

**ALASKA LEGISLATURE**

**2609**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

25

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.

**HB**

**514**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 07 2004

SENATE FINANCE  
COMMITTEE

DATE: 5/2/04

FURTHER:

DATE TURNED  
IN TO OFFICE: 7 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 514(FIN) am

## HB 514 CHILD SUPPORT ENFORCEMENT/ CRIMES

"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."

and recommends:

- be replaced with 3 CS CS HB 514 (FIN)
- adopt previous CS forthcoming
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero.	FN#
Revenue	7/04		*	✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Court	4/03/04		*		#2
Law	7/22/04		*		#3
Admin. <sup>Retire.</sup> <sub>Panel</sub>	3/12/04			✓	#4
Admin. <sup>Risk</sup> <sub>Manmt</sub>	3/9/04			✓	#5
Public <sup>Safety</sup>	3/12/04			✓	#6
Admin. <sup>PDF</sup>	4/6/04		*		#9

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	X			
COCHAIR:				
COCHAIR: <i>[Signature]</i>	✓			

MAY 07 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

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

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

\*The compromising of arrears section will result in the elimination of receivables owed to the state in favor of receiving payments against the debt. There would be a net increase in revenues to the state since we would be collecting ongoing support that we were not collecting in exchange for eliminating arrears that we also were not collecting. Since CSED cannot determine which individuals will use this program, we cannot project what this increase in revenue will be. There are approximately 18,000 cases with a total of \$250 million owed to the State of Alaska and the federal government. Of these 18,000 cases, approximately 3,000 cases totaling \$31 million have current withholding order payments each month. With the provision allowing a determination of best interest of the children and of the state these 3,000 cases would not be included in the program.

Prepared by: John Mallonee Phone 269-6802  
Division Child Support Enforcement Date/Time 5/6/04 11:58 A/M  
Approved by: Steve Porter, Deputy Commissioner Date 5/6/2004  
Agency Department of Revenue

MAY 07 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 9  
Bill Version: SCS CSHB 514(JUD)  
(S) Publish Date: 5/2/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act relating to child support BRU Legal and Advocacy Services  
and the crimes of criminal nonsupport Component Public Defender Agency  
Sponsor Reps. Kott, Harris, Hawker...  
Requester (S) Judiciary Component No. 1631

**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)

This bill would likely have a fiscal impact on the operations of the Public Defender Agency, because in Sections 1-6 it creates a new level of offenses for nonpayment of child support and aiding the nonpayment of child support and makes the offenses C felonies. Currently criminal nonsupport and aiding the nonpayment of support are both class A misdemeanors. While those offenses will continue to exist, the newly created higher offenses will result in more cases handled by the Agency. At this point it is not possible to determine the extent of the increase in caseload or workload (felonies require more work than misdemeanors to defend) since the Agency does not have current figures on the number of cases meeting the criteria for the new offenses, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
Division Public Defender Agency Date/Time 4/5/04 12:00 AM  
Approved by: Kevin Jardell, Assistant Commissioner Date 4/6/2004  
Agency Administration

# FISCAL NOTE

REPORTED OUT

MAY 07 2004

SENATE FINANCE  
COMMITTEE

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

Fiscal Note Number: 6  
 Bill Version: CSHB 514(FIN)  
 (H) Publish Date: 3/24/04

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

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

Note: Amounts do not include inflation unless otherwise

noted below.

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

<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>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

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

Prepared by: Lt. Al Storey  
 Division: Alaska State Troopers  
 Approved by: Commissioner William Tandeske  
 Agency: Department of Public Safety

Phone 269-4532  
 Date/Time 3/12/04 11:14 AM  
 Date 3/12/2004

MAY 07 2004

SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: CSHB 514(FIN)  
(H) Publish Date: 3/24/04

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

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

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

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

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

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

COMMITTEE COPY

MAY 07 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: CSHB 514(FIN)  
(H) Publish Date: 3/24/04

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

## Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

## POSITIONS

Full-time						
Part-time						
Temporary						

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

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

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

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

MAY 07 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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. Daughheteo, Director  
Division: Administrative Services  
Approved by: Kathryn Daughheteo for Gregg D. Renkes, Attorney General  
Agency: Department of Law

Phone 465-3673  
Date/Time 2/22/04 12:32 PM  
Date 2/22/2004

FISCAL NOTE #3

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 514(JUD)

**ANALYSIS CONTINUATION**

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

# FISCAL NOTE

REPORTED OUT  
MAY 07 2004  
SENATE FINANCE  
COMMITTEE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

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**

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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



# Alaska State Senate

## Senate Finance Committee

Official Business

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 7 May 2004 TIME: 9:50 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Please

SCS CS HB 514 (FIN)

23-LS11039 \ N Mischel 5/3/04

No changes

Thx  
Mindy

23-LS1639N  
Mischel  
5/3/04

SENATE CS FOR CS FOR HOUSE BILL NO. 514( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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

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 knowingly failed, without lawful  
3 excuse, to provide the support,

4 (1) the aggregate amount of accrued monetary child support arrearage  
5 is \$20,000 or more;

6 (2) no child support payment has been made for a period of 24  
7 consecutive months 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 \$20,000 or more;

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

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

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

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

15 (a) A person commits the crime of aiding the nonpayment of child support in  
16 the second degree if the person [(1)] knows that an obligor has a duty under an  
17 administrative or judicial order for periodic payment of child support or for the  
18 provision of health care coverage for a child under a medical support order [;] and

19 (1) being a person with a statutory duty to disclose information to  
20 a child support enforcement agency [(2)] intentionally [(A)] withholds the  
21 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE OBLIGOR]  
22 when it [THAT INFORMATION] is requested by a child support enforcement  
23 agency;

24 (2) [(B)] being an employer of the obligor, intentionally withholds  
25 information about the residence or employment of the obligor, the eligibility of the  
26 obligor's children for coverage under the employer's health insurance plan, or  
27 [ABOUT] the cost of the coverage of the children under the plan, when that  
28 information is requested by a child support enforcement agency or when the  
29 employer is required by state or federal law to report the information without a  
30 request by a child support enforcement agency; or

31 (3) intentionally [(C)] participates in a commercial, business, [OR]

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

9 \* Sec. 6. AS 11.51.122(b) is amended to read:

10 (b) In a prosecution under (a)(2) and (3) [(a)(2)(B) AND (C)] of this section,  
 11 it is a defense that the

12 (1) defendant did not intend to assist the obligor in the nonpayment of  
 13 child support or in the avoidance of a duty to provide health care coverage of a child;  
 14 or

15 (2) obligor did not intend to avoid paying child support or to avoid  
 16 providing health care coverage of a child.

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

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

20 \* Sec. 8. AS 11.51.122 is amended by adding new subsections to read:

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

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

26 \* Sec. 9. AS 12.55.139 is amended to read:

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

1 \* Sec. 10. AS 12.55.139 is amended by adding a new subsection to read:

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

8 \* Sec. 11. AS 22.10.020 is amended by adding a new subsection to read:

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

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

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

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

18 \* Sec. 12. AS 25.27.020(d) is amended to read:

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

26 \* Sec. 13. AS 25.27.020 is amended by adding new subsections to read:

27 (f) The agency shall, by regulation, establish procedures and standards for the  
28 forgiveness of an arrearage owed to the state under AS 25.27.120. The agency may  
29 forgive arrears under this section, with the approval of the commissioner and without  
30 the approval of the Department of Law, if

31 (1) the obligor

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

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

8 (C) enters into an agreement with the agency for alternative  
9 payment procedures if the agency determines that there are unusual  
10 circumstances justifying a waiver of income withholding;

11 (2) the obligor is in compliance with additional requirements and  
12 limitations imposed by the agency by regulation to assure that forgiveness of the  
13 arrearage is in the best interest of the child and of the state; and

14 (3) the obligor makes monthly payments pursuant to a payment  
15 agreement approved by the agency; if the obligor misses more than two monthly  
16 payments in a calendar year or more than two consecutive payments without approval  
17 of the agency for good cause, the obligor is not eligible to continue in the arrears  
18 forgiveness program under this section.

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

26 (h) The agency may establish by regulation requirements and limitations on  
27 eligibility in addition to those stated in (f) and (g) of this section.

28 \* Sec. 14. AS 25.27.040(b) is amended to read:

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

30 (1) involving incest or forcible rape, unless the mother of the child is  
31 legally competent and requests the establishment of paternity; in this paragraph,

1        "forcible rape" means sexual assault in the first degree under AS 11.41.410 or a  
 2        conviction under a law or ordinance from another jurisdiction with similar  
 3        elements; "forcible rape" includes adjudications of delinquency for acts with  
 4        elements similar to AS 11.41.410;

5                    (2) when legal proceedings for adoption are pending; [,] or  
 6                    (3) when it would not be in the best interests of the children or the  
 7        state.

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

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

12        \* Sec. 16. AS 25.27.190(e) is amended to read:

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

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

24                    INDIRECT COURT RULE AMENDMENT. Section 16 of this Act has the effect of  
 25        changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying  
 26        a support order.

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

29                    TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil  
 30        Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised  
 31        under art. IV, sec. 1, Constitution of the State of Alaska, sec. 16 of this Act takes effect for

1 purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet the two-  
2 thirds vote requirement normally applicable to changing court rules under art. IV, sec. 15,  
3 Constitution of the State of Alaska.

4 \* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

6 **APPLICABILITY.** (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted  
7 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.  
8 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this  
9 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as  
10 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person  
11 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by  
12 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

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

19 \* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to  
20 read:

21 **TRANSITION.** The forgiveness program authorized under AS 25.27.020(f) and (g),  
22 as enacted in sec. 13 of this Act, may not be implemented until the agency has adopted  
23 regulations setting standards and procedures for the program. Regulations under this section  
24 must be adopted within nine months after the effective date of this section.

25 \* **Sec. 21.** This Act takes effect July 1, 2024.

# 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  
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## **Pete Kott** **Speaker of the House**

### **SPONSOR STATEMENT**

#### **SCS CS House Bill 514 (JUD)**

**“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 six 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 \$20,000 or no payments for 24 consecutive 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**

Normally, misdemeanor crimes don't have conspiracy laws as companions to the actual crime. This law was created because there was a need for the public to know that helping a noncustodial parent to avoid their obligation was not in the best interest of the children or society as a whole.

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 or the ability to hide assets 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 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 (\$14 – 75 million) in federal funding for the Child Support Enforcement Division and the Temporary Aid to Needy Family (TANF) block grants.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


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

## MEMORANDUM

May 3, 2004

**SUBJECT:** Child Support Enforcement (SCS CSHB 514(JUD);  
(Work Order No. 23-LS1639E))

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

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

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

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

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

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

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

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

**Section 5.** Makes previous crime of aiding the nonpayment of child support a second degree crime. Modifies some elements related to knowledge and a duty to disclose certain information. Restructures subsection.

**Section 6.** Corrects cross-references for consistency with restructuring under sec. 5.

**Section 7.** Adds "second degree" to the existing misdemeanor penalty provision for aiding the nonpayment of child support.

**Section 8.** Adds cross-reference to a loss or restriction of a recreational license as an additional penalty for aiding the nonpayment of child support. Adds cross-reference to definitions of "child" and "child support."

**Section 9.** Changes the time period for loss or restriction of a recreational license as a penalty for criminal nonsupport.

**Section 10.** Adds to the penalty for aiding criminal nonsupport in the first and second degree the loss or restriction of a recreational license for up to one year. (This is the material cross-referenced in secs. 4 and 8).

**Section 11.** Adds a new subsection to the jurisdiction of the superior court pertaining to enforcement of child support orders consistent with the bill and allowing orders to require an obligor to submit a PFD application.

**Section 12.** Adds to the authority for the agency to issue an order or request a court order in arrearage cases to require a payment plan or work activities for an obligor whose child is the subject of an application for agency aid in collecting the arrearage.

**Section 13.** Adds new subsections requiring the agency to 1) adopt regulations setting standards for forgiveness of an arrearage owed to the state and providing various mechanisms for forgiveness including an agreement; 2) establishes minimum requirements for forgiveness; and 3) sets a maximum percentage for forgiveness of a child support arrearage as specified.

**Section 14.** Adds a circumstance in which the agency may attempt to establish paternity in cases involving incest or rape.

**Section 15.** 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 16.** Adds cross-reference to 42 U.S.C. 666 for periodic modification of child support orders without showing of changed circumstances.

**Section 17.** Describes indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure necessitated by sec. 16 of the bill.

**Section 18.** States that a 2/3 vote is not required for amendment to Rule 90.3.

Representative Pete Kott  
May 3, 2004  
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**Section 19.** 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 20.** Requires regulations to be adopted before implementing sec. 13's forgiveness provisions and within nine months of the effective date of the bill.

**Section 21.** Provides an effective date for the bill.

If I may be of further assistance, please advise.

JMM:lmb  
04-137.lmb



## CRIMINAL STATUTES FOR NON-PAYMENT OF CHILD SUPPORT

Scott Sussman, J.D. and Corey Mather

This chart provides an overview of the criminal statutes for non-payment of child support for the 50 states, District of Columbia, and the Federal Deadbeat Parent Punishment Act. It also provides the maximum penalty, elements of initial crime, and elements necessary to enhance the severity of the crime and penalty. However, this chart does not address the ability of judges to find a non-custodial parent in contempt when they fail to pay child support. It also does not address the actual practices of child support agencies in enforcing the laws summarized in this chart. Finally, it does not address various defenses, such as inability to pay, that non-custodial parents may have when charged with these offenses. **It is important to understand that just because a state has a law does not mean that a child support agency will use these laws.** The various policies on how and whether to enforce these laws vary from state to state and may vary from county to county within a state.

The Center on Fathers, Families, and Public Policy would like to thank the *Charles Stewart Mott Foundation* for their generous support which made this chart possible.

JURISDICTION	ELEMENTS OF INITIAL CRIME	CLASSIFICATION	MAXIMUM PENALTIES	ELEMENTS NECESSARY TO ENHANCE SEVERITY	NON-SUPPORT PENALTY STATUTES
ALABAMA	Intentionally fail to provide support	CLASS A MISDEMEANOR	1 YR AND/OR \$2,000		AL ST s. 13A-13-4/ 13A-5-7& 13A-5-12
ALASKA	Person obligated to support who fails to pay without lawful excuse	CLASS A MISDEMEANOR	1 YR AND/OR \$10,000		AK ST s. 11.51.120/ 12.55.135 & 12.55.035
ARIZONA	Knowingly fail to give reasonable support	CLASS 6 FELONY	1 YR AND/OR \$150,000		AZ ST s. 25-511/ 13-701 & 13-801
ARKANSAS	Fails to provide support	CLASS A MISDEMEANOR	1 YR AND/OR \$1,000		AR ST s. 5-26-401/ 5-4-201 & 5-4-401
		CLASS D FELONY	6 YRS AND/OR \$10,000	(1) LEAVE STATE FOR 30 DAYS W/ INTENT TO AVOID PAYMENT OR (2) PREVIOUS CONVICTION OR (3) OWES \$2,500 OR MORE & AMOUNT IS AT LEAST 4 MONTHS OF SUPPORT	
		CLASS C FELONY	10 YRS AND/OR \$10,000	(1) OWES BETWEEN \$10-25,000	
		CLASS B FELONY	20 YRS AND/OR	(1) OWES GREATER THAN \$25,000	
CALIFORNIA	Willfully omits to furnish without lawful excuse	MISDEMEANOR	1 YR AND/OR \$2,000		CA PENAL s. 270
COLORADO	Willfully fails to provide reasonable support	CLASS 5 FELONY	3 YRS. AND/OR \$100,000		CO ST s. 14-6-101/ 18-1.3-401
CONNECTICUT	Neglects to furnish reasonable necessary support		1 YR		CT ST s. 53-304
DELAWARE	Knowingly fails to give minimal support	CLASS B MISDEMEANOR	6 MONTHS AND \$1,150		DE ST TI 11 s. 1113/ 4205 & 4206
		CLASS A MISDEMEANOR	1YR AND \$2,300	(1) FAIL TO PAY 4 CONSECUTIVE MONTHS OR (2) PREVIOUS CONVICTION	
		CLASS G FELONY	2 YRS	(1) PREVIOUS CONVICTION OF A CLASS A MISDEMEANOR OR (2) FAIL TO PAY 8 CONSECUTIVE MONTHS OR (3) \$10,000 OR MORE	
D.C.	Willfully fail to follow order for support	CRIMINAL CONTEMPT	180 days		DC CODE 46-225.02
FLORIDA	Willfully fails to provide support and previous contempt conviction	MISDEMEANOR OF 1ST*	1 YR AND \$1,000		FL ST s. 827.06/ 775.082, 775.083 & 775.084
		FELONY OF 3RD*	5 YRS AND \$5,000	(1) 4TH AND BEYOND CONVICTION OR (2) OWES \$5,000 OR MORE FOR A YEAR AND PREVIOUS CONTEMPT CONVICTION	
GEORGIA	Willfully & voluntarily abandon	MISDEMEANOR	1 YR AND/OR \$1,000		GA ST 19-10-1/17-10-3
		FELONY	3 YRS	(1) LEAVES STATE OR (2) 3RD CONVICTION	
HAWAII	Knowingly and persistently fail to support	MISDEMEANOR	1 YR OR \$2,000		HRS 709-903/706-663/ 706-640

JURISDICTION	ELEMENTS OF INITIAL CRIME	CLASSIFICATION	MAXIMUM PENALTIES	ELEMENTS NECESSARY TO ENHANCE SEVERITY	NON-SUPPORT PENALTY STATUTES
IDAHO	Willfully omits to furnish food, clothing, etc.	FELONY	14 YRS OR \$300		ID ST § 18-401
ILLINOIS	Willfully refuses to provide support for longer than 6 months or arrears greater than \$5000	CLASS A MISDEMEANOR	1 YR AND/OR \$2,500		IL ST CH 750 s. 16/15; 730 s. 5/5-8-1; 730 s. 5/5-8-3; 730 s. 5/5-9-1
		CLASS 4 FELONY	3 YRS AND/OR \$25,000 & *	(1) 2ND OR MORE CONVICTION; (2) LEAVE STATE TO AVOID PAYMENT & PAYMENT UNPAID FOR 6 MONTHS OR ARREARS \$10,000; OR (3) PAYMENT UNPAID FOR A YEAR OR (4) ARREARS \$20,000 OR GREATER	
INDIANA	Knowingly or intentionally fail to support	CLASS D FELONY	1.5 YRS AND/OR \$10,000		IN ST 35-46-1-3; 35-50-2-7; 35-50-2-6
		CLASS C FELONY	4 YRS AND/OR \$10,000	ARREARS OF \$15,000 OR MORE	
IOWA	Fails or refuses to support	CLASS D FELONY	5 YRS AND \$7,500		IA ST s. 726.5; 902.9
KANSAS	Failure, neglect, or refusal to provide support to child in necessitous situation	LEVEL 10 FELONY	7 MONTHS AND/OR \$100,000		KS ST s. 21-3603; 21-4704; 21-4503a
KENTUCKY	Persistently fail to provide support when one reasonably is able or be delinquent in paying full obligation for 2 or more months	CLASS A MISDEMEANOR	1 YR. AND/OR \$500		KY ST s. 530.050; 532.090; 532.060; 534.040; 534.03
		CLASS D FELONY	5 YRS AND/OR \$1,000-\$10,000	(1) ARREARS OF \$1,000 OR (2) 6 MONTHS WITHOUT PAYMENT OR (3) CHILD IN DESTITUTE CIRCUMSTANCES	
LOUISIANA	Desertion or intentional non-support leaving child in necessitous situation		6 MONTHS AND/OR \$500		LA R.S. 14:74
MAINE	Knowingly fails to provide support and is able by means of property or capacity for labor	CLASS E	6 MONTHS AND/OR \$1,000 AND MAY PLACE ON PROBATION UNTIL YOUNGEST CHILD IS 18		ME ST T. 17-A s. 552; 17-A s. 1252; 17-A s. 1301
MARYLAND	Willfully fail to provide support	MISDEMEANOR	3 YRS AND/OR \$100		MD FAMILY s. 10-203
MASSACHUSETTS	Willfully fail to comply with order of support yet is financially able or has such earning capacity	FELONY	5 YRS AND/OR \$5,000		MA ST 273 s. 1; 273 s. 15; 273 s. 15A
			10 YRS AND/OR \$10,000	(1) LEAVE THE STATE WITHOUT SUPPORT CHILD OR (2) ENTER STATE WITH CHILD IN ANOTHER STATE WITHOUT SUPPORT CHILD	
MICHIGAN	Without providing, or refusing to provide necessary and proper help, food, etc. Refusing to appear in a hearing or trial as ordered by the court	FELONY	3 YRS		MI ST 750.161 MI ST 750.165
			4 YRS AND/OR \$1,000		
MINNESOTA	Knowingly omits and fails to support and there has been an attempt to hold in contempt	MISDEMEANOR	90 DAYS AND/OR \$700		MN ST s. 609.375
		GROSS MISDEMEANOR	1 YR AND/OR \$3,000	(1) VIOLATION FOR 90-180 DAYS OR (2) ARREARS OF 6-9 TIMES MONTHLY ORDER	
		FELONY	2 YRS AND/OR \$5,000	(1) VIOLATION FOR 180 OR MORE DAYS OR (2) ARREARS OF 9 OR MORE TIMES MONTHLY ORDER	

JURISDICTION	ELEMENTS OF INITIAL CRIME	CLASSIFICATION	MAXIMUM PENALTIES	ELEMENTS NECESSARY TO INCREASE SEVERITY	NON-SUPPORT PENALTY STATUTES
MISSISSIPPI	Desert or willfully neglect or refuse to support	FELONY	5 YRS AND/OR \$500		MS. ST. # 97-5-3
			3 YRS AND/OR \$10,000	(1) 2ND OR SUBSEQUENT CONVICTION	
MISSOURI	Knowingly fails to provide adequate support	CLASS A MISDEMEANOR	1 YR AND/OR \$1,000		MO ST 568.040; 558.011; 560.011; 560.016
		CLASS D FELONY	5 YRS AND/OR \$5,000	(1) FAILS TO PAY IN 6 OUT OF 12 MONTHS OR (2) ARREARS OF \$5,000 OR MORE	
MONTANA	Fails to provide support that can and knows legally obligated to provide		6 MONTHS AND/OR \$500		MT ST 45-3-621
			10 YRS (AT LEAST 8 OF 10 YEARS COURT MUST PLACE ON PROBATION) AND/OR \$5,000	(1) FAILS TO PAY 6 OR MORE MONTHS OR (2) FAILS TO PAY 6 MONTHS WORTH OF SUPPORT.	
		AGGRAVATED	10 YRS AND/OR \$50,000	(1) LEAVE THE STATE OR (2) PREVIOUS CONVICTION	
NEBRASKA	Intentionally fails, refuses, or neglects to support	CLASS II MISDEMEANOR	6 MONTHS AND/OR \$1,000		NE ST s. 28-706; 28-105; 28-106
		CLASS IV FELONY	5 YRS AND/OR \$10,000	(1) IF VIOLATION OF COURT ORDER	
NEVADA	Knowingly fails to provide support	MISDEMEANOR	6 MONTHS AND/OR \$1,000		NV ST 201.020; 193.150; 193.150
		CLASS C FELONY	3 YRS AND/OR \$10,000	(1) ARREARAGE OF \$10,000 OR MORE OR (2) PREVIOUS CONVICTION & ARREARS OF \$5,000 OR MORE	
NEW HAMPSHIRE	Knowingly fails to provide support	CLASS A MISDEMEANOR	1 YR AND/OR \$2,000		NH ST s. 639-4; 651:2
		CLASS B FELONY	7 YRS AND/OR \$4,000	(1) ARREARAGE UNPAID FOR 1 OR MORE YRS OR (2) ARREARAGE MORE THAN \$10,000 OR (3) PREVIOUS CONVICTION OR (4) PREVIOUS CONVICTION FOR SIMILAR OFFENSE BY ANOTHER STATE'S LAW AND ARREARAGE UNPAID FOR 1 OR MORE YRS	
NEW JERSEY	Willfully fails to provide support that knows legally obligated to provide and can provide	CRIME OF 4TH°	18 MONTHS AND/OR \$10,000		NJ ST 2C:24-5; 2C:43-3; 2C:43-6
NEW MEXICO	Abandoning or failing to provide support while having the means to provide	4TH° FELONY	18 MONTHS AND/OR \$5,000		NM ST s. 30-6-2; 31-18-15
NEW YORK	Fails or refuses to support	CLASS A MISDEMEANOR	1 YR AND/OR \$1,000		NY PENAL # 260.05; 260.06; 70.00; 70.15; 80.00; 80.05
		CLASS B FELONY	4 YRS AND/OR \$5,000	(1) PAST CONVICTION WITHIN PAST 3 YEARS	
NORTH CAROLINA	Willfully neglect or refuse to provide adequate support	CLASS 2 MISDEMEANOR	30 DAYS AND/OR \$1,000		NC ST s. 14-322; 15A-1340.23; 49-2 NC ST s. 14-322.1; 15A-1340.17
		CLASS 1 MISDEMEANOR	45 DAYS AND/OR FINE IN DISCRETION OF COURT	(1) PREVIOUS CONVICTION	
		CLASS 1 FELONY	8 MONTHS AND/OR FINE IN DISCRETION OF COURT	(1) WILLFULLY ABANDON FOR 6 MONTHS AND (2) WILLFULLY REFUSE TO GIVE ENOUGH SUP. AND (3) CONCEAL LOCATION TO AVOID OBLIGATION	

JURISDICTION	ELEMENTS OF INITIAL CRIME	CLASSIFICATION	MAXIMUM PENALTIES	ELEMENTS NECESSARY TO ENHANCE SEVERITY	NON-SUPPORT PENALTY STATUTES
NORTH DAKOTA	Wholly abandons or willfully fail to give food, shelter, clothing, and medical attention	CLASS C FELONY	5 YRS AND/OR \$5,000		ND ST 14-07-13; 12.1-32-01 ND ST 12:1-37-01
	Willfully fails to pay ordered amount of support	CLASS B MISDEMEANOR	90 DAYS AND/OR \$1,000		
		CLASS A MISDEMEANOR	1 YR AND/OR \$2,000	(1) ARREARAGE OF \$1,000-\$2,000 OR MORE OR ARREARAGE 3-6 TIMES THE MONTHLY CHILD SUPPORT ORDER	
		CLASS C FELONY	5 YRS AND/OR \$5,000	(1) ARREARAGE OF \$2,000 OR MORE OR ARREARAGE 6 OR MORE TIMES THE MONTHLY CHILD SUPPORT ORDER	
OHIO	Abandon or fail to give court ordered support	MISDEMEANOR OF 1ST*	6 MONTHS AND/OR \$1,000		OH ST s. 2919.21; 2929.21; 2929.14; 2929.18
		FELONY OF 5TH*	12 MONTHS AND/OR \$2,500	(1) PREVIOUS CONVICTION OR (2) FAIL TO PAY 26 OUT OF 104 WEEKS	
		FELONY OF 4TH*	18 MONTHS AND/OR \$5,000	(1) PREVIOUS 5TH* FELONY CONVICTION	
OKLAHOMA	Willfully omit to give necessary food, shelter, monetary child support, etc.	MISDEMEANOR	1 YR AND/OR \$500		OK ST T: 21 s. 852; 21 s. 10
		FELONY	4 YRS AND/OR \$5,000	(1) NO CHILD SUPPORT PAYMENT FOR 1 YR OR (2) ARREARS MORE THAN \$1,000 OR (3) PREVIOUS CONVICTION OR (4) LEAVE STATE TO AVOID PAYING	
OREGON	Refuses or neglects to give support	CLASS C FELONY	5 YRS AND/OR \$100,000		OR ST s. 163.555; 161.605; 161.625
PENNSYLVANIA	Willfully fails to comply with an order when one is financially able to do so	SUMMARY OFFENSE	90 DAYS AND/OR \$300		PA ST 23 P.S. s. 4354; 18 s. 1105; 18 s. 1101
RHODE ISLAND	Abandon, leaves in danger of becoming a public charge, or neglects or refuses to give support according to his or her means	MISDEMEANOR	6 MONTHS		RI ST s. 11-2-1; RI ST s. 11-2-1.1
		FELONY	5 YRS	(1) ARREARAGE OF \$30,000 OR MORE AND WILLFUL FAILURE TO MAKE ANY SUBSEQUENT PAYMENT WHILE HAVING THE MEANS TO DO SO OR (2) 3 YRS OF WILLFULLY MAKING NO PAYMENTS AND ANY SUBSEQUENT FAILURE TO MAKE ANOTHER PAYMENT	
SOUTH CAROLINA	Abandon or fail to provide reasonable support	MISDEMEANOR	1 YR AND/OR \$1,500		SC ST s. 20-7-90
SOUTH DAKOTA	Intentionally omits to give food, clothing, shelter, etc.	CLASS 1 MISDEMEANOR	1 YR AND/OR \$1,000		SD ST 25-7-16; 22-6-1; 22-6-2
		CLASS 6 FELONY	2 YRS AND/OR \$2,000	(1) DURING A VIOLATION, LEAVE STATE AND (2) GONE FOR 30 DAYS	
TENNESSEE	Fails to provide support that one can and knows	CLASS A MISDEMEANOR	1 YR AND/OR \$2,500		TN ST s. 39-15-101; 40-35-111
		CLASS B FELONY	5 YRS AND/OR \$5,000	(1) LEAVE OR REMAIN OUTSIDE OF THE STATE TO AVOID PAYING OR (2) PREVIOUS CONVICTION	
TEXAS	Intentionally or knowingly fail to give support or intentionally or knowingly fail to give support under a court order	STATE JAIL FELONY	2 YRS AND/OR \$10,000		TX PENAL s. 25.05; 12.35

JURISDICTION	ELEMENTS OF INITIAL CRIME	CLASSIFICATION	MAXIMUM PENALTIES	ELEMENTS NECESSARY TO INCREASE SEVERITY	NON-SUPPORT PENALTY STATUTES
UTAH	Knowingly fails to provide support when child is in needy circumstances or would be but for source other than the defendant	CLASS A MISDEMEANOR	1 YR AND/OR \$2,500		UT ST s. 76-7-201; 76-3-204; 76-3-203; 76-3-301
		FELONY OF 3RD	3 YRS AND/OR \$5,000	(1) PREVIOUS CONVICTION OR (2) COMMITTED OFFENSE WHILE RESIDING OUTSIDE OF UTAH OR (3) COMMITS CRIME 18 OUT OF 24 MONTHS OR (4) ARREARAGE IN EXCESS OF \$10,000	
VERMONT	Desert or willfully neglect or refuse to support	MISDEMEANOR	2 YRS AND/OR \$300		VT ST T. 15 s. 202
VIRGINIA	Desert or willfully neglect or refuse or fail to support the child being in necessitous circumstances	MISDEMEANOR	1 YR AND/OR \$1,000		VA ST s. 20-61
WASHINGTON	Willfully omit to give necessary food, clothing, shelter, or medical attendance	GROSS MISDEMEANOR	1 YR AND/OR \$5,000		WA ST 26.20.035; 9A.20.021
WEST VIRGINIA	Permanently fail to give support that one can reasonably provide or delinquent in meeting full obligation of court order for 6 or more months	MISDEMEANOR	1 YR AND/OR \$1,000		WV ST.s. 61-5-29
		FELONY	3 YRS AND/OR \$1,000	(1) ARREARAGE OF NOT LESS THAN \$8000 OR (2) 12 CONSECUTIVE MONTHS W/O PAYMENT	
WISCONSIN	Intentionally fails for less than 120 consecutive days to give child support	CLASS A MISDEMEANOR	9 MONTHS AND/OR \$10,000		WI ST 948.22; 939.51; 939.50
		CLASS I FELONY	3.5 YRS AND/OR \$10,000	(1) INTENTIONALLY FAILS FOR 120 OR MORE CONSECUTIVE DAYS TO PROVIDE CHILD SUPPORT	
WYOMING	Initially fails or refuses or neglects to give adequate support	MISDEMEANOR	6 MONTHS AND/OR \$750		WY ST.s. 20-3-101
		MISDEMEANOR	1 YR AND/OR \$1,000	(1) PREVIOUS CONVICTION OR (2) SUPPORT ORDERED BY COURT AND FAILURE TO PAY WITHIN 60 DAYS AFTER PAYMENT DUE	
	Knowingly causes or contributes to the endangering of the child's life or health by violating a duty of support	MISDEMEANOR	1 YR AND/OR \$1,500		WY ST s. 6-4-403
FELONY	5 YRS AND/OR \$5,000	(1) PREVIOUS CONVICTION FOR OFFENSE			

JURISDICTION	ELEMENTS OF INITIAL CRIME	CLASSIFICATION	MAXIMUM PENALTIES	ELEMENTS NECESSARY TO ENHANCE SEVERITY	NON-SUPPORT PENALTY STATUTES
U.S.A. (FEDERAL DEAD-BEAT PARENT PUNISHMENT ACT)	Willfully fail to provide support for a child who resides in another state if obligation unpaid for a year or is in amount greater than \$5,000	MISDEMEANOR	RESTITUTION IN AMOUNT OF ARREARS AND/OR 6 MONTHS		18 USC s. 228
		FELONY	RESTITUTION IN AMOUNT OF ARREARS AND/OR 2 YEARS	(1) TRAVEL IN INTERSTATE OR FOREIGN COMMERCE WITH INTENT TO AVOID OBLIGATION IF IT IS UNPAID FOR A YEAR OR IS IN AMOUNT GREATER THAN \$5,000 OR (2) WILLFULLY FAIL TO PROVIDE SUPPORT FOR A CHILD WHO RESIDES IN ANOTHER STATE IF OBLIGATION UNPAID FOR 2 YEARS OR IS IN AMOUNT GREATER THAN \$10,000 OR (3) PREVIOUS CONVICTION OF INITIAL CRIME	

\* Fine may vary and be increased as provided in IL ST CH 750 s. 16/15 based on amount of arrears

# LEGISLATIVE RESEARCH REPORT

DECEMBER 17, 2003



REPORT NUMBER 04.070

## CRIMINAL NONSUPPORT OF CHILDREN

PREPARED FOR REPRESENTATIVE PETE KOTT

BY PATRICIA YOUNG, MANAGER

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

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

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

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

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

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

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

**Child Support Enforcement Program of Criminal Non-support**

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 14-8-101	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.



## Summary of the Administration for Children and Families

### Region I, II & III Third Meeting on Managing Arrears

April, 2003

The Summary reflects state/non-profit-organization arrears management updates and recorded notes of discussions held at the September 2002 ROI, II & III Third Meeting on Managing Arrears. The views expressed in this summary are those of the participants. This summary is not to be considered as an official policy document of the Department of Health and Human Services or its agencies and it does not necessarily reflect the views of HHS or its interpretation of Federal law. For more information, please contact Jens Feck, ACF ROI, at [jfeck@acf.dhhs.gov](mailto:jfeck@acf.dhhs.gov).

### ACF ROI, II & III: THIRD MEETING ON MANAGING ARREARS

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THE THIRD ROI, II & III MEETING ON MANAGING ARREARS

## **Updates on State and Federal Activities, Good Ideas and & Next Steps**

**INTRODUCTION:** Region I, II and III Child Support Directors, IV-D managers and their private and Federal partners convened the third *Child Support Arrears Management* meeting on September 22, 2002, in Crystal City, Virginia. The meeting carries on a progressive discussion that was initiated in Philadelphia in April 2001. It's agenda reflects the States' continued determination to share *best ideas* and proven initiatives, to discuss the pros and cons of specific policies and practices, and to consider new and innovative projects that support the prevention of arrears accumulation.

The meeting opened and closed with remarks by Joanne Krudys, ROII CSE program manager, and Louis Katz, ACF Assistant Regional Administrator. Jens Feck, ROII CSE program specialist, moderated the discussions and summarized the outcome. The participants, representing seven States, the Commonwealth of Puerto Rico and the Virgin Islands, invited the IV-D Directors from California and Colorado and the Urban Institute to present respective overviews of California's Collectability Study and Colorado's Arrears Forgiveness Study. OCSE provided an update on the *Low-Income Non-Custodial Parent* study being conducted by Policy Studies, Inc. and the Center for Policy Research. The Center for Law and Social Policy offered a thought-provoking overview of arrears management issues.

Participants unanimously agree that the key to successful arrears management is the avoidance of arrears accumulation. The general consensus is that arrears are best avoided if States: (1) limit the number of default orders and establish equitable obligations; (2) limit the amount of built-in arrears at the time of order establishment; and (3) immediately intervene when current payments are not made. It is laudable that a great majority of the policies and procedures outlined in this summary are designed to realize one or more of these three objectives.

ROI, II and III States intend to push forward with existing and new initiatives. Looking ahead, participants anticipate that current policies may need to alter in response to new concerns, economic fluctuations and other external factors, and existing projects may have to be redesigned based on the experience of future successes or failures. It is precisely because of this shifting and evolving nature of the topic that meeting participants see a significant benefit in the continuation of tri-regional arrears management discussions – with an eye on the eventual turnaround in arrearage accumulation. Last but not least, participants hope that the theoretical and practical outcomes of their meetings will continue to support and encourage arrears management initiatives across the nation.

This summary and previous summaries (April and November 2001) are available on the OCSE Website at [www.acf.hhs.gov/programs/cse/pubs/2002/reports/arrears](http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/arrears).

## **STATE UPDATES**

The following section outlines recent *arrears management* activities in ACF Region I, II and III jurisdictions (consisting of 16 States.) The activity reports summarize planned and on-going policies, procedures and practices that, to varying degree, update the reports

cited in the December 2001 summary (see *Northeast Hub Follow-Up Meeting on Managing Arrears*, starting at page 8.) The reports reflect progress to date, as well as revisions in thinking driven by interim evaluations, these regional discussions and changing conditions. The State activities are grouped, to the extent possible, under the previously established *Discussion Framework* categories: Order Establishment, Prevention and Early Intervention and Accrued Arrears Management. (States may update the projects and policies cited below via the *Arrears Management Best Practices – Good Ideas Implementation Update* forms. For more information and copies of the forms, please contact Jens Feck at [jfeck@acf.hhs.gov](mailto:jfeck@acf.hhs.gov).)

### **Order Establishment:**

**Delaware – The Title IV-D Agency (IV-D) is abandoning its past policy of attempting to fit all low-income non-custodial parents (NCP/obligor) into one child support guideline *box*. Pursuant to a new policy, the State will attempt to treat low-income NCPs on an individual basis, using the factors and merits particular to each individual case to fashion a more appropriate support obligation.**

Maryland – The State has adopted a new policy with respect to changes in the physical custody (or the household) of a child receiving support. The IV-D Agency now redirects payments or halts the obligation immediately upon receipt of evidence of a change in the child's custody. Prior to the new policy, the flow of money did not change until IV-D had evidence of a legal change in custody. Under the new policy, action to change legal custody now follows the administrative act to redirect the money.

West Virginia – The State also has a *moving child* policy (see Maryland above.) The new caretaker is asked to sign an affidavit alleging physical custody of the child, notice of which is provided to the current parties in the case. If no party files an objection within a ten-day appeals period, the money is redirected to the new caretaker without the need for further court or administrative action.

Maryland – The State realizes that its Child Support Guidelines need to be reviewed and possibly modified. The guidelines have not been changed since 1988, and, as is true for many other jurisdictions, the somewhat antiquated guidelines may no longer be appropriate in today's environment. IV-D recommends that the guidelines are more equitable when applied to low-income NCPs – this is partially in recognition of its arrears-bucket analysis that shows that 60% of all debt is owed by parents who earn less than \$20,000 per year. (Note: California suggests that it is very important to establish clear guidelines and specific policies prior to treating low-income NCPs in a manner substantially different from the general NCP population in order to anticipate and defuse the possibility of constitutional challenges.)

Connecticut – The State, in default cases, heretofore calculated the retroactive support obligation based on the TANF grant amount (a policy that could be subject to legal challenges based on the fact that the retroactive obligation is not being established

pursuant to the actual or implied ability to pay.) The obligation, both current and retroactive, will soon be established on the imputed ability to earn minimum wage at forty hours or less. The State also intends to revise the child support guidelines to ensure that they treat low-income NCPs equitably. However, it is unlikely that the revised guidelines will include a NCP self-reserve amount (the State's TANF time-limit is 21 months – if a self-reserve amount is established, it may result in scenarios where the CP receives no basic TANF grant, but the NCP benefits from the self-reserve.)

Connecticut – IV-D is reviewing (and potentially revising and improving) all documents and letters that are used during the initial IV-D/NCP contact phase. IV-D's goal is to draft communications that are customer friendly, lead to personal contact with the NCP, and result in better income and asset information. For example, previously used financial forms were eight pages in length, and not surprisingly, seldom completed or returned by the NCP. New forms try to overcome such response barriers, and all of the new forms contain a built-in fatherhood-friendly message.

Connecticut – The State currently offers a four-month window during which the NCP can challenge a default obligation based on new, accurate and admissible evidence of actual income. This window will now be extended to one year, identical to the State's time period otherwise applicable to general civil defaults.

#### **Prevention and Early Intervention:**

New Jersey – In a judicial IV-D environment, it is critical that court orders are entered into the IV-D automated system as soon as possible in order to minimize initial arrears accumulations through immediate IV-D enforcement. IV-D is addressing the issue through collaboration with the court system and the joint development of corrective actions. For example, in Hudson County, court clerks have the ability to enter orders directly into the IV-D database. Depending on the County, anywhere from 35-58% of the orders is entered into the database within eight days. The goal is that at least 60% of all orders is entered within eight days.

New Jersey – IV-D concluded a six-month pilot *Bench Card* project that offers a Judge immediate basic information about Welfare-to-Work (WtW) and similar employment services currently available to non-custodial parents. Via the project, every case in arrears is offered the services of a One-Stop employment office. Initial data indicated that a significant number of cases meeting the broad eligibility criteria had long-standing orders and inaccurate arrears balances (in part, complicating the process of establishing WtW eligibility.) In response, IV-D changed eligibility criteria by limiting cases to those that were less than two years old, or that came before the court pursuant to a bench warrant. This newer and more circumscribed caseload, with correspondingly more accurate arrears balances and other relevant data elements, is now being subjected to an aggressive push into work programs. To supplement the project, IV-D has issued letters to NCPs in arrears to directly provide information about relevant employment services.

New Jersey – IV-D has entered into a Memorandum of Understanding with the Department of Corrections to offer a Nurturing Parent Curriculum to inmates, beginning six months prior to an inmate's release. The project is conducted in partnership with the Departments of Labor, Education, Parole and other relevant entities. Prior to release, the inmates develop a *Complete Family Plan* that addresses employment, order adjustment, visitation and other family issues. 600 inmates are expected to complete the program in 2002.

Massachusetts – IV-D also considers the expeditious entry of court orders into the IV-D system an absolute priority. The State follows a 48-hour timeframe policy for court-to-IV-D-system referrals. However, court orders drafted by private attorneys often do not contain minimum IV-D data elements, and are seldom filed within timeframe requirements. Collaboration with and training of members of the Bar Association are options under consideration that could lead to improvements in the quality and timeliness of these referrals.

Massachusetts – IV-D has instituted an aggressive caseworker-driven enforcement policy that focuses on the eight-week period immediately after order establishment. If an obligor fails to comply with the order during this period, the case is immediately referred back to the court for further action. This policy establishes up-front the seriousness of the obligation, and, if appropriate, it could facilitate a more timely review of the appropriateness of the obligation. IV-D finds that the immediate focus on new cases is much more cost-effective and productive than a focus on older cases with large arrearages. In further support of this policy, IV-D cites a direct correlation between the time that a case was last subjected to a contempt hearing and that case's payment rate.

Massachusetts – The State's Department of Corrections offers a grant based program to inmates at the time of inmate processing, a so called "happy hour", that encompasses a IV-D presentation with focus on order modifications. IV-D services include the provision of information about procedures to initiate UIFSA-type modifications that do not require the inmate's presence in court. The State has approximately 22,000 inmates who owe more than \$15 million in arrears. Empirical evidence shows that the program reduces the inmates' anxiety with respect to their support obligations.

Puerto Rico – The Commonwealth's Department of Labor has established a *Quick Response Task Force* that reaches out to about-to-be displaced or laid-off workers, preferably at the site of employment. The task force includes representatives from IV-D and WtW entities. To date, more than 1,800 employees in 48 companies have received comprehensive services that address the impending loss of employment. IV-D offers downward modification services to non-custodial parents, as well as upward modification services to custodial parents. (New Jersey expressed interest in the project, and may consider expanding its existing contact with employers relative to wage withholding and medical support to include WtW and child support issues.)

Puerto Rico – IV-D, in cooperation with the Department of Corrections (which allows IV-D access to its database), provides Responsible Fatherhood and IV-D information to

incarcerated NCPs. While some inmates are able to and do pay support, others are offered appropriate information about modification services and other customer rights (so far, more than 390 inmates have received services.) A theatre group has produced and performs vignettes that provide culturally sensitive fatherhood messages. IV-D intends to collaborate with private prison-rights attorneys to ensure continuation of the program. (Inmates who are incarcerated pursuant to contempt actions are separated from the general prison population, significantly easing IV-D's access to these individuals. However, since findings of contempt usually imply a willful failure to pay support, it is not suggested that this group of inmates would necessarily receive modification services.)

Delaware – IV-D points out that arrears often accumulate solely based on how a State conducts its business. For example, the State used to assign cases to caseworkers based on the type of case scenario (interstate, intrastate, etc.) This meant that when a case type switched from intrastate to interstate, a new caseworker would have to be assigned. The transfer period, ranging from one to two weeks, resulted in corresponding or longer delays and inaction with respect to worker-driven enforcement methods. IV-D has now issued a new policy that assigns cases to the caseworker for the life of the case.

Maryland – IV-D is in the process of establishing an electronic interface with the Department of Corrections in order to identify WtW eligible NCPs. Identified candidates would be encouraged to apply and qualify for pre-release employment services.

Connecticut – The State may soon address the circumstances of incarcerated NCPs. IV-D will propose legislation that mandates the automatic suspension of the support obligation if the NCP's sentence is in excess of six months. The automatic suspension would not apply if an interested party can provide evidence that the NCP has sufficient assets with which to pay support. Suspending the obligation by operation of law appears to have two immediate benefits: no one needs to file for or conduct modification hearings, and bypassing the court's discretionary powers may ensure more uniform application.

(There is no consistency with respect to policy on incarcerated NCPs. Connecticut surveyed other IV-D directors on this issue – see *Addendum A*. Thirty-one States responded. The tabulated response indicates that approximately half of the States are willing to provide some type of modification service for inmates, and half are not.)

#### **Accrued Arrears Management:**

Massachusetts – IV-D posts on its website the names and last known location (City and State) of obligors who owe more than \$50,000 in unpaid support if they have not made a payment in 6 months. Specific arrears balances are not published. These delinquent obligors are advised that they can have their names removed if they make regular payments equivalent to one month's worth of their current support, plus an additional 25% toward the arrears balance. The list is updated monthly. Massachusetts plans to add names of those owing lesser amounts in the near future. (The Virgin Islands initiated a similar project in 1990, publishing the names of obligors who owed more than \$5,000, but only after obligors were given the opportunity to enter into payment plans. The

project was abandoned in 1995, when an obligor who did not owe arrears was inadvertently included on the published list.)

Massachusetts – The State relies heavily on the License Revocation process to collect arrears. Through this process, more than \$1 million has been collected for more than a thousand IV-D cases. IV-D also reports that the license revocation process significantly contributes to case-clean-up efforts, correcting case data via the appeals process and often identifying open cases that meet closure requirements. (E.g., in response to a plan to suspend approximately 1,750 professional licenses, 1,000 obligors paid, 250 licenses were suspended and 500 cases were closed.)

Massachusetts – The State has been charging interest and penalties since 1998. However, IV-D is primarily using these charges as a leverage to collect arrears. For example, interest charges can be waived if the obligor pays at least 75% of the current obligation and if he is making payments towards arrearages. IV-D reports that many obligors willingly pay off arrears in exchange for a full waiver of all interest and penalties. Surprisingly, or not so, many obligors in TANF cases have taken advantage of the offer, at times making \$10,000 to \$40,000 lump-sum payments to satisfy arrears. (Some IV-D managers and staff may believe that, generally speaking, TANF obligors do not have the resources or means to satisfy accumulated arrears – as Massachusetts demonstrates, that belief does not necessarily reflect reality in every jurisdiction.)

Massachusetts – IV-D, as part of its overall staff training efforts, encourages front-line staff to use every contact and conversation with a NCP as an opportunity to encourage that parent to enter into a payment plan or to otherwise satisfy arrears balances.

Pennsylvania – IV-D uses its customer service staff to reach out to NCPs. The customer service workers, who normally receive and answer customer calls and complaints, are assigned to an enforcement caseload every Wednesday night. At that time, the workers use their communication skills to call obligors and encourage them to enter into payment plans or otherwise satisfy arrearages. IV-D estimates that for every dollar in labor costs it collects about \$12 in arrears – a very impressive cost/effectiveness ratio.

Virgin Islands – IV-D has recently initiated an *arrears clean-up* project in conjunction with its automated old-system-to-new-system data-conversion project. While very labor intensive, the project has already identified more than \$6 million in erroneous arrearages. The project includes notice to each obligor of the newly calculated arrears balance, and information about the right to request a review hearing. The experience so far has been that few obligors decide to challenge the newly calculated but otherwise alleged balance. As enforcement methods such as license revocation are initiated based on the new arrears balances (and some yet to be reviewed accounts), it is expected that additional appeals will result in additional balance adjustments – and possibly some case closures.

Delaware – The State is also in the process of analyzing its arrears bucket. IV-D staff is currently adjusting arrears balances that may have been incorrectly calculated by the system or are incorrect due to conversion errors. Both the projects in the Virgin Islands

and in Delaware point to the benefits of including an arrears analysis in the initial phase of any arrears management effort. The analysis will help to define the true extent of the problem, ensure that future enforcement steps are appropriate, and maximize the identification of cases eligible for closure.

West Virginia – The State has a limited Amnesty Program that waives interest in exchange for payment of support. The program has been well received, and it was recently extended by legislative action. Under the program, all interest is waived if the non-custodial parent pays off all arrears and pays all current support for at least one year. Any waiver action requires the custodial parent's prior consent since IV-D does not separately account for interest that is due to the State or the custodial parent (i.e., interest due is co-mingled into one account.)

Delaware – The State is considering a pilot *Support Arrears Elimination Program*. The pilot would forgive a percentage of arrears in exchange for compliance with the current obligation. For example, arrears would be reduced by 20% if the obligor stays current for four months. Arrears would be reduced by 40% if the obligor stays current for eight months. The pilot project, if implemented, will only apply to a targeted group of non-custodial parents (e.g., low-income and/or previously incarcerated parents), and would only extend to arrears owed to the State. Final terms and parameters are still being negotiated with stakeholders. Legal authority is apparently not an issue since the Attorney General already has the power to compromise state debt.

Maryland – The State's *Arrears Leveraging Program* is already two years old. The program's success is credited to IV-D's extensive partnering with all relevant Community Based Organizations (CBO), and the program's dual focus on collecting support and putting a dad back into the life of his children. The program targets low-income NCPs who are willing to pay support, and it trades the reduction of bad debt (i.e., arrears unlikely to be collected) in exchange for good behavior. The program initially leads to a debt reduction of 25%, with additional debt reductions possible after a six-month program compliance period. For the first 124 participants, the State collected approximately \$340,000 in current support and leveraged approximately one-third of the \$1.3 million in arrears available for leveraging. Outreach for the program and IV-D in general has been accomplished through a collaboratively produced six-video public television series. Excerpts of the excellent and powerful video were viewed by meeting participants. Some commented that the video conveyed a clear and important message that the Leveraging Program is not open to *dead beats* who intend to cheat the system.

(Maryland points to the importance of ensuring that your CBO partners clearly understand that not every person who qualifies for CBO services is necessarily a good or appropriate candidate for arrears leveraging. CBOs must realize that Maryland's eligibility criteria for leveraging are very narrowly construed, and that individuals who fail to pay merely to qualify under the program are certainly not the candidates IV-D is looking for. However, it is doubtful that a lack of eligible candidates will ever be an issue, given that 60% of Maryland's debt is owed by NCPs who earn less than \$20,000.)

Maryland – The State is considering implementation of a *Debt Expungement Program* in the event that the *Arrears Leveraging Program* is ultimately judged to be successful (see above synopsis of arrears leveraging program.) The *Expungement Program's* initial focus is on erasing support debt that may have accumulated during a NCP's incarceration – but the program may expand to include other mitigating circumstances. The program, if implemented, will initially apply only to TANF debt but may expand to non-TANF debt. Prior to an expansion to non-TANF debt, the State will probably need to enact legislation that establishes a legal presumption that an incarcerated person has a limited and fixed (in terms of dollars) capacity to pay support.

Connecticut – The State enacted an Arrears Adjustment statute effective as of June 2001. Implementing regulations are currently being drafted. NCPs may be required to meet the following criteria to be eligible for adjustments:

1. Prior to enrollment, no payments to arrears during the previous year.
2. Satisfactory progress in a fatherhood program, as certified by IV-D.
3. Either living with children or paying current support (payment for minimum of 10 out of 12 months.)

NCPs will receive a 5% adjustment for participation in the fatherhood program, an additional 25% adjustment if current support was paid for 10 out of 12 months, and an additional 5% for steady employment during the previous year. Additional adjustments may be made for payment of current support in future years, or for increasing the number of steady-employment hours.

## **COLORADO'S ARREARS FORGIVENESS STUDY**

Colorado's caseload represents approximately one percent of the national caseload. In contrast, the State's arrears total represents approximately 2.1 percent of the nation's total arrearage. The discrepancy between these percentages, and the corresponding public policy implications, called for a response. IV-D initiated the response with an analysis of the composition of its arrears bucket (partially financed by an OCSE grant.) Highlights of the analysis are as follows:

- Approximately half of arrears are owed to the government (State and Federal).
- Approximately half of arrears are owed to custodial parents.
- The arrears total is approximately \$1.1 billion.
- Incarcerated non-custodial parents only owe approximately \$1 million in arrears.

- Interest due represents only 4.6% of total arrears (note that not all counties charge interest.)
- One-third of non-custodial parents had more than one child support order.
- The average monthly earnings of a non-custodial parent in arrears are \$1,393.
- The average arrears case is 7 years old and has an arrears balance of \$14,000.

IV-D then considered operational factors that might have had a bearing on arrears accumulation and the below-average payment rate to current support. These factors include: (1) that support obligations are retroactive to the birth of the child or the date of the parents' separation, and (2) that the child support guidelines date back to 1991, possibly contributing to the establishment of less than appropriate order amounts in more recent years. (The guidelines were reviewed and modified in 2002, effective January 2003, and they now include a \$50 minimum order provision and a self-support reserve that attempts to equalize the effects of poverty.)

The accumulated data and research led to the first point of study: Does the suspension of retroactive child support result in better payment rates for current support? The parameters of the question address the impact of the "retroactive-to-birth" provision (and the corresponding potential for substantial amounts of retroactive support obligations) in terms of the popular viewpoint that the presence of large arrears has a discouraging affect upon the payment of current support.

To answer the question, IV-D established an experimental group (who were not charged retroactive support) and a control group (who were charged retroactive support pursuant to standard practice) under the umbrella of an Arrears Forgiveness project. No participant in either group was aware of the study, and the experimental group did not know that they received preferential treatment. The outcome of the study is as follows: The presence of or lack of retroactive support had no calculable influence on the payment of current support, as measured at 6 month intervals during the two year project period.

IV-D is not implying that the result of its study would necessarily be the same had it been hosted by "Lets Make a Deal" – that is, had the NCP knowingly committed to the payment of current support in exchange for the forgiveness of retroactive support. It is also agreed that the above study did not differentiate between cases with large and small arrearages. Arguably, this lack of segregation eliminates the possible influence of the size of the arrears amount as a potential outcome factor upon the payment rate of current support. Meeting participants therefore concur that similar studies conducted under somewhat altered criteria and controls may generate different outcomes and divergent conclusions.

More recently, Colorado initiated a new Arrears Forgiveness project that is based on the give-and-take concept. IV-D targeted NCPs with arrears of \$1,500 or higher and approached them via letters (on less-intimidating fatherhood program letterheads) that

encouraged active participation in the project. The offered deal was in fact encouraging: if the NCP remained current in the obligation for ten months, \$5,000 in arrears would be forgiven. (In Larrimore County, IV-D offered a 10% reduction in arrears for each month of current support.)

Surprisingly, participation rates never exceeded the 7.5% to 13% range. The project primarily attracted NCPs with already good payment histories, and few NCPs with poor payment histories. A participant's eventual success rate was also very much dependent upon his earning status -- the higher the earnings, the more likely that the NCP successfully completed project requirements. Characteristics common to NCPs who failed were as follows: disabilities, low-income, second families, and problems with visitation. Notwithstanding the less than encouraging participation rates, the project did increase collection rates, and it did reduce arrears.

The conclusions drawn from the aforementioned studies (the lack of effect and the unwillingness to voluntarily participate, especially with respect to non-payers) have understandable led Colorado to focus more on avoiding arrears and less on forgiving arrears. To maximize arrears avoidance, the State is currently considering, or has already implemented, the following:

- Revise the child support guidelines, and establish a NCP self-reserve amount.
- Plan to introduce and enact legislation that will eliminate the interest charges on child support debt. The legislation, to be enacted by or during 2003, is based on the belief that charging interest has no positive effect upon the payment of current support.
- Maximize use of credit bureau reporting as an effective way to get NCPs to pay serious attention to their obligation.
- Collaborate with Judges to obtain consensus on how to best treat incarcerated NCPs.
- Revisit and enhance the Review and Adjustment process.
- Collaborate with Fatherhood Programs to reach common ground on how IV-D can be more responsive to fatherhood issues without compromising its mission to collect fair support on behalf of children.
- Address NCP employment needs.
- Revisit and review the order establishment process, including the establishment of retroactive support and the imputation of income in default settings.

#### **CALIFORNIA'S COLLECTABILITY STUDY**

California reported approximately \$14.4 billion in accumulated child support arrears when the Collectability Study was initiated. The debt now stands at approximately \$17

billion. IV-D is presently conducting more research and collecting additional background data before finalizing legislative and policy proposals that are expected to effectively address this increasingly difficult issue. The additional research and data may also constitute that extra bit of evidence needed to fully convince elected officials that *effective policies* is not a paraphrase for the *appeasement of dead beat dads*.

The primary purpose of the Collectability Study is to identify and define that share of California's support debt that is realistically collectable. The Study's preliminary findings indicate that only 25% of the \$14.4 billion of debt will be collected over the next 10 years, and that the State's total debt will increase to \$34 billion during that same period (on the assumption that the status quo remains unchanged.) These findings further suggest that before the State can hope to have a significant and positive impact on arrears accumulation, it may need to reach beyond the aggressive collection of past-due support and rethink and reinvent entire aspects of the IV-D operation. That process has begun. The State has hired a contractor who is currently developing a wide range of State-specific recommendations that address both the management of existing arrears and their future avoidance. IV-D suggests that the evolving recommendations will likely speak to the following points:

- That the primary focus should be on aggressive enforcement.
- That the secondary focus should be on ending the accrual of additional arrears.
- That the number of default orders must be reduced. (Around 70% of all orders are established by default – usually with high amounts in the erroneous belief that this would encourage NCPs to appear and appeal. In L.A. County, the default rate is over 80%!)
- That the State's policy of allocating payments first to interest and then to principal is a significant contributor to the arrears problem. While the abolishment of interest is probably not politically feasible, considerations may need to include a reduction in the rate or a change in the payment application policy.
- That the State should grant IV-D the authority to forgive arrears with the understanding that such authority serves as a tool to improve IV-D performance. IV-D's preference is that any forgiveness policy be implemented on an individual basis guided by NCP-specific factors; and that the counties have a limited authority to forgive up to a set dollar amount with the State's authority extending to amounts above that limit.

California may find that the final draft of policy recommendations, as State-specific as it must be, is nonetheless likely to reflect and encompass a substantial number of the arrears management experiences coming out of Regions I, II and III and other jurisdictions across this nation. If so, it would be a reaffirmation of the continuing importance of discussing and sharing arrears management ideas at both the local and national level.

## **Preliminary Data Results**

The final report that summarizes California's Collectability Study has not yet been released. However, some preliminary findings have been made available, courtesy of the Urban Institute. Highlights of the findings are as follows (1999 and 2000 data):

- CA's caseload represents 12% of the national caseload.
- CA's arrearage represents 20% of the total national arrearage.
- Out of 834,000 NCPs, 22,000 were incarcerated (State prisons only.)<sup>[1]</sup>
- 70% of arrears is owed to the State.
- 70% of arrears is owed by NCPs whose income is less than \$10,000.
- 25% of NCPs who owe arrears had no recent income (2 years back.)
- The average arrears amount is \$17,000.
- For NCPs with an income between \$1,000 and \$5,000, the average support obligation was \$280.
- For NCPs with an income between \$25,000 and \$30,000, the average support obligation was \$360.
- One-third of NCPs who report no income nonetheless paid some support (evidence of the *underground economy*?)
- 27% of the arrears total represents interest due on principal.
- 70% of debtors have wage withholding in place.
- The median annual earnings of employed debtors are \$14,110, compared to other State workers whose median annual earnings are \$16,635.

The study's underlying data, and most critically the actual NCP income data, was applied to a microsimulation model to reach the key conclusion that California is not likely to collect more than \$3.8 billion over the next ten years towards the \$14.4 billion that was owed as of March 2000. The Urban Institute indicates that better results are doubtful even under an aggressive enforcement plan due to the fact that a relatively small number of low-income NCPs (earning less than \$10,000 per year) owe more than \$10 billion of the total debt. The Urban Institute also suggests that the factors sharing responsibility for the current crisis (among them the high default rate, inadequate modification services, retroactive support and the multiple orders issue) will, if not resolved, continue to advance the ongoing explosion in the overall arrears amount.

It is this kind of sobering arrears analysis that may in fact be the requisite first step any jurisdiction needs to take before reaching consequential conclusions concerning arrears-related causes and solutions. And while not every State's analysis may need to be as complex or expansive, California's ongoing experience certainly reinforces the advisability of the April 2001 Northeast Hub suggestion that knowledge of your arrears *bucket* is the best foundation for effective arrears management action.

## **OCSE's REPORT ON POLICY AND PRACTICE OPTIONS FOR**

### **LOW-INCOME NON-CUSTODIAL PARENTS**

OCSE, Policy Studies, Inc. and the Center for Policy Research are engaged in an on-going study that seeks to identify effective policies and practices with respect to low-income NCPs. The project partially responds to studies by the Office of the Inspector General and other entities that report on the large percentage of total arrears owed by low-income parents who may in fact never have the resources to ever satisfy their debt.

Preliminary outcomes have already reinforced initial beliefs that the most effective way to avoid arrears for low-income NCPs is to secure their participation in the order establishment process and to ensure that the process ends with a reasonable obligation. States may need to supplement this approach by maximizing access to and use of computerized wage data so that at least a minimum amount of earnings information is available for all cases, including defaults. There is widespread consensus that the ultimate beneficiary of any of these efforts should be the family. Designing a system that establishes fair and reasonable obligations that encourage rather than discourage the payment of child support will go a long way toward reaching that goal.

Some of the options and suggestions currently under review are categorized below:

### **Establishing Appropriate Orders**

- Base orders solely on the ability to pay and utilize computerized income information in default cases.
- Set temporary orders at default hearings. Do not establish permanent arrearages until the NCP appears at a hearing.
- Set reasonable minimum obligations if the NCP income falls below the self-support reserve amount.
- When imputing income, do not assume that NCP's work full time - especially if the NCP has a history of sporadic unemployment or underemployment.

- Account for multiple family situations and ensure that the total amount of all orders does not exceed a set percentage of available NCP income.
- Consider in-kind contributions such as child-care and medical support when establishing the obligation.
- Establish a self-support reserve that is regularly updated.
- Equalize the respective standards of living in poverty situations.
- Reconsider the imposition of fines and penalties. These charges may merely add to the arrearage and may not be effective to secure future payments.

## **Service of Process**

- Try to minimize the number of default cases by implementing more effective service of process procedures and by reaching out to low-income NCPs whenever possible. It is important to convey the message that attendance and providing income information is an act of self-interest.
- Restrict the use of substitute service, especially for paternity establishments. Monitor the method of service, especially when performed by private process servers.
- Provide complete locate information to process servers.
- Use simple and plain language on all appearance notices – be sure that low-income obligors understand what you are saying.
- Use bilingual notices whenever appropriate.
- Be flexible with hearing times, sites and process.
- Eliminate filing fees if they discourage legal actions such as modifications, motions for visitation, etc.
- Require that a notice to show cause is served in conjunction with any notice of default hearing.
- Offer remedial opportunities after default orders are issued – for example, motions to set aside, amend or reopen default obligations based on evidence of actual assets and earnings.
- Issue temporary or provisional default orders.

- Adopt a staff-wide philosophy that default orders should be avoided, that respondents receive actual notice of proceedings, and that obligations should be fair and reasonable.
- Use multiple means of service of process.

## **Review and Adjustment of Child Support Orders**

- Reevaluate existing thresholds in the review and adjustment process; consider lowering the threshold if the obligor has large arrears.
- Provide for a simple pro-se modification process for low-income cases.
- Encourage modifications based on changes in circumstances especially when the NCP is unemployed or incarcerated.
- Notify parties of their right to request reviews and adjustments and modifications.
- Automate the pre-review process.
- Expedite the review and adjustment process and avoid hearings if possible.
- Conduct telephonic review and adjustment hearings.

## **Use of Enforcement Remedies**

- Pursue alternatives to jail time (use civil rather than criminal contempt.) E.g., consider diversion programs, lump sum payments and purge bonds, and community service.
- Use the following diversion programs if appropriate: employment training, drug treatment, parenting classes and mental health services.
- Temporarily defer sentencing in contempt proceedings to open a payment window.
- Actively pursue the motor vehicle suspension process – suspend the process in lieu of lump sum payment, payment plans or voluntary wage withholding.

## **Arrears Avoidance vs. Retroactive Support**

- Cap the amount of retroactive support.
- Impose retroactive support based on available current income.
- Expand caseworker discretion in the process.

- Restrict the imposition of retroactive support when appropriate and if permissible.

## **Accumulated Arrears Management**

- Consider capping arrears for low-income NCPs (especially when there is a history of low earnings.)
- Review individual arrears accounts to verify that the accumulation occurred under equitable circumstances.
- Consider arrears forgiveness if the arrears are not the result of willful actions by the NCP.
- Compromise state debt (especially if the debt is considered uncollectable) in exchange for positive NCP action (payment on current, participation in fatherhood or WtW programs, etc.)

## **Marriage Reconciliation**

- Consider the suspension of child support obligation during sustained periods of reconciliation and cohabitation (requires frequent monitoring.)
- Consider compromising arrears owed by reconciling and cohabiting couples
- Sponsor, co-sponsor and otherwise encourage *marriage promotion* and *divorce prevention* demonstrations

## **Interest, Penalties and Fees**

- Consider that all charges in excess of child support are especially burdensome for the low-income and NCP and imposition of same may discourage the payment of current support.
- Exempt low-income NCPs from court, genetic testing and similar fees.
- Exempt low-income NCPs from fees associated with the modification process.
- Consider that charging for genetic testing may discourage testing and may result in questionable paternity establishments. In this era of paternity disestablishments, genetic testing should be encouraged, not discouraged.
- Cap fees and other add-ons for low-income NCPs.
- Reduce and/or eliminate interest and penalty payments.

## **Amnesty Programs**

- Establish strict time limits for amnesty programs.
- Precede programs with extensive publicity.
- Offer to revise payment plans as an incentive to increase low-income NPC participation.

## **Ancillary Services**

- Access and Visitation programs have proven to be a positive factor in raising child support payment rates.
- Encourage (and train) front-line staff to refer problem cases to mediation or otherwise appropriate services.
- If circumstances do not permit regular visitation, encourage supervised visitation as an alternative.
- Extend Access and Visitation services to low-income never-married parents.
- When possible, encourage joint-custody orders; joint-custody appears to encourage the payment of child support.
- Maximize collaboration with all types employment services, whether offered through the TANF program, Department of Labor, CBOs or fatherhood entities.
- Collaborate with Marriage Promotion programs and demonstration projects.
- Collaborate with Divorce Prevention programs and demonstration projects.

## **THE CLASP OVERVIEW OF ARREARS MANAGEMENT**

CLASP recognizes that the *arrears problem* encompasses a profound diversity of issues and policy considerations. CLASP, from the viewpoint of a child support advocate, is especially concerned about the impact of accumulating arrears upon the reputation and image of the IV-D program. It recommends that the problem may be best attacked with a balanced approach that needs to embrace a significant focus on the payment of current support. CLASP finally recommends that IV-D decision-makers consider the following points when shaping arrears management policy so that the needs and concerns of all the interested parties may be best addressed:

- Utilize aggressive enforcement techniques that reveal errors in arrears balances and ultimately lead to case clean-up activities. The key is to focus on the prevention of arrears whenever possible.
- Begin with a thorough examination of the order establishment process. Identify and recognize those components of the process that are out of sync with the obligor's underlying ability to pay support.
- Analyze the arrears *bucket* and use the resulting State-specific data to politically sell proposed policy changes.
- Recognize that some of the arrears accumulate due to inappropriate and counter-productive business practices.
- Understand the difference between *forgiving*, *adjusting* and *compromising* arrears. While States may have their own definitions, consider that arrears arguably could be subject to *forgiveness* if the arrears did not accumulate as a result of an obligor's willful refusal to pay. *Adjustment* in turn should not be tied to past behavior but instead to the current ability to pay. And *Compromise* (or leveraging) should depend upon some corresponding good behavior by the obligor.
- Target the specific groups of NCPs that are most likely to accumulate arrears in your State (for example, incarcerated parents, low-income parents and those that are facing layoffs and other negative economic circumstances.)
- Approach and involve all of your stakeholders, including members of the legislative and judicial branch. Consider individual approaches to stakeholders that include presentations of stakeholder-relevant factual information.
- Consider that the issue surrounding incarcerated NCPs is currently a hot national topic. Interest in this issue can be the hook that gets the State's stakeholders to approach a wider range of arrears management concerns.

CLASP may consider drafting a State matrix of arrears management practices. Such matrix would be a substantial contribution to any State effort to reinvent and/or enhance order establishment, enforcement and prevention policies.

## NEXT STEPS

Participants recognize the significant progress they have made since the date of the first arrears management meeting in April 2001. They likewise recognize that the time spent on developing new management strategies and policies may have been at the expense of efforts to change the attitude of front-line IV-D staff to one of greater acceptance and support of a IV-D world that is rapidly changing to accommodate arrears management concerns. It is therefore suggested that the level of future progress may depend on the

level of involvement, education and support that is extended to the entire IV-D organizational structure.

Participants are also unanimous in acknowledging the benefits derived from regional discussions around arrears management issues, and they intend to continue the discussion at future meetings. Participants make the following recommendations with respect to future meetings:

- Presentations by *outside* IV-D Directors and public interest groups have been extremely helpful and stimulating and selected IV-D Directors and other interested parties should be invited to attend future meetings.
- Future discussions, whenever possible, should be conducted within the context of *personal responsibility*.
- Meetings and related activities should be coordinated with the work of the Big10+ group and other relevant workgroups under an umbrella of national collaboration on arrears management issues.
- Future discussions may need to connect to the pending Workforce Investment Act and other legislation that directly impacts low-income non-custodial parents.
- The sharing of summaries and other tri-regional work products should continue via the OCSE net, the IV-D link, the Child Support Report and State and Federal websites.
- The time may have come to focus future meetings on some of the individual factors that appear to contribute the most to inappropriate arrears accumulations. Possible topics are:

1. The order establishment process
2. Multiple order situations
3. Service of process
4. Review and Adjustment policies

The Agenda Committee will be issuing corresponding proposals and suggestions for Region I, II and III State comment by June 2003.

#### ADDENDUM A

*Survey Regarding Establishment or Modification of Support Orders With Respect to Incarcerated NCPs*

(Compiled December 9, 2001; Revised 9-15-02 by Diane M. Fray, IV-D Director, CT)

**1. Do you establish (or try to establish) a child support order against an NCP if he is incarcerated?**

**Alabama:** Alabama has no specific law or policy regarding establishing orders against incarcerated noncustodial parents. However, generally we would wait until he is released because he does not have the ability to pay while incarcerated.

**Arkansas :** No

**California:** Yes

**Colorado:** Yes

**Connecticut:** No

**D.C.** The District does not usually attempt to establish a child support order against an incarcerated NCP because DC has case law stating that an NCP has a right to have his/her order suspended during incarceration, unless s/he has income while incarcerated.

**Florida:** No, unless the state can prove current ability to pay. If a source of income is identified, an obligation can be established.

**Guam:** Yes, if paternity is not established and if the NCP is on a work release program.

**Illinois:** No

**Indiana:** Yes

**Kentucky:** Yes

**Louisiana:** No, unless there is income to calculate the proper support amount. For example, if the NCP is in a work release program. We do pursue establishment of paternity if it is an issue.

**Maine:** Generally yes and no, there are several factors to consider. Has the action already been filed? If we begin an action and the NCP becomes incarcerated, or if we find out he is incarcerated, we would continue and get the order. Have we searched for years to locate this NCP? Is the incarceration for a short period? Does the NCP have any assets? Is the NCP on work release?

**Maryland:** Yes but it is a zero order unless there is an income flow.

**Massachusetts:** Yes, and we are starting to work on procedures for establishing minimum orders through hearing by affidavit or videoconference.

**Minnesota:** In general, child support magistrates have been entering findings stating that the obligor's income is diminished due to incarceration, reserving child support in the order, and requiring the obligor to provide financial information upon release that will form the basis for an order for support at that time.

**Montana:** No

**Nebraska:** Establish paternity, yes. Nebraska law allows for child support to be established, but the majority of Nebraska courts reserve the setting of the child support until incarcerated non-custodial parent is released. If a child support order is established it generally is for the minimal amount which is \$50/month.

**New Hampshire:** Yes. In most cases we request an order in accordance with the statutory minimum child support obligation of \$50.00 per month. The obligation would be suspended with accrual while the NCP is incarcerated. Upon release from incarceration, or release to a work release program, we would pursue a modification for current support and payment towards any accrued arrears.

**New Mexico:** Yes

**North Dakota:** Yes

**Oklahoma:** Yes

**Oregon:** We do not establish (or try to establish) a child support order against an incarcerated NCP, unless we've ascertained that the NCP has sufficient income or resources to pay on the order or unless the incarceration is expected to last less than six months.

**Pennsylvania :** Establish paternity but no monetary order unless on work release.

**Rhode Island:** We generally do not file a motion for support for an incarcerated dad but we will pursue establishment of paternity.

**South Carolina:** This is not done in most instances. Court action against an incarcerated individual requires the appointment of a guardian ad litem to safeguard the person's rights. This is cost prohibitive and cumbersome. In cases involving an incarcerated obligor, staff determines the earliest possible release date and then prompts to check for the obligor's release at that time.

**South Dakota:** Yes

**Tennessee:** Establish paternity and reserve the order amount while incarcerated.

**Texas:** Yes

**Utah :** Yes (with qualifications)

**Virginia:** Establish paternity in all cases where there is an incarceration. We set the release date in our computer to tell us 30 days before the release date. Then we seek to establish the order. To establish it on a prisoner with, say, a life sentence or a death sentence merely runs up arrears and punishes the state on incentives.

**Washington:** Yes, we will establish paternity and child support against an NCP who is incarcerated.

**Wisconsin:** Yes

2. If yes to question 1, what criteria are used to establish the amount of the order?  
(Examples - imputed based on ability prior to incarceration; standard minimum order;  
other).

**Alabama :** N/A

**Arkansas :** N/A

**California:** No special criteria would be used to establish support amount.

**Colorado:** We use the child support guidelines, this allows for minimum orders of \$20-50; counties and courts may impute wages to the incarcerated if they consider him voluntarily unemployed or underemployed. This consideration is within the discretion of the court.

**Connecticut:** N/A

**D.C.** If there is income, we use the guideline.

**Florida:** If the state can prove current ability to pay and a source of income is identified, an obligation can be established.

**Guam:** Standard minimum order of \$50 per child per month.

**Illinois:** The criteria we are looking at is a \$10 order for support.

**Indiana:** Prior ability or at least minimum wage.

**Kentucky:** Based on the child support guidelines, which has a minimum amount.

**Louisiana:** N/A

**Maine:** Law provides in 19A MRSA ) 2001(5)(D) that "a party who is incarcerated in a correctional or penal institution is deemed available only for employment that is available through such institutions." We could look to other assets as provided by 19A MRSA) 2007 which sets out grounds for deviation - other income such as a trust fund, income producing property, disability benefits.

**Maryland:** Zero Order

**Massachusetts:** The court sets the order amount, but the child support agency (DOR) recommends the minimum amount (\$50/month), unless the NCP is on work release or has assets.

**Minnesota:** In general, child support magistrates have been entering findings stating that the obligor's income is diminished due to incarceration, reserving child support in the order, and requiring the obligor to provide financial information upon release that will form the basis for an order for support at that time.

**Montana:** N/A

**Nebraska:** Minimal order - \$50/month.

**New Hampshire:** The New Hampshire Child Support Guidelines provide a minimum child support obligation of \$50.00 per month. The court may impute wages for the NCP, usually based upon previous employment, if the custodial party, or the State, argues that the NCP's incarceration is due to fault and should not justify the imposition of the minimum obligation.

**New Mexico:** Incarceration is viewed as a voluntary situation. The support guidelines are utilized using imputed income.

**North Dakota:** Our case law holds that the guidelines pertain to incarcerated NCPs and that the income should be imputed on minimum wage when the NCP has no other income.

**Oklahoma:** Minimum Order

**Oregon:** In the short-term circumstances described above, we would typically impute a minimum-wage income and a minimum order under Oregon's guidelines, unless we had information indicating a higher ability to pay. In other words, we'd just follow Oregon's normal child support guidelines as if the NCP was not incarcerated.

**Pennsylvania:** N/A

**Rhode Island:** N/A

**South Carolina:** N/A

**South Dakota:** We impute income for the NCP at the minimum wage level.

**Tennessee:** Generally reserve support amount while incarcerated. If a source of income is identified, would apply child support guidelines as appropriate. TN's guideline approach (percent of net income) allows for a minimal payment.

**Texas:** Texas law provides that a non-custodial parent owes a duty to support his (or her) child based on the parent's income [Texas Family Code Ch 154]. Many Texas courts view the obligor's incarceration as "intentional employment," and therefore set support based on the obligor's income ability prior to this incarceration. If no income history is available, the court usually sets support based on a minimum wage presumption.

**Utah :** We do not impute in this situation. In the past we have established a standard minimum of \$20 per the statutory guidelines, but more recently we have discussed the possibility of holding

the support amount in reserve "to be determined" under the guideline table upon release from prison. In the meantime at least paternity is established if paternity was the primary issue.

Virginia: N/A

**Washington: Administrative Orders**, if the NCP is incarcerated with a release date at least 12 months in the future and has no income or assets, the Division of Child Support will establish an administrative support order for \$0.00 per month. **Judicial Orders**, practices vary by county in Washington, but generally Superior Courts will enter an order for \$25 per month per child. Based on the facts of the case, for example, length of incarceration, assets or income available to the inmate, a few courts will enter a zero order and set a review hearing shortly after the inmate's release date. Incarceration is a basis to rebut the presumptive \$25 minimum per child per month support amount.

**Wisconsin:** Based on the child support guidelines, which has a minimum amount.

3. Do you modify an existing child support order if the NCP becomes incarcerated?

Alabama : No.

Arkansas : Incarcerated NCP would have to hire an attorney and petition the court.

**California:** Not automatically.

**Colorado:** This is at county CSE or court discretion. Not automatic, NCP must request.

**Connecticut:** Family Support Magistrates do not usually modify orders.

**D.C.** CSED does not initiate the modification. The NCP has to move for a modification in Court, and the modification is only retroactive to the date of filing the motion. CSED is working with a prisoners' legal services organization to provide information, form pleadings, etc. to incarcerated NCPs to advise them of their rights and facilitate the process.

**Florida:** No, the Title IV-D agency will not file a petition for modification once a noncustodial parent is incarcerated.

**Guam:** No

**Illinois:** Yes we will modify an existing order for an incarcerated NCP.

**Indiana:** No, per state case law an incarcerated individual should not be rewarded (by having support order lowered) for being incarcerated.

**Kentucky:** Yes

**Louisiana:** No, the court can order the suspension of collection for the duration of the incarceration; however, arrears accrue in these situations.

**Maine:** We do not move to modify on behalf of the NCP if we learn he is incarcerated. However, we explain their need to modify their court order. If the NCP has an administrative order we explain the need to modify and how to begin the administrative process. We do not oppose requests for modification generally.

**Maryland:** Not usually. We have drafted legislation that will be introduced this session to reduce support to \$25/month for periods of incarceration over a year if there is no other income.

**Massachusetts:** There is a separate procedure for incarcerated NCPs to request modification. They file their complaint for modification with DOR. LOR files it with the court and serves the custodial parent. Then it is held until the NCP notifies DOR that he is about to be or has been released. The matter is then marked up for hearing and the court decides on the modification complaint (and can modify back to the date of service on the custodial parent or any date since then-or choose not to modify). We are working on a different procedure for longer term (mostly state prison) inmates, which would have the hearing immediately, with the NCP participating by affidavit or videoconference, if the custodial parent doesn't stipulate to a temporary order for the minimum amount until the NCP is on work release or released. If the NCP doesn't cooperate with DOR or the court after work release or release, the order would revert to the pre-mod amount.

**Minnesota:** When an obligor becomes incarcerated it may be a significant change of circumstances, which renders the existing order unjust or unfair. If so, the obligor should request a review/modification of the order. Then the order is modified based upon the financial information provided.

**Montana:** Incarcerated individuals may apply to the CSED or the district court for a modification. However, current Montana Supreme Court case law, and therefore CSED policy, provides that incarceration does not constitute a substantial and continuing change in circumstances sufficient to warrant a modification.

**Nebraska:** No, Nebraska State Statute §43-512.15 states that a review and modification cannot be done when "the variation from the guidelines is due to a voluntary reduction in net monthly income". Breaking the law which leads to an individual being incarcerated at one of the state's correctional facilities is based on "voluntarily" breaking the law, which in turn is a "voluntary" reduction in their salary.

**New Hampshire:** In TANF cases we do pursue modifications and, in most cases, do seek imposition of the statutory minimum obligation of \$50.00 per month. We have a prisoner outreach program to educate incarcerated obligors as to their statutory rights and responsibilities toward their child support obligation. In Non-TANF cases it would be the responsibility of the obligor to pursue a court modification of their support obligation with proper notice and an opportunity to be heard on the issue provided to the custodial party.

**New Mexico:** No

**North Dakota:** Orders are not automatically adjusted merely because the NCP is jailed; however, either party can request a review.

**Oklahoma :** Yes, if brought to our attention.

**Oregon:** Yes, if a party to the order so requests.

**Pennsylvania :** Generally only if requested to do so by the NCP.

**Rhode Island:** If the obligor files a motion to modify/review we ask the court to look at all the circumstances and to make a decision on a case-by-case basis. In a recent Supreme Court decision on incarcerated dads, the Family Court Judge ruled that he would not suspend a child support order for an incarcerated dad because he in essence through his own fault was incarcerated and should not benefit from that. The dad appealed and the Supreme Court would not hear the case. Accordingly, the issue is still open.

**South Carolina:** Modification would be within the discretion of the Family Court judge, but in almost all cases, judges do not modify support orders in cases of incarceration. Reduction of the obligation would be seen as rewarding the criminal behavior of the obligor.

**South Dakota:** No. However, either parent may file a petition for modification without OCSE's involvement. In these cases, however, some courts have ruled the NCP's reduction in income is a result of his/her voluntary acts, and therefore have dismissed the modification action. We have a statute that states the court may deviate from the application of the guidelines in situations involving the voluntary act of either parent, which reduces the parent's income.

**Tennessee:** Generally, if the NCP requests, we do.

**Texas:** If any obligor (incarcerated or otherwise) applies for IV-D services and requests a modification of support, the CSD accepts the application and analyzes whether the obligor meets the modification criteria as set out in Texas law: a material and substantial change in

circumstances, or it has been three years since the support order was last modified or initially set and the monthly support obligation in place differs by 20 percent or \$100 from the amount that would be ordered based on obligor's current income.

**Utah:** We are not required to pursue a modification in this situation under state law, because the act, which resulted in the NCP in prison was "voluntary". However, recently we have discussed whether we should reconsider past policy and practice, considering the effect it has on the % of current support paid ratio, the % of cases with arrears receiving payments on arrears ratio, and the build up of arrears that may be uncollectible.

**Virginia:**

We do not downwardly modify orders when a person is incarcerated . They are considered voluntarily unemployed.

**Washington:** no automatic mechanism to modify an existing order when an NCP becomes incarcerated. The NCP may petition to modify an existing order or the agency may petition if we are reviewing a case for modification.

**Wisconsin:** Yes.

**4. If yes to question 3, what are the criteria for the amount of the new order?**

**Alabama:** N/A

**Arkansas:** N/A

**California:** See response to question number two.

**Colorado:** \$20-50 per month is within guideline, however frequently the NCP is considered voluntarily unemployed and wages are imputed.

**Connecticut:** N/A

**D.C.** The criteria of the new order is the amount of the NCP's income. If none, the order is suspended.

**Florida:** N/A

**Guam:** N/A

**Illinois:** The criteria are a change in income of at least \$20 or 100% reduction in income.

**Indiana:** N/A

**Kentucky:** They will be modified downward to the minimum amount.

**Louisiana:** N/A

**Maine:** The new order would be based on the NCPs income from employment available through the correctional facility.

**Maryland:** N/A

**Massachusetts:** Same as #2 with provisions

**Minnesota:** Obligor should request a review/modification of the order. Then the order is modified based upon the financial information provided.

**Montana:** N/A

**Nebraska:** N/A

**New Hampshire:** In most cases the incarcerated NCP has minimal, or no income, which would result in a minimum order for support upon calculation in accordance with the Child Support Guidelines. As noted above the court may impute income and apply the Child Support Guidelines to the imputed income.

**New Mexico:** N/A

**North Dakota:** The case law applies to establishment and review and adjustment situations.

**Oklahoma:** Minimum order

**Oregon:** We have an administrative rule OAR 461-200-3300 that describes how we proceed when the NCP is incarcerated.

**Pennsylvania :** Current income and assets if any.

**Rhode Island:** If the obligor files a motion to modify/review we ask the court to look at all the circumstances and to make a decision on a case-by-case basis, considering the following: the length of incarceration, the resources and assets of the inmate, whether he is on work release, whether he is willing to participate in a job training and placement program, etc.

**South Carolina:** N/A

**South Dakota:** N/A

**Tennessee:** Apply net income to child support guideline chart, which allow for minimal payment.

**Texas:** Incarceration is not an explicit consideration for the setting of support. If the court decides that the incarcerated obligor has become voluntarily unemployed, it will set support based on the obligor's pre-incarceration income; otherwise, the court will use the minimum wage income presumption. In some instances, the court may articulate reasons for deviating from the child support guidelines and set support at a lesser amount.

**Utah:** If we were to do this, it would likely result in the standard minimum in the guideline table (\$20). We would want to include language in the modified order that would either revert to the original amount upon release from prison, or authorize an automatic adjustment of the support award under the guideline table upon release from prison (if possible).