 years of age or older for whom the person is ordered to pay support under a valid court or administrative support order [THE CHILD].

1           misdemeanor.

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

3           (d) Criminal nonsupport is a class C felony if the support the person failed to  
4           provide is monetary support required by a court or administrative order from this or  
5           another jurisdiction and, at the time the person failed to provide the support

*without lawful excuse*

*Rep. Ogg's Amendment*

6                       (1) the aggregate amount of accrued monetary arrearage is \$10,000 or  
7           more;

8                       (2) no payment has been made for a period of 24 months or more; or

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

11                               (A) the aggregate amount of accrued monetary arrearage is  
12           \$5,000 or more; or

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

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

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

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

22                               (1) has an aggregate amount of accrued monetary arrearage of  
23           \$10,000 or more;

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

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

27                               (A) has an aggregate amount of accrued monetary arrearage of  
28           \$5,000 or more; or

29                               (B) has not made a payment for a period of 24 months or more.

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

In Taylor v. State, 710 P.2d 1019 (Alaska Court of Appeals, 1985), the court held that the state must shoulder the burden of proving the element of an obligor's ability to pay, and that the burden of proof is beyond a reasonable doubt. Failure to provide support in criminal non support cases requires proof beyond a reasonable doubt of the following elements: 1. That the accused was legally charged with the support of a child under 18 years of age; 2. That the accused failed to provide for the support of the child; 3. That the accused's failure to provide support was knowing; 4. That the accused's failure to provide support was without lawful excuse - in other words, that the accused either actually had the financial ability to provide support or that he could have had such actual ability through the exercise of reasonable efforts; and 5. That the accused was actually aware of his financial ability to provide support or that he acted recklessly in his disregard of it.

Section 3  
and  
Section 4

~~Amendment to misperception + delay and  
know that defendant must have ability~~

Add these <sup>extra</sup> elements to 11.51.120 + 121

1) knowingly

2) Defendant (insert underlined concept)

~~11.51.120 + 121~~

New Mex  
TN  
KT  
RI

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

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

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

7 (2) intentionally *and unreasonably*

8 (A) withholds information about the residence or employment  
9 of the obligor when that information is requested by a child support  
10 enforcement agency;

11 (B) being an employer of the obligor, withholds information  
12 about the eligibility of the obligor's children for coverage under the employer's  
13 health insurance plan or about the cost of the coverage of the children under  
14 the plan when that information is requested by a child support enforcement  
15 agency; or

16 (C) participates in a commercial, business, or employment  
17 arrangement with the obligor, knowing at the time that the arrangement is  
18 made that it will allow the obligor to avoid paying all or some of the support  
19 when it is due or to avoid having a lien placed on assets for the payment of  
20 delinquent support; receipt of a substantial asset for less than fair market value  
21 from an obligor after the obligor's support order has been established  
22 constitutes a rebuttable presumption that the person receiving the asset knew  
23 that the transfer would allow the obligor to avoid paying all or some of the  
24 support or to avoid having a lien placed on the asset.

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

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

28 \* Sec. 7. AS 22.10.020 is amended by adding a new subsection to read:

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

- 1 (1) make payments according to an approved payment plan;
- 2 (2) participate in appropriate work activities if the individual is not
- 3 incapacitated; or
- 4 (3) complete and submit an application for a permanent fund dividend
- 5 under AS 43.23.015 or provide proof to the agency or the court that the individual is
- 6 not eligible for a dividend in a given year.

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

8 (d) The agency may issue an administrative order or request a court order that  
 9 requires an individual in arrears under an order of support [FOR A CHILD WHO IS  
 10 RECEIVING ASSISTANCE UNDER AS 47.07, OR UNDER AS 47.25.310 -  
 11 47.25.420 OR A SUCCESSOR PROGRAM,] to make payments according to an  
 12 approved payment plan or, if the individual is not incapacitated, to participate in  
 13 appropriate work activities.

14 \* Sec. 9. AS 25.27.020 is amended by adding new subsections to read:

15 (f) The agency may employ investigators who may exercise the power of  
 16 peace officers when those powers are specifically granted by the agency to that  
 17 investigator. Peace officer powers granted by the agency under this subsection may be  
 18 exercised for protection in the line of duty.  
 19 ~~only when necessary for the enforcement of child support laws and~~

20 ~~regulations.~~ An investigator granted and who is exercising peace officer powers under  
 21 this subsection may carry a firearm only if the investigator

22 (1) has completed ~~at some time~~ a peace officer training academy  
 23 program ~~approved by the commissioner of public safety; and~~ and

24 (2) has met annual firearm certification requirements that are  
 25 equivalent to those required by the Department of Public Safety.

26 (g) The agency may compromise a child support obligation, including interest  
 27 payments, owed to the state under AS 25.27.120, without the assistance of agency  
 28 counsel. If a debt is compromised under this subsection, the agency shall file a notice  
 29 of the compromise with the appropriate agency, employer, or court through which the  
 30 compromised order of support was being enforced. The agency shall adopt  
 31 regulations establishing procedures and standards for compromises under this  
 subsection. The regulations must encourage compromises of support obligations in

replace  
w/ version  
of sec. 8  
on next page

As of 05.10.200 Dept of L&J

\*  
157  
120 of  
140.

Replace (g) and add (h)

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

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

\* parent or guardian  
(or whatever language is necessary  
to cover "everyone" it should.)

is parent for  
of. 11.11.11

Please ~~insert~~ replace (g) with this language...

\* Sec. 9. AS 25.27.020 is amended by adding new subsections to read:

~~(g) The agency may, by regulation, establish procedures and standards for the forgiveness of an arrearage owed to the state under AS 25.27.020. The agency may forgive arrears under this section, with the approval of the Department of Law, if~~

(g) The agency may, by regulation, establish procedures and standards for the forgiveness of an arrearage owed to the state under AS 25.27(120). The agency may forgive arrears under this section, ~~with the approval of the Department of Law, if~~ <sup>or 1302</sup>

(1) the obligor

(A) has or obtains employment for which income withholding can be initiated under AS 25.27.250 within 60 days after the date the obligor is approved for the forgiveness program;

(B) enrolls in and completes an employment training program approved by the agency and obtains employment for which income withholding can be initiated under AS 25.27.250 within 30 days after completion of the employment training program; or

(C) enters into an agreement with the agency for alternative ...

Sect. 9  
(g)(cont)...

payment procedures, if the agency determines that there are unusual circumstances justifying a waiver of income withholding; and

(2) the obligor makes monthly payments in accordance with a payment agreement approved by the agency; if the obligor misses more than two monthly payments in a calendar year, without approval of the agency for good cause, the obligor is not eligible to continue in the arrears forgiveness program under this subsection.

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

OK

insert

1 appropriate circumstances.

2 \* Sec. 10. AS 25.27.040(b) is amended to read:

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

4 (1) involving incest or forcible rape, unless the mother of the child,  
5 or the mother's parent or legal guardian if the mother is a minor or incompetent,  
6 requests the establishment of paternity; in this paragraph, "forcible rape" means  
7 sexual assault in the first degree under AS 11.41.410 or a conviction under a law  
8 or ordinance from another jurisdiction with similar elements; "forcible rape"  
9 includes adjudications of delinquency for acts with elements similar to  
10 AS 11.41.410;

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

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

14 \* Sec. 11. AS 25.27.080(b) is amended to read:

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

18 \* Sec. 12. AS 25.27.190(e) is amended to read:

19 (e) Modification or termination of future periodic support payments may be  
20 ordered upon a showing of good cause and material change in circumstances. The  
21 adoption or enactment of guidelines or a significant amendment to guidelines for  
22 determining child support is a material change in circumstances, if the guidelines are  
23 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic  
24 modification of child support may be made without a showing of a material  
25 change in circumstances if the child support order being modified on the periodic  
26 basis has not been modified or adjusted during the three years preceding the  
27 periodic modification.

28 \* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 INDIRECT COURT RULE AMENDMENT. Section 12 of this Act has the effect of  
31 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying

1 a support order.

2 \* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 **TWO-THIRDS VOTE NOT REQUIRED.** Because Rule 90.3, Alaska Rules of Civil  
5 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised  
6 under art. IV, sec. 1, Constitution of the State of Alaska, sec. 12 of this Act takes effect for  
7 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-  
8 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,  
9 Constitution of the State of Alaska.

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

12 **APPLICABILITY.** (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted  
13 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.  
14 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this  
15 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as  
16 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person  
17 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by  
18 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

25 \* **Sec. 16.** This Act takes effect July 1, 2004.

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal

**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee

**Date:** February 24, 2004

**Re:** CS Request

---

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS1639\I, HB 514, incorporating the attached amendment. The blank CS was adopted by the committee yesterday and is attached as well. The bill was heard in committee yesterday and the CS will be reheard tomorrow 2/25 if time permits.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HB 514

Amendment #1 by Rep. Ogg - PASSED

P. 2, Line 5

Alter "jailed"  
Insert "without lawful excuse"

23-LS1639I  
Mischel  
2/21/04

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, Coghill, 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

9 (1) under 18 years of age, the person fails without lawful excuse to  
10 provide support for the child; or

11 (2) under a valid court or administrative support order, the person  
12 fails without lawful excuse to provide support for the child.

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

14 (c) Except as provided in (d) of this section, criminal nonsupport is a class A

1           misdemeanor.

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

3           (d) Criminal nonsupport is a class C felony if the support the person failed to  
4           provide is monetary support required by a court or administrative order from this or  
5           another jurisdiction and, at the time the person failed to provide the support,

6                   (1) the aggregate amount of accrued monetary arrearage is \$10,000 or  
7           more;

8                   (2) no payment has been made for a period of 24 months or more; or

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

11                   (A) the aggregate amount of accrued monetary arrearage is  
12          \$5,000 or more; or

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

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

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

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

22                   (1) has an aggregate amount of accrued monetary arrearage of  
23       \$10,000 or more;

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

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

27                   (A) has an aggregate amount of accrued monetary arrearage of  
28       \$5,000 or more; or

29                   (B) has not made a payment for a period of 24 months or more.

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

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

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

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

7 (2) intentionally

8 (A) withholds information about the residence or employment  
9 of the obligor when that information is requested by a child support  
10 enforcement agency;

11 (B) being an employer of the obligor, withholds information  
12 about the eligibility of the obligor's children for coverage under the employer's  
13 health insurance plan or about the cost of the coverage of the children under  
14 the plan when that information is requested by a child support enforcement  
15 agency; or

16 (C) participates in a commercial, business, or employment  
17 arrangement with the obligor, knowing at the time that the arrangement is  
18 made that it will allow the obligor to avoid paying all or some of the support  
19 when it is due or to avoid having a lien placed on assets for the payment of  
20 delinquent support; receipt of a substantial asset for less than fair market value  
21 from an obligor after the obligor's support order has been established  
22 constitutes a rebuttable presumption that the person receiving the asset knew  
23 that the transfer would allow the obligor to avoid paying all or some of the  
24 support or to avoid having a lien placed on the asset.

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

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

28 \* Sec. 7. AS 22.10.020 is amended by adding a new subsection to read:

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

- 1 (1) make payments according to an approved payment plan;  
2 (2) participate in appropriate work activities if the individual is not  
3 incapacitated; or  
4 (3) complete and submit an application for a permanent fund dividend  
5 under AS 43.23.015 or provide proof to the agency or the court that the individual is  
6 not eligible for a dividend in a given year.

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

8 (d) The agency may issue an administrative order or request a court order that  
9 requires an individual in arrears under an order of support [FOR A CHILD WHO IS  
10 RECEIVING ASSISTANCE UNDER AS 47.07, OR UNDER AS 47.25.310 -  
11 47.25.420 OR A SUCCESSOR PROGRAM,] to make payments according to an  
12 approved payment plan or, if the individual is not incapacitated, to participate in  
13 appropriate work activities.

14 \* Sec. 9. AS 25.27.020 is amended by adding new subsections to read:

15 (f) The agency may employ investigators who may exercise the power of  
16 peace officers when those powers are specifically granted by the agency to that  
17 investigator. Peace officer powers granted by the agency under this subsection may be  
18 exercised only when necessary for the enforcement of child support laws and  
19 regulations. An investigator granted and who is exercising peace officer powers under  
20 this subsection may carry a firearm only if the investigator

21 (1) has completed at some time a peace officer training academy  
22 program approved by the commissioner of public safety; and

23 (2) has met annual firearm certification requirements that are  
24 equivalent to those required by the Department of Public Safety.

25 (g) The agency may compromise a child support obligation, including interest  
26 payments, owed to the state under AS 25.27.130, without the assistance of agency  
27 counsel. If a debt is compromised under this subsection, the agency shall file a notice  
28 of the compromise with the appropriate agency, employer, or court through which the  
29 compromised order of support was being enforced. The agency shall adopt  
30 regulations establishing procedures and standards for compromises under this  
31 subsection. The regulations must encourage compromises of support obligations in

1 appropriate circumstances.

2 \* Sec. 10. AS 25.27.040(b) is amended to read:

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

4 (1) involving incest or forcible rape, unless the mother of the child,  
5 or the mother's parent or legal guardian if the mother is a minor or incompetent,  
6 requests the establishment of paternity; in this paragraph, "forcible rape" means  
7 sexual assault in the first degree under AS 11.41.410 or a conviction under a law  
8 or ordinance from another jurisdiction with similar elements; "forcible rape"  
9 includes adjudications of delinquency for acts with elements similar to  
10 AS 11.41.410;

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

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

14 \* Sec. 11. AS 25.27.080(b) is amended to read:

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

18 \* Sec. 12. AS 25.27.190(e) is amended to read:

19 (e) Modification or termination of future periodic support payments may be  
20 ordered upon a showing of good cause and material change in circumstances. The  
21 adoption or enactment of guidelines or a significant amendment to guidelines for  
22 determining child support is a material change in circumstances, if the guidelines are  
23 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic  
24 modification of child support may be made without a showing of a material  
25 change in circumstances if the child support order being modified on the periodic  
26 basis has not been modified or adjusted during the three years preceding the  
27 periodic modification.

28 \* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 INDIRECT COURT RULE AMENDMENT. Section 12 of this Act has the effect of  
31 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying

1 a support order.

2 \* Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil  
5 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised  
6 under art. IV, sec. 1, Constitution of the State of Alaska, sec. 12 of this Act takes effect for  
7 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-  
8 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,  
9 Constitution of the State of Alaska.

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

12 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted  
13 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.  
14 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this  
15 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as  
16 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person  
17 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by  
18 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

25 \* Sec. 16. This Act takes effect July 1, 2004.

# LEGAL SERVICES

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

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FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329


## MEMORANDUM

February 21, 2004

**SUBJECT:** Child support enforcement (CSHB 514( ))

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

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



Please find enclosed a blank CS version of HB 514 as we discussed. You have also asked for some explanation of the changes you requested.

**Section 1.** Retains the 18 year age limit for criminal nonsupport and adds a separate subsection without the age limit and with a limitation of a valid court or administrative support order. This change will allow prosecutors to charge a person with criminal nonsupport (1) without a support order for a child who is under 18 and (2) with a support order for a child, regardless of age. The rebuttable presumption language was deleted pursuant to the previous section on this bill.

**Section 8.** This section has not been changed in this version, but you asked whether the deletion of the language pertaining to a child who is receiving public assistance, including TANF, would limit the agency's authority to request an order requiring a payment plan or appropriate work activities. The answer is no. The deletion of the relevant language broadens the agency's authority in this regard.

**Section 9.** Adds authority for the agency to adopt regulations establishing standards and procedures for compromising a support obligation and encouraging such compromises. Removed "best interest" and commissioner discretion to compromise obligations since regulations will establish the standard.

JMM:med  
04-220.med

Enclosure

# Alaska State Legislature

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



*Interim: (June-Dec)*  
716 West 4th Avenue, Suite 600  
Anchorage, AK 99501-2133  
(907) 269-0155  
(907) 269-0154 Fax

**Pete Kott**  
Speaker of the House

Date: February 17, 2004  
From: Representative Pete Kott  
To: Representative Lesil McGuire, Chair  
House Judiciary Committee  
Re: HB 514, "Child Support Enforcement/Crimes"

---

I respectfully request that House Bill 514 be scheduled for a hearing in the House Judiciary Committee at your earliest convenience. Attached to this memo are the following:

1. HB 514
2. Sponsor Statement
3. Background information
4. Sectional Analysis (to follow)

If you have any questions please feel free to contact me personally, or my staff, John Main, at ext. #3777.

# Alaska State Legislature

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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.

### **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.

**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.

# LEGAL SERVICES

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## MEMORANDUM

February 19, 2004

**SUBJECT:** Child Support Enforcement and Crimes  
(Work Order No. 23-LS1639H)

**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 criminal nonsupport elements, deletes reference to age of child, and adds a rebuttable presumption. The presumption may encounter some difficulty if challenged since the Alaska Supreme Court, in Taylor v. State 710 P.2d 1019 (1985), has interpreted one of the elements of the crime ("without lawful excuse") to require proof of the ability to pay. The presumption negates that.

**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. Replaces a cross reference to a loss or restriction of a recreational license as additional criminal penalty.

**Section 4.** Establishes an enhanced crime of aiding the nonpayment of child support in the first degree for circumstances related to the felony in section 3.

**Section 5.** Makes previous crime of aiding the nonpayment of child support a second degree crime.

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

**Section 7.** Adds a new subsection pertaining to child support orders to the jurisdiction of the superior court.

**Section 8.** Deletes a limitation pertaining to a child receiving public assistance for the agency to order or request a court order in arrearage cases for a payment plan or work activities by an obligor.

**Section 9.** Adds two subsections authorizing the agency to 1) employ peace officers who may carry a firearm when specified training is completed and for child support enforcement investigations; and 2) compromise a child support obligation.

**Section 10.** Adds circumstances in which the agency may order paternity testing in cases involving incest or rape.

**Section 11.** 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 12.** Adds cross-reference to 42 U.S.C. 666 for periodic modification of child support orders without showing of changed circumstances.

**Section 13.** Describes indirect court rule amendment to Rule 90.3, Alaska Rule of Civil Procedure necessitated by sec. 12 of the bill.

**Section 14.** States that a 2/3 vote is not required for amendment to Rule 90.3.

**Section 15.** 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 16.** Provides an effective date for the bill.

JMM:mdr  
04-057.mdr

# 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 graduate 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.