

ALABAMA LEGISLATIVE COMMITTEE FILED 1900/2

3280

HJUD

HB 92

150

1           (5) [(7)] to change the name of one of the parties.

2 \* Sec. 4. AS 47.23.020(a) is amended to read:

3           (a) The agency shall

4                 (1) seek enforcement of [OBTAIN, ENFORCE, AND ADMINISTER]  
5 child support orders of the superior courts of the state in other  
6 jurisdictions and shall obtain, enforce, and administer the orders in  
7 this state;

8                 (2) adopt regulations to carry out the purposes of this  
9 chapter, including regulations that [WHICH] establish

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

14                         (B) procedures for hearings conducted under AS 47.23.-  
15 170; and

16                         (C) subject to AS 47.23.025 and to federal law, a  
17 uniform [SCHEDULE OF PENALTIES AND A] rate of interest on arrear-  
18 ages of support that shall be charged the obligor upon notice if  
19 child support payments are 10 or more days overdue or if payment  
20 is made by a check backed by insufficient funds;

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

23                 (4) establish, enforce, and administer child support obli-  
24 gations administratively in accordance with this chapter;

25                 (5) administer the state plan required under 42 U.S.C.  
26 651 - 665 (Title IV-D, Social Security Act) as amended;

27                 (6) disburse child support payments collected by the agency  
28 to the obligee together with interest charged under (2)(C) of this  
29 subsection; [AND]

1           (7) establish and enforce through the superior courts of  
2 the state child support orders from other jurisdictions pertaining to  
3 obligors within the state; [DEPOSIT PENALTIES CHARGED UNDER (2)(C) OF  
4 THIS SUBSECTION IN THE GENERAL FUND]

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

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

12 \* Sec. 5. AS 47.23 is amended by adding a new section to read:

13           Sec. 47.23.022. ENFORCEMENT REQUESTS FROM OTHER STATES. (a)  
14 The agency may act, under the laws of this state, upon requests from  
15 similar state agencies in other states that operate child support  
16 enforcement programs under 42 U.S.C. 651 - 665 (Title IV-D Social  
17 Security Act) to establish and enforce against obligors within this  
18 state support obligations determined in other states.

19           (b) Requests from child support enforcement agencies in other  
20 states shall be made by application containing the information that  
21 this state's agency requires and including written authorization from  
22 the requesting state agency and the obligee for this state's agency to  
23 initiate action necessary to establish, enforce, and collect the  
24 support obligation on their behalf.

25 \* Sec. 6. AS 47.23.025 is amended to read:

26           Sec. 47.23.025. RATES OF [PENALTY AND] INTEREST. [A PENALTY  
27 IMPOSED UNDER AS 47.23.020(a)(2)(C) MAY NOT BE AT A RATE THAT EXCEEDS  
28 THE RATE OF INTEREST IMPOSED ON DELINQUENT TAXES UNDER AS 43.05.225.]  
29 The rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal

1 the rate imposed under AS 43.05.225 or a lesser rate that is the  
2 maximum rate of interest permitted to be imposed under federal law.

3 \* Sec. 7. AS 47.23.045 is amended to read:

4 Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency  
5 may appear in an action seeking an award of support on [IN] behalf of  
6 a child owed a duty of support, or to enforce a spousal support order  
7 if a spousal support obligation has been established and if a support  
8 obligation, established with respect to a child of that spouse, is  
9 also being administered, and may also appear in an action seeking  
10 modification of a support order, decree or judgment already entered.  
11 Action under this section may be undertaken upon application of an  
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15 (c) In a court proceeding where the support of a minor child is  
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17 necessary for support, maintenance, nurture, and education of the  
18 child. The court shall issue a medical support order as part of a  
19 child support order if health care coverage is available to the obli-  
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25 Sec. 47.23.075. EMPLOYMENT INFORMATION. (a) An employer of an  
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27 to the agency information requested regarding the obligor's employ-  
28 ment, wages or salary, and location.

29 (b) An employer of an obligor or a labor union of which an

1 obligor is a member that knowingly violates this section is liable for  
2 a civil penalty of not more than \$1,000.

3 \* Sec. 10. AS 47.23.150(a) is amended to read:

4 (a) Action to enforce a support order administratively under  
5 AS 47.23.230 - 47.23.270 is initiated by the agency serving a notice  
6 on the obligor of the obligor's liability under the support order.  
7 [NOTICE UNDER THIS SUBSECTION SHALL BE SERVED PERSONALLY OR BY REGIS-  
8 TERED, CERTIFIED, OR INSURED MAIL, RETURN RECEIPT REQUESTED, FOR  
9 RESTRICTED DELIVERY ONLY TO THE PERSON TO WHOM THE NOTICE IS DIRECTED  
10 OR TO THE PERSON AUTHORIZED UNDER FEDERAL REGULATION TO RECEIVE THAT  
11 PERSON'S RESTRICTED DELIVERY MAIL.]

12 \* Sec. 11. AS 47.23.226 is amended to read:

13 Sec. 47.23.226. COLLECTION OF [ACTION TO COLLECT] CHILD SUPPORT.  
14 To [COMMENCE AN ACTION TO] collect the payment due, the custodian of a  
15 child, or the agency on behalf of that person, shall file with the  
16 court (1) a motion [PETITION] requesting establishment of a judgment;  
17 (2) an affidavit that states that one or more payments of child sup-  
18 port are 30 or more days past due and that specifies the amounts past  
19 due and the dates they became past due; and (3) notice of the ob-  
20 ligor's right to respond. Service on the obligor shall be in the  
21 manner provided in AS 47.23.265 [BY THE RULE OF CIVIL PROCEDURE FOR  
22 SERVICE OF SUMMONS IN A CIVIL ACTION]. The child's custodian, or the  
23 agency on behalf of the custodian, shall file with the court proof of  
24 service of the petition, affidavit, and notice. The obligor shall  
25 respond no later than 15 days after service by filing an affidavit  
26 with the court. If the obligor's affidavit states that the obligor  
27 has paid any of the amounts claimed to be delinquent, describes in  
28 detail the method of payment or offers any other defense to the peti-  
29 tion, then the obligor is entitled to a hearing. After the hearing,

1 if any, the court shall enter a judgment for the amount of money owed  
2 If the obligor does not file an affidavit under this section, the  
3 court shall enter a default judgment against the obligor.

4 \* Sec. 12. AS 47.23.250(i) is amended to read:

5 (i) Exemptions under AS 09.38 do not apply to proceedings to  
6 enforce the payment of child support under AS 47.23.230 - 47.23.270  
7 however, [50 PERCENT OF THE OBLIGOR'S] net disposable earnings are  
8 [IS] exempt from execution as provided in 15 U.S.C. 1673(b) [UNDER  
9 AS 47.23.230 - 47.23.270]. In this subsection, "net disposable earn  
10 ings" has the meaning given in 15 U.S.C. 1672.

11 \* Sec. 13. AS 47.23.255 is amended to read:

12 Sec. 47.23.255. INCOME WITHHOLDING [ASSIGNMENT] ORDERS. (a)  
13 The agency shall pay to the obligee all money recovered by the agency  
14 from the obligor under an income withholding [ASSIGNMENT] order except  
15 for court costs and money assigned to the agency under AS 47.23.120  
16 47.23.130 [THAT ARE RECOVERED FROM THE OBLIGOR].

17 (b) Notwithstanding AS 47.23.250, an income withholding [ASSIGN  
18 MENT] order contained in a decision of the agency that has not been  
19 set aside by the superior court under AS 47.23.220 shall be enforce  
20 under the procedure established in AS 09.65.132.

21 \* Sec. 14. AS 47.23.260 is amended to read:

22 Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH A  
23 ORDER OR LIEN. If any person, political subdivision, or department of  
24 the state (1) fails to make an answer to an order to withhold and  
25 deliver within the time prescribed in AS 47.23.250; (2) fails to  
26 refuse to deliver property in accordance with an order issued under  
27 AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys  
28 real property subject to a lien filed under AS 47.23.230 to or for the  
29 benefit of the obligor or any other person; (4) fails or refuses to

1 surrender upon demand property attached; (5) fails or refuses to honor  
2 an assignment of wages or an income withholding [ASSIGNMENT] order  
3 under AS 09.65.132 presented by the agency, the person, political  
4 subdivision, or department of the state is liable to the agency in an  
5 amount equal to 100 percent of the amount constituting the basis of  
6 the lien, order to withhold and deliver, attachment, or withholding  
7 [ASSIGNMENT] of wages or income, together with costs, interest, and  
8 reasonable attorney fees.

9 \* Sec. 15. AS 47.23.265(a) is amended to read:

10 (a) Except as otherwise provided under this chapter, when a  
11 notice, paper, or other document is required by this chapter to be  
12 given or served upon a person by the agency, the notice, paper, or  
13 other document may be served as required by Rule 5, Alaska Rules of  
14 Civil Procedure or any other method permitted by law [SENT BY REGIS-  
15 TERED OR CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THAT PERSON.  
16 SERVICE BY MAIL UNDER THIS CHAPTER IS EFFECTED WHEN THE NOTICE, PAPER,  
17 OR OTHER DOCUMENT IS PROPERLY ADDRESSED REGISTERED OR CERTIFIED, AND  
18 MAILED].

19 \* Sec. 16. AS 47.23 is amended by adding a new section to read:

20 Sec. 47.23.278. PAYMENTS NOT DISBURSED. Support payments col-  
21 lected and held by the agency for seven years without disbursal shall  
22 be returned to the obligor.

23 \* Sec. 17. This Act takes effect October 1, 1985.  
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Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 92 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL,

6 For an Act entitled: "An Act relating to child and spousal support; and  
7 providing for an effective date."

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

9 \* Section 1. AS 09.65.132 is amended to read:

10 Sec. 09.65.132. INCOME WITHHOLDING [ASSIGNMENT] ORDER FOR CHILD  
11 SUPPORT. (a) A judgment, court order, or order of the child support  
12 enforcement agency under AS 47.23 [(AS 47.23)] providing for the  
13 support of a minor child must [SHALL] contain an income withholding  
14 [ASSIGNMENT] order.

15 (b) An income withholding [ASSIGNMENT] order must [SHALL] direct  
16 the obligor, the obligor's employer, future employer, and any person,  
17 political subdivision, or department of the state to withhold [ASSIGN]  
18 money due or to be due the obligor and pay the money to the [OBLIGEE  
19 OR, WHERE THE ORDER IS ISSUED TO THE CHILD SUPPORT ENFORCEMENT AGENCY  
20 (AS 47.23) OR COLLECTIONS ARE BEING MADE THROUGH THE CHILD SUPPORT EN-  
21 FORCEMENT AGENCY, TO THAT] agency, in an amount determined under (h)  
22 of this section [SUFFICIENT TO MEET THE SUPPORT PAYMENTS IMPOSED BY  
23 THE COURT OR BY THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.-  
24 140].

25 (c) If support payments are in arrears in an amount at least  
26 equal to support payable for one month, the agency, on behalf of an  
27 [AN] obligee or person or public agency designated to receive support  
28 payments, shall [MAY] request an income withholding [ASSIGNMENT] order  
29 against the obligor to take effect by filing a sworn statement with

1 the court that alleges [ALLEGING IN A SWORN STATEMENT] that the obli-  
2 gor is in arrears in an amount at least equal to the support payable  
3 for one month [HAS FAILED TO MAKE A SUPPORT PAYMENT IN FULL WITHIN 45  
4 DAYS OF THE DATE THE PAYMENT WAS DUE AND BY FILING THAT STATEMENT WITH  
5 THE COURT].

6 (d) If an application is [HAS BEEN] filed with the clerk of  
7 court, notice shall be served upon the obligor by the agency in the  
8 manner provided by Rule 5, Alaska Rules of Civil Procedure or any  
9 other method permitted by law. The notice shall [BE SENT BY CERTIFIED  
10 MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF THE  
11 OBLIGOR. THE NOTICE SHALL BE POSTMARKED NO LATER THAN 10 DAYS AFTER  
12 THE DATE ON WHICH THE APPLICATION WAS FILED AND SHALL] inform the  
13 obligor that the income withholding order [ASSIGNMENT] will take  
14 effect 15 days after the date on which the notice is served [WAS  
15 RECEIVED] unless the obligor requests a hearing within the 15 days  
16 after the notice is served [WAS SENT]. If the obligor requests a  
17 hearing, an income withholding order [ASSIGNMENT] may not take effect  
18 until the conclusion of the hearing. The court shall hold a hearing  
19 requested under this section within 15 days after the date the obligor  
20 requests the hearing, to determine if there are any mistakes of fact  
21 that make the withholding order improper, if the amount to be withheld  
22 is incorrect, or if there are any other legal defenses. The court  
23 shall inform the obligor, either at the hearing or within 15 days  
24 after the hearing, whether or not the withholding will occur and of  
25 the date on which it is to commence. It is not a defense under this  
26 section that less than one full month's payment is due if at least one  
27 full month's payment was due on the date notice was served under this  
28 section [. IF THE OBLIGOR PAYS ALL SUPPORT PAYMENTS DUE BEFORE THE  
29 HEARING, AN INCOME ASSIGNMENT ORDER MAY NOT TAKE EFFECT].

1 (e) The obligee or person or public agency that requested the  
2 income withholding [ASSIGNMENT] order shall immediately send a copy of  
3 the income withholding [ASSIGNMENT] order , a copy of AS 47.23.260 and  
4 AS 09.65.132, and an explanation of the effect of the statutes by  
5 certified mail to persons who may owe money to an obligor. An income  
6 withholding [ASSIGNMENT] order made under this section is binding upon  
7 a person, employer, political subdivision, or department of the state  
8 immediately upon receipt of a copy of the income withholding [ASSIGN-  
9 MENT] order. An employer shall begin withholding the specified amount  
10 from the employee's wages 14 days after the mailing date on the notice  
11 of withholding or on the first day of the next pay period, if earlier.  
12 The amount withheld shall be sent to the agency.

13 (f) An employer may not discharge, discipline, or refuse to em-  
14 ploy an obligor on the basis of an income withholding order issued  
15 [ASSIGNMENT] under this section. If an employer discharges, disci-  
16 plines, or refuses to employ an obligor because of an income withhold-  
17 ing obligation, the court, after notice and hearing, may order rein-  
18 statement or restitution to the obligor, or both. A person who vio-  
19 lates this subsection or a regulation adopted to implement it, is  
20 liable for a civil penalty of not more than \$1,000.

21 (g) An income withholding order [ASSIGNMENT] under this section  
22 has priority over all other attachments, executions, garnishments, or  
23 other legal process brought under state law against the same money  
24 [ASSIGNMENTS] unless otherwise ordered by the court. An income with-  
25 holding order [ASSIGNMENT] is not limited to the wages of an obligor  
26 but may include all money owed to the obligor not otherwise exempt by  
27 law. Exemptions under AS 09.38 do not apply to income assignments  
28 under this section [; HOWEVER, 50 PERCENT OF THE OBLIGOR'S NET DISPOS-  
29 ABLE EARNINGS IS EXEMPT FROM EXECUTION UNDER THIS SECTION. IN THIS

1 SUBSECTION, "NET DISPOSABLE EARNINGS" HAS THE MEANING GIVEN IN 15  
2 U.S.C. 1672].

3 (h) The court may order payment of [AN OBLIGOR TO PAY] all court  
4 [COURTS] costs that resulted from [INVOLVED IN] an income withholding  
5 [ASSIGNMENT] proceeding under this section.

6 \* Sec. 2. AS 09.65.132 is amended by adding new subsections to read:

7 (i) An employer shall, to the extent permitted under 15 U.S.C.  
8 1673(b), withhold the current support obligation from an obligor's  
9 wages. An employer shall withhold additional income, to the extent  
10 permitted under 15 U.S.C. 1673(b), from an obligor's wages for any  
11 support arrearage.

12 (j) An employer may combine into a single payment to the agency  
13 amounts withheld from more than one obligor if the employer specifies  
14 the portion of the payment attributable to each obligor.

15 (k) At the time an obligor terminates employment with an em-  
16 ployer then in receipt of an unsatisfied income withholding order  
17 regarding the obligor, the employer shall immediately inform the  
18 agency of the obligor's name and last known address and the name and  
19 address of all other known employers of the obligor.

20 (l) A petition by the obligor to the court to terminate or  
21 reduce the withholding of income may be granted upon good cause shown.

22 \* Sec. 3. AS 25.24.160 is amended to read:

23 Sec. 25.24.160. JUDGMENT. In a judgment in an action for di-  
24 vorce or action declaring a marriage void or at any time after judg-  
25 ment, the court may provide

26 (1) [Repealed

27 (2)] for the payment by either or both parties of an amount  
28 of money or goods, in gross or installments that may include cost-of-  
29 living adjustments, as may be just and proper for the parties

1 contribute toward the nurture and education of their children, and the  
2 court may order the parties to arrange with their employers for an  
3 automatic payroll deduction each month or each pay period, if the  
4 period is other than monthly, of the amount of the installment; if the  
5 employer agrees, the installment shall be forwarded by the employer to  
6 the clerk of the superior court which entered the judgment or to the  
7 court trustee, and the amount of the installment is exempt from execu-  
8 tion;

9 (2) [(3)] for the recovery by one party from the other of  
10 an amount of money for maintenance, in gross or in installments, as  
11 may be just and necessary without regard to which of the parties is in  
12 fault;

13 (3) [(4)] for the delivery to either party of that party's  
14 personal property in the possession or control of the other party at  
15 the time of giving the judgment;

16 [(5) Repealed]

17 (4) [(6)] for the division between the parties of their  
18 property, whether joint or separate, acquired only during coverture,  
19 in the manner as may be just, and without regard to which of the  
20 parties is in fault; however, the court, in making the division, may  
21 invade the property of either spouse acquired before marriage when the  
22 balancing of the equities between the parties requires it; and to  
23 accomplish this end the judgment may require that one or both of the  
24 parties assign, deliver, or convey any of their real or personal  
25 property to the other party;

26 (5) [(7)] to change the name of one of the parties.

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1 (i) Exemptions under AS 09.38 do not apply to proceedings to  
2 enforce the payment of child support under AS 47.23.230 - 47.23.270;  
3 however, [50 PERCENT OF THE OBLIGOR'S] net disposable earnings are  
4 [IS] exempt from execution as provided in 15 U.S.C. 1673(b) [UNDER  
5 AS 47.23.230 - 47.23.270]. In this subsection, "net disposable earn-  
6 ings" has the meaning given in 15 U.S.C. 1672.

7 \* Sec. 13. AS 47.23.255 is amended to read:

8 Sec. 47.23.255. INCOME WITHHOLDING [ASSIGNMENT] ORDERS. (a)  
9 The agency shall pay to the obligee all money recovered by the agency  
10 from the obligor under an income withholding [ASSIGNMENT] order except  
11 for court costs and money assigned to the agency under AS 47.23.120 -  
12 47.23.130 [THAT ARE RECOVERED FROM THE OBLIGOR].

13 (b) Notwithstanding AS 47.23.250, an income withholding [ASSIGN-  
14 MENT] order contained in a decision of the agency that has not been  
15 set aside by the superior court under AS 47.23.220 shall be enforced  
16 under the procedure established in AS 09.65.132.

17 \* Sec. 14. AS 47.23.260 is amended to read:

18 Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN  
19 ORDER OR LIEN. If any person, political subdivision, or department of  
20 the state (1) fails to make an answer to an order to withhold and  
21 deliver within the time prescribed in AS 47.23.250; (2) fails or  
22 refuses to deliver property in accordance with an order issued under  
23 AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys  
24 real property subject to a lien filed under AS 47.23.230 to or for the  
25 benefit of the obligor or any other person; (4) fails or refuses to  
26 surrender upon demand property attached; (5) fails or refuses to honor  
27 an assignment of wages or an income withholding [ASSIGNMENT] order  
28 under AS 09.65.132 presented by the agency, the person, political  
29 subdivision, or department of the state is liable to the agency in an

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amount equal to 100 percent of the amount constituting the basis of the lien, order to withhold and deliver, attachment, or withholding [ASSIGNMENT] of wages or income, together with costs, interest, and reasonable attorney fees.

\* Sec. 15. AS 47.23.265(a) is amended to read:

(a) Except as otherwise provided under this chapter, when a notice, paper, or other document is required by this chapter to be given or served upon a person by the agency, the notice, paper, or other document may be served as required by Rule 5, Alaska Rules of Civil Procedure or any other method permitted by law [SENT BY REGISTERED OR CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THAT PERSON. SERVICE BY MAIL UNDER THIS CHAPTER IS EFFECTED WHEN THE NOTICE, PAPER, OR OTHER DOCUMENT IS PROPERLY ADDRESSED REGISTERED OR CERTIFIED, AND MAILED].

\* Sec. 16. AS 47.23 is amended by adding a new section to read:

Sec. 47.23.278. PAYMENTS NOT DISBURSED. Support payments collected and held by the agency for seven years without disbursal shall be returned to the obligor.

\* Sec. 17. This Act takes effect October 1, 1985.

A M E N D M E N T

Offered in the HOUSE

By Taylor

TO: CSHB 92(Jud)

Page 1, line 14, after "order.", insert:

"An income withholding order under this section may not be enforced unless the obligor had (actual) notice of the order when it was made or an application for the order was served on the obligor in the manner provided for service of a summons under Rule 4, Alaska Rules of Civil Procedure."

Edwards  
3/25/85 ✓

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 92 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child and spousal support; and  
7 providing for an effective date."

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

9 \* Section 1. AS 09.65.132 is amended to read:

10 Sec. 09.65.132. INCOME WITHHOLDING [ASSIGNMENT] ORDER FOR CHILD  
11 SUPPORT. (a) A judgment, court order, or order of the child support  
12 enforcement agency under AS 47.23 [(AS 47.23)] providing for the  
13 support of a minor child must [SHALL] contain an income withholding  
14 [ASSIGNMENT] order.

15 (b) An income withholding [ASSIGNMENT] order must [SHALL] direct  
16 the obligor, the obligor's employer, future employer, and any person,  
17 political subdivision, or department of the state to withhold [ASSIGN]  
18 money due or to be due the obligor and pay the money to the [OBLIGEE  
19 OR, WHERE THE ORDER IS ISSUED TO THE CHILD SUPPORT ENFORCEMENT AGENCY  
20 (AS 47.23) OR COLLECTIONS ARE BEING MADE THROUGH THE CHILD SUPPORT EN-  
21 FORCEMENT AGENCY, TO THAT] agency, in an amount determined under (h)  
22 of this section [SUFFICIENT TO MEET THE SUPPORT PAYMENTS IMPOSED BY  
23 THE COURT OR BY THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.-  
24 140].

25 (c) If support payments are in arrears in an amount at least  
26 equal to support payable for one month, the agency, on behalf of an  
27 [AN] obligee or person or public agency designated to receive support  
28 payments, shall [MAY] request an income withholding [ASSIGNMENT] order  
29 against the obligor to take effect by filing a sworn statement with

1 the court that alleges [ALLEGING IN A SWORN STATEMENT] that the obli-  
2 gor is in arrears in an amount at least equal to the support payable  
3 for one month [HAS FAILED TO MAKE A SUPPORT PAYMENT IN FULL WITHIN 45  
4 DAYS OF THE DATE THE PAYMENT WAS DUE AND BY FILING THAT STATEMENT WITH  
5 THE COURT].

6 (d) If an application is [HAS BEEN] filed with the clerk of  
7 court, notice shall be served upon the obligor by the agency in the  
8 manner provided by Rule 5, Alaska Rules of Civil Procedure or any  
9 other method permitted by law. The notice shall [BE SENT BY CERTIFIED  
10 MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF THE  
11 OBLIGOR. THE NOTICE SHALL BE POSTMARKED NO LATER THAN 10 DAYS AFTER  
12 THE DATE ON WHICH THE APPLICATION WAS FILED AND SHALL] inform the  
13 obligor that the income withholding order [ASSIGNMENT] will take  
14 effect 15 days after the date on which the notice is served [WAS  
15 RECEIVED] unless the obligor requests a hearing within the 15 days  
16 after the notice is served [WAS SENT]. If the obligor requests a  
17 hearing, an income withholding order [ASSIGNMENT] may not take effect  
18 until the conclusion of the hearing. The court shall hold a hearing  
19 requested under this section within 15 days after the date the obligor  
20 requests the hearing, to determine if there are any mistakes of fact  
21 that make the withholding order improper, if the amount to be withheld  
22 is incorrect, or if there are any other legal defenses. The court  
23 shall inform the obligor, either at the hearing or within 15 days  
24 after the hearing, whether or not the withholding will occur and of  
25 the date on which it is to commence. It is not a defense under this  
26 section that less than one full month's payment is due if at least one  
27 full month's payment was due on the date notice was served under this  
28 section [ . IF THE OBLIGOR PAYS ALL SUPPORT PAYMENTS DUE BEFORE THE  
29 HEARING, AN INCOME ASSIGNMENT ORDER MAY NOT TAKE EFFECT].

1 (e) The obligee or person or public agency that requested the  
2 income withholding [ASSIGNMENT] order shall immediately send a copy of  
3 the income withholding [ASSIGNMENT] order , a copy of AS 47.23.260 and  
4 AS 09.65.132, and an explanation of the effect of the statutes by  
5 certified mail to persons who may owe money to an obligor. An income  
6 withholding [ASSIGNMENT] order made under this section is binding upon  
7 a person, employer, political subdivision, or department of the state  
8 immediately upon receipt of a copy of the income withholding [ASSIGN-  
9 MENT] order. An employer shall begin withholding the specified amount  
10 from the employee's wages 14 days after the mailing date on the notice  
11 of withholding or on the first day of the next pay period, if earlier.  
12 The amount withheld shall be sent to the agency.

13 (f) An employer may not discharge, discipline, or refuse to em-  
14 ploy an obligor on the basis of an income withholding order issued  
15 [ASSIGNMENT] under this section. If an employer discharges, disci-  
16 plines, or refuses to employ an obligor because of an income withhold-  
17 ing obligation, the court, after notice and hearing, may order rein-  
18 statement or restitution to the obligor, or both. A person who vio-  
19 lates this subsection or a regulation adopted to implement it, is  
20 liable for a civil penalty of not more than \$1,000.

21 (g) An income withholding order [ASSIGNMENT] under this section  
22 has priority over all other attachments, executions, garnishments, or  
23 other legal process brought under state law against the same money  
24 [ASSIGNMENTS] unless otherwise ordered by the court. An income with-  
25 holding order [ASSIGNMENT] is not limited to the wages of an obligor  
26 but may include all money owed to the obligor not otherwise exempt by  
27 law. Exemptions under AS 09.38 do not apply to income assignments  
28 under this section [; HOWEVER, 50 PERCENT OF THE OBLIGOR'S NET DISPOS-  
29 ABLE EARNINGS IS EXEMPT FROM EXECUTION UNDER THIS SECTION. IN THIS

1 SUBSECTION, "NET DISPOSABLE EARNINGS" HAS THE MEANING GIVEN IN 15  
2 U.S.C. 1672].

3 (h) The court may order payment of [AN OBLIGOR TO PAY] all court  
4 [COURTS] costs that resulted from [INVOLVED IN] an income withholding  
5 [ASSIGNMENT] proceeding under this section.

6 \* Sec. 2. AS 09.65.132 is amended by adding new subsections to read:

7 (i) An employer shall, to the extent permitted under 15 U.S.C.  
8 1673(b), withhold the current support obligation from an obligor's  
9 wages. An employer shall withhold additional income, to the extent  
10 permitted under 15 U.S.C. 1673(b), from an obligor's wages for any  
11 support arrearage.

12 (j) An employer may combine into a single payment to the agency  
13 amounts withheld from more than one obligor if the employer specifies  
14 the portion of the payment attributable to each obligor.

15 (k) At the time an obligor terminates employment with an em-  
16 ployer then in receipt of an unsatisfied income withholding order  
17 regarding the obligor, the employer shall immediately inform the  
18 agency of the obligor's name and last known address and the name and  
19 address of all other known employers of the obligor.

20 (l) A petition by the obligor to the court to terminate or  
21 reduce the withholding of income may be granted upon good cause shown.

22 \* Sec. 3. AS 47.23.020(a) is amended to read:

23 (a) The agency shall

24 (1) seek enforcement of [OBTAIN, ENFORCE, AND ADMINISTER]  
25 child support orders of the superior courts of the state in other  
26 jurisdictions and shall obtain, enforce, and administer the orders in  
27 this state;

28 (2) adopt regulations to carry out the purposes of this  
29 chapter, including regulations that [WHICH] establish

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

5 (B) procedures for hearings conducted under AS 47.23.-  
6 170; and

7 (C) subject to AS 47.23.025 and to federal law, a  
8 uniform [SCHEDULE OF PENALTIES AND A] rate of interest on arrear-  
9 ages of support that shall be charged the obligor upon notice if  
10 child support payments are 10 or more days overdue or if payment  
11 is made by a check backed by insufficient funds;

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

14 (4) establish, enforce, and administer child support obli-  
15 gations administratively in accordance with this chapter;

16 (5) administer the state plan required under 42 U.S.C.  
17 651 - 665 (Title IV-D, Social Security Act) as amended;

18 (6) disburse child support payments collected by the agency  
19 to the obligee together with interest charged under (2)(C) of this  
20 subsection; [AND]

21 (7) establish and enforce through the superior courts of  
22 the state child support orders from other jurisdictions pertaining to  
23 obligors within the state; [DEPOSIT PENALTIES CHARGED UNDER (2)(C) OF  
24 THIS SUBSECTION IN THE GENERAL FUND]

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

29 (9) obtain a medical support order as part of a child

1 support order if health care coverage is available to the obligor at a  
2 reasonable cost.

3 \* Sec. 4. AS 47.23 is amended by adding a new section to read:

4 Sec. 47.23.022. ENFORCEMENT REQUESTS FROM OTHER STATES. (a)

5 The agency may act, under the laws of this state, upon requests from  
6 similar state agencies in other states that operate child support  
7 enforcement programs under 42 U.S.C. 651 - 665 (Title IV-D Social  
8 Security Act) to establish and enforce against obligors within this  
9 state support obligations determined in other states.

10 (b) Requests from child support enforcement agencies in other  
11 states shall be made by application containing the information that  
12 this state's agency requires and including written authorization from  
13 the requesting state agency and the obligee for this state's agency to  
14 initiate action necessary to establish, enforce, and collect the  
15 support obligation on their behalf.

16 \* Sec. 5. AS 47.23.025 is amended to read:

17 Sec. 47.23.025. RATES OF [PENALTY AND] INTEREST. [A PENALTY  
18 IMPOSED UNDER AS 47.23.020(a) 2)(C) MAY NOT BE AT A RATE THAT EXCEEDS  
19 THE RATE OF INTEREST IMPOSED ON DELINQUENT TAXES UNDER AS 43.05.225.]  
20 The rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal  
21 the rate imposed under AS 43.05.225 or a lesser rate that is the  
22 maximum rate of interest permitted to be imposed under federal law.

23 \* Sec. 6. AS 47.23.045 is amended to read:

24 Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency  
25 may appear in an action seeking an award of support on [IN] behalf of  
26 a child owed a duty of support, or to enforce a spousal support order  
27 if a spousal support obligation has been established and if a support  
28 obligation, established with respect to a child of that spouse, is  
29 also being administered, and may also appear in an action seeking

1 modification of a support order, decree or judgment already entered.  
2 Action under this section may be undertaken upon application of an  
3 obligee, or at the agency's own discretion if the obligor is liable to  
4 the state under AS 47.23.120(a) or (b).

5 \* Sec. 7. AS 47.23.060(c) is amended to read:

6 (c) In a court proceeding where the support of a minor child is  
7 at issue, the court may order either or both parents to pay the amount  
8 necessary for support, maintenance, nurture, and education of the  
9 child. The court shall issue a medical support order as part of a  
10 child support order if health care coverage is available to the obli-  
11 gor at a reasonable cost. Upon a showing of good cause the court may  
12 order the parents required to pay support to give reasonable security  
13 for payments. An order for prospective child support may be modified  
14 or revoked as the court considers necessary.

15 \* Sec. 8. AS 47.23 is amended by adding a new section to read:

16 Sec. 47.23.075. EMPLOYMENT INFORMATION. (a) An employer of an  
17 obligor or a labor union of which an obligor is a member shall provide  
18 to the agency information requested regarding the obligor's employ-  
19 ment, wages or salary, and location.

20 (b) An employer of an obligor or a labor union of which an  
21 obligor is a member that knowingly violates this section is liable for  
22 a civil penalty of not more than \$1,000.

23 \* Sec. 9. AS 47.23.150(a) is amended to read:

24 (a) Action to enforce a support order administratively under  
25 AS 47.23.230 - 47.23.270 is initiated by the agency serving a notice  
26 on the obligor of the obligor's liability under the support order.  
27 [NOTICE UNDER THIS SUBSECTION SHALL BE SERVED PERSONALLY OR BY REGIS-  
28 TERED, CERTIFIED, OR INSURED MAIL, RETURN RECEIPT REQUESTED, FOR  
29 RESTRICTED DELIVERY ONLY TO THE PERSON TO WHOM THE NOTICE IS DIRECTED

1 OR TO THE PERSON AUTHORIZED UNDER FEDERAL REGULATION TO RECEIVE THAT  
2 PERSON'S RESTRICTED DELIVERY MAIL.]

3 \* Sec. 10. AS 47.23.226 is amended to read:

4 Sec. 47.23.226. COLLECTION OF [ACTION TO COLLECT] CHILD SUPPORT.  
5 To [COMMENCE AN ACTION TO] collect the payment due, the custodian of a  
6 child, or the agency on behalf of that person, shall file with the  
7 court (1) a motion [PETITION] requesting establishment of a judgment;  
8 (2) an affidavit that states that one or more payments of child sup-  
9 port are 30 or more days past due and that specifies the amounts past  
10 due and the dates they became past due; and (3) notice of the ob-  
11 ligor's right to respond. Service on the obligor shall be in the  
12 manner provided in AS 47.23.265 [BY THE RULE OF CIVIL PROCEDURE FOR  
13 SERVICE OF SUMMONS IN A CIVIL ACTION]. The child's custodian, or the  
14 agency on behalf of the custodian, shall file with the court proof of  
15 service of the petition, affidavit, and notice. The obligor shall  
16 respond no later than 15 days after service by filing an affidavit  
17 with the court. If the obligor's affidavit states that the obligor  
18 has paid any of the amounts claimed to be delinquent, describes in  
19 detail the method of payment or offers any other defense to the peti-  
20 tion, then the obligor is entitled to a hearing. After the hearing,  
21 if any, the court shall enter a judgment for the amount of money owed.  
22 If the obligor does not file an affidavit under this section, the  
23 court shall enter a default judgment against the obligor.

24 \* Sec. 11. AS 47.23.250(i) is amended to read:

25 (i) Exemptions under AS 09.38 do not apply to proceedings to  
26 enforce the payment of child support under AS 47.23.230 - 47.23.270;  
27 however, [50 PERCENT OF THE OBLIGOR'S] net disposable earnings are  
28 [IS] exempt from execution as provided in 15 U.S.C. 1673(b) [UNDER  
29 AS 47.23.230 - 47.23.270]. In this subsection, "net disposable

1 earnings" has the meaning given in 15 U.S.C. 1672.

2 \* Sec. 12. AS 47.23.255 is amended to read:

3 Sec. 47.23.255. INCOME WITHHOLDING [ASSIGNMENT] ORDERS. (a)  
4 The agency shall pay to the obligee all money recovered by the agency  
5 from the obligor under an income withholding [ASSIGNMENT] order except  
6 for court costs and money assigned to the agency under AS 47.23.120 -  
7 47.23.130 [THAT ARE RECOVERED FROM THE OBLIGOR].

8 (b) Notwithstanding AS 47.23.250, an income withholding [ASSIGN-  
9 MENT] order contained in a decision of the agency that has not been  
10 set aside by the superior court under AS 47.23.220 shall be enforced  
11 under the procedure established in AS 09.65.132.

12 \* Sec. 13. AS 47.23.260 is amended to read:

13 Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN  
14 ORDER OR LIEN. If any person, political subdivision, or department of  
15 the state (1) fails to make an answer to an order to withhold and  
16 deliver within the time prescribed in AS 47.23.250; (2) fails or  
17 refuses to deliver property in accordance with an order issued under  
18 AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys  
19 real property subject to a lien filed under AS 47.23.230 to or for the  
20 benefit of the obligor or any other person; (4) fails or refuses to  
21 surrender upon demand property attached; (5) fails or refuses to honor  
22 an assignment of wages or an income withholding [ASSIGNMENT] order  
23 under AS 09.65.132 presented by the agency, the person, political  
24 subdivision, or department of the state is liable to the agency in an  
25 amount equal to 100 percent of the amount constituting the basis of  
26 the lien, order to withhold and deliver, attachment, or withholding  
27 [ASSIGNMENT] of wages or income, together with costs, interest, and  
28 reasonable attorney fees.

29 \* Sec. 14. AS 47.23.265(a) is amended to read:

1 (a) Except as otherwise provided under this chapter, when a  
2 notice, paper, or other document is required by this chapter to be  
3 given or served upon a person by the agency, the notice, paper, or  
4 other document may be served as required by Rule 5, Alaska Rules of  
5 Civil Procedure or any other method permitted by law [SENT BY REGIS-  
6 TERED OR CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THAT PERSON.  
7 SERVICE BY MAIL UNDER THIS CHAPTER IS EFFECTED WHEN THE NOTICE, PAPER,  
8 OR OTHER DOCUMENT IS PROPERLY ADDRESSED REGISTERED OR CERTIFIED, AND  
9 MAILED].

10 \* Sec. 15. AS 47.23 is amended by adding a new section to read:

11 Sec. 47.23.278. PAYMENTS NOT DISBURSED. Support payments col-  
12 lected and held by the agency for seven years without disbursal shall  
13 be returned to the obligor.

14 \* Sec. 16. This Act takes effect October 1, 1985.  
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A M E N D M E N T

Offered in the HOUSE

By Clocks

TO: CSHB 92 (HESS)

Page 1, line 29, delete:

"[TO TAKE EFFECT]" and insert "to take effect"

Page 2, line 7, after "obligor", insert:

"by the agency"

Page 2, line 25, after "commence.", insert:

"It is not a legal defense under this section that <sup>less than one</sup> ~~partial payment of~~  
~~month's payment is owed if the payment was made after~~  
~~an amount owed at the time notice was served under this section, has~~  
since been paid."

Page 2, line 29, delete:

"and" and insert "1"

Page 3, line 7, delete:

"47.23.270" and insert "AS 09.65.132, and an explanation of the effect-  
of the statutes"

Page 3, line 7, after "notice", insert:

"of withholding"

Page 3, line 16, delete:

"fine" and insert "civil penalty"

Page 3, line 19, delete:

"pages" and insert "money"

Page 3, lines 28 - 29, delete:

"the plaintiff's court [ALL COURTS] costs and reasonable attorney fees" and insert "all court costs"

Page 4, line 9, after "payment", insert:

"to the agency"

Page 4, lines 11 - 14, delete:

"If in receipt of more than one income withholding order regarding one obligor, the employer shall honor the orders by paying each in full in the sequence of its receipt to the extent permitted under 15 U.S.C. 1673(b)."

Page 4, line 20, delete:

"An obligor may petition" and insert "A petition by the obligor to"

Page 4, lines 21 - 23, delete:

", if all support payments are current, upon good cause shown, such as the emancipation of a child for whom support is paid, or the lack of contract by the agency with the obligee"

Insert: "may be granted upon good cause shown. Good cause includes the emancipation of a child for whom support is owed, the lack of contact by the agency with the obligee, or a written agreement by the parties <sup>which is</sup> approved by the agency"

Page 4, line 24, through page 5, line 28, delete all material.

Renumb remaining bill sections accordingly

~~Page 7, line 6, after "administered", insert~~  
~~"even if not sought by the obligee"~~

Page 7, lines 7 - 8, delete:

"or spousal"

Page 8, line 17, delete "or spousal"

Page 8, after line 21, insert a new bill section to read:

\*\* Sec. 8. AS 47.23 is amended by adding a new section to read:

Sec. 47.23.075. EMPLOYMENT INFORMATION. (a) The employer of an obligor or a labor union of which an obligor is a member shall provide to the agency information requested regarding the obligor's employment, wages or salary, and location.

(b) An employer of an obligor or a labor union of which an obligor is a member that violates this section is liable for a civil penalty of not more than \$1,000."

Page 8, lines 22 - 28, delete all material

Renumber succeeding sections accordingly

Page 10, lines 4 - 5, delete:

"50 percent of the obligor's net disposable earnings is exempt from execution under AS 47.23.230 - 47.23.253 [47.23.270]" and insert "[50 PERCENT OF THE OBLIGOR'S] net disposable earnings are [IS] exempt from execution as provided in 15 U.S.C. 1673(b) [UNDER AS 47.23.230 - 47.23.270]"

Page 10, lines 10 - 12, delete all material and insert:

"The agency shall pay to the obligee all money recovered by the agency from an obligor under an income withholding [ASSIGNMENT] order except for court costs and money assigned to the agency under AS 47.-23.120 - 47.23.130 [THAT ARE RECOVERED FROM THE OBLIGOR]"

Page 11, lines 19 - 20, delete:

"immediately in accordance with AS 01.10.070(c)" and insert "October 1, 1985"

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date

REQUEST

Bill/Resolution No: CSHB 92 HESS  
 Title: An Act relating to child support enforcement  
 Sponsor: Governor  
 Requestor: Governor  
 Date of Request: 1-17-85

FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: Revenue Collection and Management  
 BRU, Program of Subprogram(s) Affected: Child Support Enforcement Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	*(69.6)	(69.6)	(69.6)	(69.6)	(69.6)	(69.6)

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-	-	-	-	-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

not applicable

\* Due to the immediate effective date of the bill, the FY 85 fiscal impact is unknown at this time. However, in no event will it exceed the 69.6 figure shown above.

ANALYSIS: See attached.

Prepared By: Holli Ilene Ploog  
 Division: Child Support Enforcement

Phone: 276-3441  
 Date: 2-25-85

Approved by Commissioner: Milt Tucker Acting  
 Agency: Dept. of Revenue

Date: 3-1-85

Distribution (by Agency preparing fiscal note):

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

## Child Support Enforcement

### Analysis:

This bill is required for Alaska to be in compliance with federal legislation (HR 4325---Child Support Enforcement Amendments of 1984). Audit sanctions could result from failure to establish corresponding state legislation. The total federal grant for Public Assistance could be reduced up to 5%.

### Revenue Reduction:

AS 47.23.025 (Rates of Penalty and Interest)

The proposed legislation eliminates the rate imposed as penalty to obligors for late and missed payments which currently is 12%.

### Computation Basis:

The estimated \$69.6 annual reduction in revenues is based on the average loss of \$5.8 per month in penalties using actual unpaid obligations for a sample period from October through December, 1984. Penalties are imposed for missed or late payments and are one time assessments.

Note: The satisfaction of penalty does not occur until all current obligations, arrearages, and accrued interest have been paid. Therefore, we are unable to determine when or if the division will actually collect the penalties assessed. In fact, collections in FY 84 were only \$186.56 and FY 85 to date collections are only \$535.86. (These figures are not in thousands of dollars.)

POSITION PAPER

HOUSE BILL No. 92

For "An act relating to child and spousal support; and providing for an effective date."

House Bill No. 92 provides for a series of changes in the statutes governing the operations of the Child Support Enforcement Division (CSED) of the Department of Revenue. Most of these changes are required by the federal Child Support Enforcement Amendments of 1984.

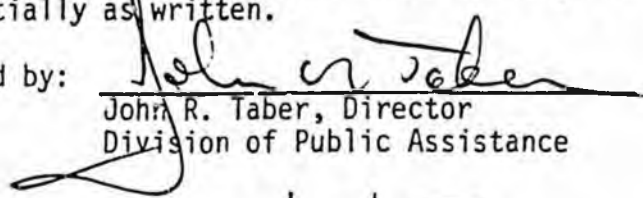
The Department of Health and Social Services supports any reasonable, cost-effective measures which would improve the ability of CSED to establish and collect child support obligations. The funds it collects, on behalf of children receiving assistance under our Aid to Families with Dependent Children Program (AFDC), are partially retained by the state as an offset to AFDC expenditures. Successful collections on behalf of AFDC recipients do result in families leaving the AFDC rolls. Just as importantly, we believe prompt and successful collection efforts on behalf of children who are not receiving AFDC is often instrumental in keeping the family from needing to apply for assistance. We view CSED's success as an essential element in restraining the rapid growth in AFDC expenditures.

An amendment in federal law included in the Child Support Enforcement Amendments of 1984 makes the passage of HB No. 92 of vital interest to our Department. This amendment provides that, should a state's child support enforcement activities be found to be substantially out of compliance with federal requirements and performance standards, the fiscal penalty to the state will be taken as a percentage decrease in the state's AFDC 50 percent federal matching funds. With this amendment comes a clearly-stated congressional intent not merely to threaten such penalties, but to actually enforce them.

RECOMMENDATION

Since passage of HB No. 92 is necessary to ensure CSED's compliance and failure to pass this legislation may pose an actual threat to AFDC federal funding of a magnitude that may even require supplemental state funding, we urge you to enact this bill substantially as written.


Recommended by:

  
John R. Taber, Director  
Division of Public Assistance

Date:

1/28/85

Approved by:

  
John R. Pugh, Commissioner  
Department of Health & Social  
Services

Date:

1/30/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 92  
 Title: An Act relating to child and spousal support  
 Sponsor: Rules, by request  
 Requestor: Revenue  
 Date of Request: 1/18/85

**FISCAL DETAIL**

Agency Affected: Health & Social Services  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program or Subprogram(s) Affected: Assistance Payments, AFDC Component

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

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

HB 92 has a potential cost-avoidance impact upon Aid to Families with Dependent Children (AFDC) utilization and expenditures. If enacted, it should result in some single parent families being supported sufficiently to eliminate their need to apply for AFDC. It should also slightly increase the numbers of current AFDC recipient families leaving the AFDC rolls. Finally, enactment helps to ensure compliance with federal program requirements, thereby avoiding federal

Prepared By: John R. Taber, Director *JRT* Phone: 465-3347  
 Division: Public Assistance Date: \_\_\_\_\_

Approved by Commissioner: John R. Poy Date: 1/30/85 *JCC*  
 Agency: \_\_\_\_\_

**Distribution (by Agency preparing fiscal note):**

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

ANALYSIS CONT.

fiscal penalties, which would be taken against the 50% federal AFDC funding. However, no data exists by which the total potential amount of cost-avoidance might be estimated.

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS

FROM: NANCY BENNETT, COMMITTEE STAFF

RE: CS FOR HB 92 (HESS) - CHANGES IN THE BILL

DATE: FEBRUARY 13, 1985

SECTION 1 and 3 were deleted from the original bill because the committee determined that existing state law already provides remedies for paternity determination better than what was proposed in HB 92.

SECTION 4 was deleted because the subcommittee decided to pursue a different route in providing for interstate income withholding of support payments (see section 4) rather than adoption of a Model Law.

Page 1, lines 25-29 and page 2 lines 1-3: The language was rewritten to be more concise and readable. "May" on page 1, line 28 was changed to "shall" to comply with PL 98-378 which requires income withholding orders.

Page 2, line 22: The language "or if there are any other legal defenses" was added to the sentence as a finding of the court hearing.

Page 2, lines 22-25: This amendment was suggested by Judge Carlson, to make the law comply with the reality of court operations.

Page 3, lines 14-16: Removed language which provided for a misdemeanor for an employer who violates the section.

Page 3, line 29: Added "and reasonable attorney fees" to what the court may order in addition to court costs.

Page 4, line 20: Added "reduce" to grant more discretion to the court in adjusting orders.

Page 4, lines 21-23: Language re-written to comply with federal law. It provides that payments can be terminated or reduced if all arrears are paid but language allowing termination upon a good payment history was deleted since it was determined out of compliance with federal regulations.

Page 4, lines 26-29: Language was added to allow the agency to proceed with interstate support obligations.

Page 5, line 10: Deleted language relating to penalties since the committee determined, upon testimony by the agency director, that penalties are administratively difficult to determine and rarely collected.

Page 5, lines 23-25: Deleted previous language concerning penalties and added language allowing the agency to work interstate support obligations through the courts of the state.

Page 6, line 3: Added "spousal" to the provision for medical support order since many orders are combined for child and spousal support.

Page 6, line 5-17: Added a new section to the bill to apply all state laws relating to support enforcement to interstate obligations the agency may receive.

Page 6, lines 19-21: Deleted all language related to penalties.

Page 7, line 12: Added "or spousal".

Page 7, line 18-23: Added language to this section to guarantee non-discrimination on the basis of receipt of public assistance.

Page 8, lines 5-8: Judge Carlson suggested language to make clear the intent of the section. Also changed "petition" (line 8) to "motion".

Page 9, line 7: Added "attorney fees" to be consistent with language in other sections of the bill.

Page 10, line 5: Added language concerning notice to make the section consistent with other parts of the bill amending notice provisions.

Page 10, lines 11-13: Added a new section to the bill providing that undistributed payments may be returned to the obligor after seven years.

SECTIONAL ANALYSIS

CSHB 92 (HESS) AN ACT RELATING TO CHILD AND SPOUSAL SUPPORT; EFD.

- SEC 1-2 PL 98-378 requires income withholding. Collections are to be deposited and distributed by a public agency designated by the state. Withholding must occur without amendment of support order, must comply with Consumer Credit Reporting Act [15USC 1673(b)], must occur when support is overdue in an amount equal to one month's support. Support obligation must have priority over other legal processes, the amount withheld must be current support and arrears. Notice is required as well as an opportunity to contest action for mistakes of fact. Within 45 days, the obligor must be informed if and when withholding will begin.  
Employer must have notice of the amount to be withheld, must be subject to fine for discharging, refusing to hire and disciplining employee and will be held liable for amount not withheld. The law is to make the employer effort as minimal as possible.
- Sec 3 PL 98-378 requires enforcement of spousal support orders when a child support order is being enforced. Agency must also obtain medical support order when costs are reasonable. Agency must enforce interstate obligations.
- Sec 4 New section of law designed to provide that all child support laws of Alaska are applicable to requests from other jurisdictions. Requests must be accompanied by information needed by the agency, on forms which they specify.
- Sec 5 Deleted all language in this section and section 3 relating to penalties in the statute. Developing the amount of penalties is a large administrative problem and penalties are seldom collected.
- Sec 6 Language complies with the requirement that spousal support obligations must be administered if a child support obligation is administered by the agency.
- Sec 7 Language complies with the requirement that a medical support order must accompany a child support order if the cost is reasonable.
- Sec 8 Language provides that the agency must provide services without discrimination on the basis of receipt of public

assistance.

- Sec 9 Language corrects oversight in Ch. 144, SLA 84 when AS 47.23.265 was enacted, which sets out general notice provisions in all of AS 47.23.
- Sec 10 Clean up language suggested by Judge Carlson (lines 5-8). Other provisions change general notice requirements in compliance with section 9.
- Sec 11 PL 98-378 requires that withholding orders are subject to 15 USC 1673 (b), Consumer Credit Reporting Act.
- Sec 12 Language changes consistent with other sections, and allows the agency to retain costs of attorney fees.
- Sec 13 Language changes consistent with other sections.
- Sec 14 Notice changes consistent with section 9.
- Sec 15 New section which allows undistributed support payments to be returned to obligor.
- Sec 16 Immediate effective date.



Alaska State Legislature  
House of Representatives  
COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

OFFICIAL BUSINESS

FOUCH V  
JUNEAU, AK 99811  
465-3759

ACCEPTED 2/14/84

Proposed amendmer.t

Sec. 25.24.160 Judgment.

change as follows:

(2) for the payment by either or both parties of an amount of money or goods, in gross or installments, as may be just and proper for the parties to contribute toward the nurture and education of their children, such an order may include an automatic cost-of-living increase, and the court may order the parties to arrange with their employers for an automatic payroll deduction each month or each pay period, if the period is other than monthly, of the amount of the installment; if the employer agrees, the installment shall be forwarded by the employer to the clerk of the superior court which entered the judgment or to the court trustee, and the amount of the installment is exempt from execution.

King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

The "clean hands" doctrine serves no purpose in a setting where the court is asked to modify its own custody award as specifically allowed by the statute. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

Courts will recognize and enforce custody decrees of a sister state without reexamination of their merits, regardless of change of conditions, when there is mis-

conduct or malfeasance on the part of the parent seeking such reexamination, by invoking the doctrine of "clean hands." This misconduct generally consists of defiantly leaving a sister state, usually the marital domicile, with the minor to avoid its jurisdiction and for the purpose of seeking redetermination of the issue in a more favorable forum. King v. King, Sup. Ct. Op. No. 650 (File No. 1235), 477 P.2d 356 (1970).

**Collateral references.** — Consent of natural parents as essential to adoption where parents are divorced, 47 ALR2d 824.

Court's power as to custody and visitation of children in marriage annulment proceedings, 63 ALR2d 1008.

Mental health of contesting parent as factor in award of child custody, 74 ALR2d 1073.

Power of court which denied divorce, legal separation or annulment, to award custody or make provisions for support of child, 7 ALR3d 1096.

Withholding or denying visitation rights for failure to make alimony or support payments, 51 ALR3d 520.

Right, in child custody proceedings, to cross-examine investigating officer whose report is used by court in its decision, 59 ALR3d 1337.

Effect in subsequent proceedings, of paternity findings or implications in divorce or annulment decree or in support or custody made incident thereto, 78 ALR3d 846.

Grandparents' visitation rights, 90 ALR3d 222.

Rights and remedies of parents inter se with respect to the names of their children, 92 ALR3d 1091.

Admissibility of social worker's expert testimony on custody issue, 1 ALR4th 837.

Visitation rights of persons other than natural parents or grandparents, 1 ALR4th 1270.

Parent's physical disability or handicap as factor in custody award or proceedings, 3 ALR4th 1044.

Initial award or denial of child custody to homosexual or lesbian parent, 6 ALR4th 1297.

Race as factor in custody award or proceedings, 10 ALR4th 796.

Desire of child as to geographical location of residence or domicile as factor in awarding custody or terminating parental rights, 10 ALR4th 827.

Right of incarcerated mother to retain custody of infant in penal institution, 14 ALR4th 748.

Propriety of awarding joint custody of children, 17 ALR4th 1013.

Propriety of awarding custody of child to parent residing or intending to reside in foreign country, 20 ALR4th 677.

**Sec. 25.24.160. Judgment.** In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

(1) *[Repealed, § 2 ch 160 SLA 1968.]*

(2) for the payment by either or both parties of an amount of money or goods, in gross or installments, as may be just and proper for the parties to contribute toward the nurture and education of their children, and the court may order the parties to arrange with their employers for an automatic payroll deduction each month or each pay period, if the period is other than monthly, of the amount of the installment; if the employer agrees, the installment shall be forwarded by the employer to the clerk of the superior court which entered the judgment

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or to the court trustee, and the amount of the installment is exempt from execution;

(3) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may be just and necessary without regard to which of the parties is in fault;

(4) for the delivery to either party of that party's personal property in the possession or control of the other party at the time of giving the judgment;

(5) [Repealed, § 5 ch 251 SLA 1976.]

(6) for the division between the parties of their property, whether joint or separate, acquired only during coverture, in the manner as may be just, and without regard to which of the parties is in fault; however, the court, in making the division, may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it; and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of their real or personal property to the other party;

(7) to change the name of one of the parties. (§ 12.14 ch 101 SLA 1962; am § 1 ch 84 SLA 1966; am §§ 2 — 6 ch 160 SLA 1968; am §§ 72, 73 ch 127 SLA 1974; am § 5 ch 251 SLA 1976)

Revisor's notes. — Formerly AS 09.55.210. Renumbered in 1983.

NOTES TO DECISIONS

- I. General Consideration.
- II. Child Support.
- III. Alimony.
- IV. Division of Property.
  - A. In General.
  - B. What Constitutes Property.

I. GENERAL CONSIDERATION.

This section and AS 09.55.220 (now AS 25.24.170) are predicated upon the court's jurisdiction of the parties and the subject matter. *Weber v. Weber*, 10 Alaska 214 (1942).

And jurisdiction of defendant's person is necessary for money judgment for alimony. — Where the plaintiff was a resident of Connecticut and the defendant a resident of Alaska, constructive service of summons being made on the defendant in Alaska, the court of the forum had jurisdiction of the marital status but did not have jurisdiction of the person of the defendant which is essential for the entry of a money judgment for alimony. *Thornhill v. Huston*, 13 Alaska 150 (1951).

Quoted in *Balchen v. Balchen*, Sup. Ct. Op. No. 1469 (File No. 3178), 566 P.2d 1324 (1977); *Allen v. Allen*, Sup. Ct. Op.

No. 2514 (File No. 6006), 645 P.2d 774 (1982).

Cited in *Otton v. Zaborac*, Sup. Ct. Op. No. 1072 (File No. 2050), 525 P.2d 537 (1974); *Guterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

II. CHILD SUPPORT.

The trial court is given broad discretion in fashioning suitable visitation rights and support obligations. *Curgus v. Curgus*, Sup. Ct. Op. No. 943 (File No. 1837), 514 P.2d 647 (1973).

Continuation of educational support beyond age of majority. — A reasonable construction of this section allows for the continuation of educational support of children beyond the age of majority. *Hinchey v. Hinchey*, Sup. Ct. Op. No. 2312 (File No. 3528), 625 P.2d 297 (1981).

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600  
465-3603

February 5, 1985

The Honorable Max Gruenberg  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: HB 92 Child and Spousal  
Support

Dear Representative Gruenberg:

During the House HESS committee meeting on January 30, 1985, you asked me to look into the constitutional issue of due process in relation to the use of regular mail as a means of affording notice to obligors in child support enforcement actions. 1/ Your question was predicated on the Child Support Enforcement Division's proposal that the agency be allowed to use regular mail to notify an obligor of enforcement actions.

The seminal United States Supreme Court case concerning notice continues to be Mullane v. Central Hanover Bank and Trust Co., 399 U.S. 306, 314, 315 (1950) which provides that:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. ... The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, ... or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

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1/ My focus is limited to the case where a child support amount has been established and the obligor had notice and an opportunity to be heard in the establishment proceeding.

The Honorable Max Gruenberg  
Alaska State Legislature  
Re: HB 92 Child and Spousal Support

February 5, 1985  
Page 2

The Alaska Supreme Court has relied upon this standard in its own decisions regarding procedural due process requirements. <sup>2/</sup> In Balchen v. Balchen 566 P.2d 1324, 1327 (Alaska 1977) the Alaska Supreme Court found that the formal complaint-summons service requirements of Civil Rule 4 are inappropriate in proceedings which seek to enforce terms of a prior divorce decree relating to child support payments, for, unlike most judgments, divorce decrees can be modified at anytime. The appropriate procedure to be followed in such cases is set forth in the Civil Rule 5. <sup>3/</sup>

Civil Rule 5 provides in part:

(b) Service -- How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing....

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<sup>2/</sup> In State v. Bowers Office Products, Inc. 621 P.2d 11, 13 (Alaska 1980) the court found that the use of regular mail was adequate service to notify potential bidders of a bid amendment.

In Wickersham v. State Commercial Fisheries Entry Commission, 680 P.2d 1135, 1145, 1147 (Alaska 1984) the Alaska Supreme Court found that the Commission's efforts to notify potential applicants for limited entry permits through bulk mailing and media advertisements were constitutionally adequate, even if the materials sent by the Commission never actually reached the potential applicants.

<sup>3/</sup> In Balchen three years had elapsed between the divorce decree and the modification hearing.

The Honorable Max Gruenberg  
Alaska State Legislature  
Re: HB 92 Child and Spousal Support

February 5, 1985  
Page 3

It is the contention of the Child Support Enforcement Division that as in other continuing civil litigation the obligor bears responsibility for keeping the agency or the court informed of his or her current address. <sup>4/</sup> In the child support cases in question an obligor has participated, or had the opportunity to participate, in a prior judicial proceeding regarding his or her child support obligation. The court has continuing jurisdiction of the child support matter. To require the agency to meet the requirements of Civil Rule 4, as if each enforcement proceeding were a new action appears unduly onerous and would interfere unnecessarily with the enforcement process.

Sincerely yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By: *Elizabeth L. Shaw*  
Elizabeth L. Shaw  
Assistant Attorney General

ELS:bap

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4/ AS 47.23.265(b) provides:

SERVICE; NOTIFICATION OF CHANGE OF ADDRESS. (a) Except as otherwise provided under this chapter, when a notice, paper, or other document is required by this chapter to be given or served upon a person by the agency, the notice, paper, or other document may be sent by registered or certified mail to the last known address of that person. Service by mail under this chapter is effected when the notice, paper, or other document is properly addressed, registered or certified, and mailed.

(b) A person required by court order to make child support payments through the agency shall keep the agency informed of the person's current address.

# Summary by Area of Improvement

## CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984

### SUMMARY

The legislation's key provisions make critical improvements to State and local programs in four major areas:

- o Child support enforcement services must be available equally to welfare and non-welfare families;
- o State Child Support Enforcement programs must use proven enforcement techniques;
- o Federal financing of State program operations and the focus of Federal auditing are tied more closely to program effectiveness and efficiency; and
- o There is a strengthened and focused effort to improve enforcement where the custodial parent and children live in one State, and the parent obligated for support lives in another.

The many provisions of the Amendments are categorized below into these cross-cutting themes, so that the same provision may be referenced more than once.

#### I. EQUAL ENFORCEMENT SERVICES FOR WELFARE AND NON-WELFARE FAMILIES

A State's child support enforcement services--establishing paternity, locating absent parents, establishing and enforcing support orders--must be available to all families who apply for them. The new legislation enhances equal treatment through:

##### Wage Withholding

- o Effective October 1, 1985, States must provide for wage withholding when the amount due is equal to one month's support, less if State law permits or absent parent requests; applies to current support and arrearages;
- o Order is issued automatically upon default, the employer and absent parent must be notified, there is no return to court;
- o After October 1, 1985, all support orders initiated by the State include provision for wage withholding;
- o At it's option, the State may apply withholding from sources of income other than wages.

##### Offset of State and Federal Income Tax Refunds

- o For both welfare and non-welfare families, the State must offset State income tax refunds for overdue child support, in appropriate cases;

- o The State can request offset of Federal income tax refunds payable in 1986 through 1990 for non-welfare families; due process requirements and joint return protections included.

#### Program Improvement Incentives

- o Incentive payments are made to States based on cost-effective program operation and collections made on behalf of both welfare and non-welfare families.

#### Other Enhancements

- o Families who leave the welfare rolls must be transferred automatically to non-welfare status for continuation of support enforcement services, with no application or fee required;
- o State enforcement agencies must collect child support on behalf of children receiving foster care;
- o States must collect spousal support when it is also collecting support for the child with whom the former spouse is living;
- o States can use the Federal Parent Locator Service for non-welfare families before exhausting State and local locate sources;
- o States must regularly publicize the availability of enforcement services;
- o Annual notice of support collected for welfare families.

## II. STATE AGENCIES MUST USE PROVEN ENFORCEMENT TECHNIQUES

### Wage/Income Withholding

- o Results in regular and full payment of both current and overdue support.

### Expedited Legal Processes

- o States must use administrative or expedited judicial process for establishing and enforcing support orders, and can use them for establishing paternity.

### State and Federal Income Tax Refund Offsets

- o States must offset State income tax refunds for welfare and non-welfare families. Monies collected on behalf of welfare families go toward reimbursing AFDC payments; non-welfare collections go to family;
- o States can request offset of Federal income tax refunds for both welfare and non-welfare families; monies similarly disbursed as under State tax offset.

Liens

- o States must be able to impose liens against real and personal property, where appropriate.

Security or bonds

- o States must be able to require, where there is a pattern of non-payment, or late payment, bonds or security to be deposited with the court from which support payments can be taken where appropriate.

Reports to Credit Bureaus

- o Upon request from a credit bureau, and after notice to the absent parent, the child support agency must report on overdue support amounts over \$1,000, and can report lesser amounts.

Statute of Limitations

- o States must be able to establish paternity until a child's 18th birthday.

III. IMPROVED PROGRAM PERFORMANCE

Federal Financial Participation (FFP)

- o Encourages greater reliance on performance-based incentives by reducing FFP for State administrative costs by 2% starting in FY 1988 (to 68% of costs) and by another 2% in FY 1990 and after (66%).

Incentive Payment Structure

- o Replaces the old fixed rate of 12% of collections for welfare families, effective FY 1986;
- o Pays a minimum of 6% of collections for both welfare and non-welfare families, with additional payments on a sliding scale up to 10% of collections based on the respective ratios of welfare and non-welfare collections to total administrative costs;
- o States must share incentive payments with local child support enforcement programs, where they have participated in the costs of the program;
- o Each State's incentive payments for non-AFDC collections are limited to 100% of the AFDC collection incentive for FY 1986 and 1987, 105% for FY 1988, 110% for FY 1989, and 115% for FY 1990 and after;
- o In calculating incentive payments for FY 1985, the \$50 disregard of child support income (required by Deficit Reduction Act of 1984) will be included.

Program Audit Requirements

- o Replaces annual audit with requirement for audit at least once every three years; audits are comprehensive and performance-based;

- o Replaces current penalty (5% of Federal AFDC funds) with graduated penalties and provides for suspension of penalties based on corrective action plans.

#### Other

- o Present 90% Federal matching funds are explicitly made available for the development and installation of automated systems to improve required procedures; 90% matching newly extended to computer hardware purchased;
- o Governors must appoint broad-based Commissions on Child Support, with certain exceptions;
- o States are to formulate guidelines for child support awards for judges and other officials who make support determinations;
- o At their option, States may monitor support payments at the request of either parent;
- o The Federal Parent Locator Service and Internal Revenue Service must, upon request, disclose social security numbers to State enforcement agencies.
- o Revised reporting requirements for annual report to the Congress.

#### IV. IMPROVED ENFORCEMENT OF INTERSTATE CASES

##### Proven enforcement techniques

- o State must have procedures for interstate enforcement of wage withholding, regardless of where the custodial parent and child and the absent parent live;
- o Expedited legal processes and other techniques are applicable to interstate as well as intrastate cases.

##### Incentive Payments

- o Interstate collections will be credited to both the initiating and the responding State for calculating incentives.

##### Federal Income Tax Refund offset on behalf of non-welfare families

##### Demonstration Grants

- o Legislation authorizes \$7 million in FY 1985, \$12 million in FY 1986 and \$15 million in FY 1987 for special demonstration projects testing innovative methods of interstate enforcement and collection;
- o Demonstration authority including waivers of program requirements extended to child support program.

##### Program audit focus on program performance, including interstate cooperation

V. OTHER PROVISIONS OF THE AMENDMENTS

Fees

- o States must charge non-AFDC families an application fee of not more than \$25; fee can be charged to the custodial or absent parent, or be paid by the State based on individual's ability to pay;
- o States may charge, in welfare and non-welfare cases, a late-payment fee to the obligated parent of between 3 and 6 %of the arrearages;

Wisconsin Child Support Initiative

Medicaid Benefits

- o Until FY 1989, families that become ineligible for AFDC due to collection of child support, will retain Medicaid benefits for 4 months.

Medical Support

- o States must include medical support as part of child support orders when private health insurance is available to the non-custodial parent at reasonable cost.

Sectional Summary. Relates to PL 98-378  
★ - effective earlier than 10/1/85

Child Support Enforcement Amendments of 1984

Section 1 Bill title.



Section 2 Would amend section 451 of the Social Security Act to clarify that assistance in obtaining support must be available to all children for whom such assistance is requested.

Equal Treatment  
eff. with  
 enactment

Section 3 Would amend section 454 of the Social Security Act to require States to have laws in effect October 1, 1985 requiring procedures for:

eff date  
applies to all  
mandatory  
practices

provisions

- o automatic wage withholding in the case of all IV-D child support payments delinquent in an amount equal to one month's support obligation, or upon request by the absent parent, or any time earlier which the State may choose. Withholding must be paid through public or publicly-accountable entities with accurate recordkeeping and monitoring. Advance notice must be given to the absent parent. If contested, State has 45 days from the advance notice to inform absent parent if withholding will occur and (if so) when. The amount to be withheld could include a fee to cover employer costs, at State option. Employer may waive the fee. Provisions must be made for withholding in interstate cases and terminating withholdings in all cases. At the States' option, income other than wages may be subject to withholding.
- o expedited processes, either through the judicial or administrative system for the establishment and enforcement of support obligations. States may include establishment of paternity in these processes.
- o offsetting State tax refunds to collect overdue support for AFDC and non-AFDC cases, except in appropriate cases.
- o imposing liens against real and personal property for amounts of overdue support, except in appropriate cases.
- o authorizing the court to require a security, bond, or other guarantee to secure support obligations from absent parents with a pattern of overdue support, except in appropriate cases.
- o permitting the establishment of paternity for both AFDC and non-AFDC children until their 18th birthdays.
- o making information available to the consumer credit agencies upon request if amounts of overdue support are in excess of \$1000, except in appropriate cases. States may recover costs of this activity from the credit agencies.
- o all support orders issued or modified after October 1, 1985 to include a provision for wage withholding.
- o Secretary may grant States exemption from the eight requirements above if such State demonstrates that the use of such procedure(s) would not increase the effectiveness or efficiency of the State child support program.

### Rule 5. Service and Filing of Pleadings and Other Papers.

(a) **Service—When Required.** Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) **Service—How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service, execution and return based on a copy of any paper transmitted by telegraph or radio may be made by the person to whom directed with the same effect as if such copy were the original. In such case the original shall be filed in the court from which it was issued.

(c) **Service—Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) **Filing.**

(1) Except as provided in (2) of this paragraph, all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(2) Unless filing is ordered by the court on motion of a party or on its own motion, the following may not be filed unless and until they are used in the proceedings:

- (i) notices of taking depositions;
- (ii) interrogatories and requests for admissions and answers thereto;
- (iii) requests for production and responses thereto;
- (iv) subpoenas, including subpoenas duces tecum;
- (v) offers of judgment;
- (vi) proof of service of any of the above;
- (vii) copies of correspondence between counsel.

(e) **Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court at the court location where the case is filed unless otherwise directed by the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(f) **Proof of Service.** Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in these rules, must show

the day and manner of service and may be by written acknowledgement of service, by certificate of an attorney, by affidavit of the person who served the papers, or by any other proof satisfactory to the court. Proof of service must be made promptly and in any event before action is to be taken on the paper served by the court or the parties. Failure to make the proof of service required by this subdivision does not affect the validity of service; and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

(g) Service After Final Judgment.

(1) Notwithstanding the provisions of paragraph (b) of this rule requiring service upon an attorney, a party who has been represented by an attorney in an action or proceeding shall himself be served in accordance with the provisions of paragraph (b) with a motion or other request for relief filed in the action or proceeding where a period of one year has elapsed since the filing of any paper or the issuance of any process in the action or proceeding, and

(i) The final judgment or decree has been entered and the time for filing an appeal has expired or

(ii) If an appeal has been taken, the final judgment or decree upon remand has been entered or the mandate has been issued affirming the judgment or decree, and

(iii) The party's attorney has not filed a notice of continued representation under Rule 81(d)(2).

(2) If a party is served under circumstances described in Section (1) of this paragraph, or if a party appeared in his or her own behalf in the prior action or proceeding, the paper served shall include notice to the party of his right to file written opposition or response, the time within which such opposition or response must be filed, and the place where it must be filed. (Amended by Supreme Court Order 258 effective November 15, 1976; by Supreme Court Order 354 effective April 1, 1979; by Supreme Court Order 372 effective August 15, 1979; by Supreme Court Order 375 effective August 15, 1979; by Supreme Court Order 410 effective May 15, 1980; by Supreme Court Order 471 effective June 1, 1981; and by Supreme Court Order 522 effective October 1, 1982)

320(b).<sup>7</sup> Thus, while we recognize that strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement under the provisions of that statute.

[3] Applying the foregoing rule to the instant case, we hold that the trial judge was clearly mistaken in finding that there was a substantial basis for the City engineer's conclusion that the alleged easement was reasonably necessary for appellees' use and enjoyment of their property. The record was devoid of such evidence. At most, the easement was shown to be a matter of added convenience.

Our search of the record fails to disclose evidence sufficient to support appellees' contention that the access available from Water Street would not provide them with a reasonable mode of ingress and egress sufficient to allow them full use and enjoyment of their property. The fact that such access may be less convenient, or that it is not a method of access commonly used by them or their predecessors in interest, does not mean that it is unavailable or that it is not a reasonable mode of access.

The judgment of the superior court is reversed. This matter is remanded for entry of judgment in favor of appellant, such judgment to include an award for costs and reasonable attorney's fees. Our resolution of this case makes it unnecessary for us to decide the other issues presented by the appeal or by appellees' cross appeal.

REVERSED and REMANDED for entry of judgment in favor of appellant.



7. We do not imply that the term "reasonably necessary" should be defined in this manner for the purpose of determining portions of unoccupied tidelands reasonably necessary to an occupant's use and enjoyment of occupied

Alphonse P. BALCHEN, Appellant.

v.

Majorie A. BALCHEN, Appellee.

No. 3178.

Supreme Court of Alaska.

Aug. 5, 1977.

The Superior Court, Third Judicial District, James K. Singleton, J., denied former husband's motion to set aside 1975 judgment entered in favor of former wife on her motion for judgment on back child support to which she was entitled under 1975 divorce decree, and former husband appeared. The Supreme Court, Rabinowitz, held that: (1) facts that former husband rather than his attorney, was served with copy of motion for judgment on back child support and that court's permission had not been obtained prior to serving former husband did not render judgment void; despite fact that service of motion was procedurally defective in that it contained no notice of hearing date and failed to advise former husband of right to file opposition to motion, procedural defects did not furnish sufficient grounds for vacation of judgment since defects were neither jurisdictional nor did they rise to the level of a due process violation.

Affirmed in part and modified in part.

#### 1. Judgment $\Rightarrow$ 15, 349

A judgment rendered without jurisdiction is void and is thus vulnerable to attack pursuant to rule governing motion to set aside judgment. Rules of Civil Procedure rule 60(b).

#### 2. Divorce $\Rightarrow$ 311

Formal complaint-summons service requirements of civil rule are inappropriate in proceedings which seek to enforce terms of a prior divorce decree relating to child support payments, for, unlike most judgments, divorce decrees can be modified at anytime, and thus superior court retains jurisdiction of the matter after the "final" judgment

or developed land. The definition which we use here applies to the claim of an easement across the tidelands occupied or developed by another.

has been entered; appropriate procedure to be followed in such cases is set forth in rule requiring service upon attorney unless service upon party himself is ordered by the court. Rules of Civil Procedure, rules 4, 5(b), 60(b)(4); Fed.Rules Civ.Proc. rules 4, 5, 28 U.S.C.A.

M. Ashley Dickerson and James Ottinger, M. Ashley Dickerson, Inc., Anchorage, for appellant.

Peter LaBate, Anchorage, for appellee.

Before BOOCHEVER, C. J., and RABINOWITZ and BURKE, JJ.

OPINION

RABINOWITZ, Justice.

This is an appeal from the superior court's denial of Alphonse Balchen's Civil Rule 60(b) motion to set aside a judgment. For reasons set forth below, we affirm the superior court's decision in part and modify it in part.

In July 1973, Marjorie Balchen filed a complaint for divorce. Later that month, Paul F. Robison, Esq. filed an appearance on behalf of Alphonse Balchen. Thereafter, pursuant to the two documents filed, the Appearance and Waiver and the Separation and Property Settlement Agreement, the superior court, in October 1973, entered findings of fact and conclusions of law, a decree of divorce, and a child support order. Under the terms of the decree, Marjorie was given custody of three of the parties' four minor children, and Alphonse was ordered to pay monthly child support in the amount of \$135.00 per child.

In July 1976, Marjorie filed a motion for judgment on back child support. In this motion Marjorie sought a total of \$1,250.00 in arrearages for the support of two of the parties' daughters. Alphonse did not reply or plead to the motion. On August 23, 1976, a judgment was entered in which it was decreed that Alphonse owed the sum of \$1,250.00 for back child support.<sup>1</sup> Three weeks later, Alphonse moved to set this judgment aside on two grounds. First, it was asserted that the judgment was void, because the superior court did not obtain jurisdiction over Alphonse since he was not served in accordance with either Civil Rule 4 or Civil Rule 5.<sup>2</sup> Second, it was contended

3. Divorce  $\Rightarrow$  311

Where decree of divorce was entered in October, 1973 and former wife's motion to reduce support arrearages to judgment was filed in July, 1976, fact that former husband, rather than his attorney, was served with copy of wife's motion for judgment on back child support did not invalidate judgment in favor of wife on her motion, even though preferred procedure of obtaining superior court's permission prior to making service of motion on former husband rather than his attorney was not complied with. Rules of Civil Procedure, rule 5(b).

4. Divorce  $\Rightarrow$  311

Despite fact that service of former wife's motion to reduce arrearage to judgment was procedurally defective in that it contained no notice of hearing date and additionally failed to advise former husband of right to file opposition to motion, procedural defects did not furnish sufficient grounds for vacation of judgment entered in favor of wife on her motion, in view of fact that defects were neither jurisdictional nor did they rise to level of due process violation and in view of absence of any showing of a meritorious defense. Rules of Civil Procedure, rule 60(b).

5. Appeal and Error  $\Rightarrow$  982(2)

Except in very unusual case, Supreme Court will not reverse superior court's denial of motion to set aside judgment as an abuse of discretion where movant has made a showing of a meritorious defense. Rules of Civil Procedure, rule 60(b).

1. At this time a new child support order was entered by a master of the superior court. This order directed that all future support payments be made through the court trustee's office.

2. Civil Rule 60(b)(4) reads: On motion and upon such terms as are just, the court may relieve a party or his legal

Appellant,

Appellee.

Alaska.

rd Judicial Dis- denied former ide 1976 judg- former wife on back child sup- led under 1973 husband appeal- Rabinowitz, J., ormer husband, as served with t on back child mission had not ng former hus- ment void; (2) motion was pro- t contained no failed to advise file opposition ts did not fur- or va tion of e neither juris- o the level of a modified in part.

Without jurisdic- erable to attack motion to set Civil Procedure,

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that the superior court's judgment should be set aside because rendered through excusable neglect, mistake, or inadvertence.<sup>3</sup> This latter basis for appellant's attack on the judgment was founded on his allegations that the judgment included future support for a minor child who had been emancipated. The superior court denied Alphonse's Civil Rule 60(b) motion and this appeal followed.

Appellant's primary contention on appeal is that the superior court lacked jurisdiction to enter the judgment for support arrearages because "service of appellee's motion to reduce alleged arrearages to judgment . . . failed to comply with [the appropriate] Rules of Civil Procedure."

[1] Alaska Civil Rule 5(b) provides that with respect to all pleadings and papers subsequent to the original complaint "the service shall be made upon the attorney unless service upon the party himself is ordered by the court." Alaska Civil Rule 4 sets forth the procedures whereby an original complaint is served, complete with a summons. Alphonse, rather than his attorney, was served with a copy of the motion. Thus the procedure used did not comply with Rule 5(b). Alphonse was not served with a summons. Therefore the procedure used did not comply with Rule 4. Alphonse contends that because there was lack of strict compliance with either Rule 4 or Rule 5(b) the superior court was without jurisdiction. A judgment rendered without jurisdiction is void and is thus vulnerable to attack pursuant to a Rule 60(b)(4) motion.<sup>4</sup> Since this court has not addressed this precise issue before, we think it appropriate to examine relevant authority from other sources.

representative from a final judgment, order, or proceeding for the following reason:

(4) the judgment is void[.]

Civil Rule 4(a) provides:

Upon the filing of the complaint the clerk should forthwith issue a summons and deliver it for service to a peace officer or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants. Civil Rule 5(b) reads, in part:

Whenever under these rules service is required or permitted to be made upon a party

Writing on the parallel federal rules, Professors Wright and Miller state:

The requirement of service on the attorney is to be followed literally; service upon a party represented by an attorney does not comply with the rule. The theory underlying Rule 5(b) is that service of papers on the attorney rather than the party will expedite preparation of a case for prompt adjudication on the merits.

There are two basic exceptions to the rule that papers be served on the attorney. Under the first, service on a party is valid—indeed it is obligatory—if a party does not have an attorney or if his attorney has ceased to represent him.

The second exception permits service on the party at the express direction of the court.<sup>5</sup> (footnotes omitted)

A case similar to the one at bar was presented in *Tilghman v. Tilghman*, 57 F.Supp. 417 (D.D.C.1944). In *Tilghman*, the wife moved to have the husband adjudged in contempt for failure to pay the alimony as awarded in their divorce decree. The husband, who was personally served with a copy of the motion outside the District of Columbia, attempted a special appearance to quash service. The district court first noted that the court had acquired jurisdiction over the person of the husband in the divorce proceeding and thus all motions with respect to that action were governed by Fed.R.Civ.P. 5, rather than Fed.R.Civ.P. 4. The court next addressed the issue of non-compliance with the terms of Rule 5(b), since the husband, rather than the hus-

represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court.

3. Civil Rule 60(b)(1) provides that a party may be relieved from a final judgment in cases of "mistake, inadvertence, surprise or excusable neglect."

4. 11 C. Wright & A. Miller, *Federal Practice and Procedure*: Civil § 2862, at 198-200 (1973).

5. 4 C. Wright & A. Miller, *Federal Practice and Procedure*: Civil § 1145, at 583-84 (1969).

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hand's attorney, had t served with the  
motion. The court state.

It is true plaintiff did not obtain, in ad-  
vance, an order of court for service upon  
the party instead of the attorney, but I  
cannot believe the Rules are to be con-  
strued so narrowly as to make such fail-  
ure a ground for invalidating the service  
herein. Such construction would be con-  
trary to their spirit and purpose which is  
epitomized in Rule 1 Federal Rules of  
Civil Procedure, wherein it is stated that  
they should be construed to secure just,  
speedy, and inexpensive determination of  
every action.

Indeed, it would seem to be desirable  
practice, in motions of this character (and  
I have heretofore so indicated), to serve  
defendant personally under order of  
court, rather than his attorney of record,  
whenever there is likely to be a showing  
that, with the passage of years after final  
judgment, the attorney has lost contact  
with his client.<sup>6</sup>

[2] We think the *Tilghman* analysis  
sound. In our view, the formal complaint-  
summons service requirements of Civil Rule  
4 are inappropriate in proceedings which  
seek to enforce the terms of a prior divorce  
decree relating to child support payments.  
Unlike most judgments, divorce decrees can  
be modified at anytime; thus, the superior  
court retains jurisdiction of the matter af-  
ter the "final" judgment has been entered.<sup>7</sup>  
We therefore hold that Civil Rule 5(b) pro-  
vides the appropriate procedure to be fol-  
lowed in such cases.

6. 57 F.Supp. at 418. See generally Annot., 42  
A.L.R.2d 1115 (1955) and Annot., 15 A.L.R. 627  
(1921).

7. AS 09.55.210 outlines the powers of the court  
to rule "in an action for divorce or action de-  
claring a marriage void or at any time after  
judgment" with respect to property divisions  
and support orders. AS 09.55.205 provides au-  
thority for the court to enter orders concerning  
custody and visitation "at the final hearing or  
at any time thereafter during the minority" of  
the child of the marriage.

8. We are of the view that the general procedur-  
al questions raised by this appeal should be

[3] Thus we must determine whether  
the failure to secure the court's permission  
prior to serving the appellant personally  
rendered the judgment void. In this case  
we are presented with a situation which is  
not atypical. As we noted previously, the  
decree of divorce was entered in October  
1973, and appellee's motion to reduce sup-  
port arrearages to judgment was granted in  
August 1976. The fact that attorneys often  
do not continue to represent individuals af-  
ter the entry of a divorce decree implies  
that in order to ensure notice to the party  
of the pending motion, it is more appropri-  
ate to serve the party personally. This  
situation is analogous to the first exception  
to Civil Rule 5(b) discussed by Wright and  
Miller. That is, service on the party rather  
than the attorney is required when the at-  
torney has ceased to represent the party or  
when the party does not have an attorney.  
Admittedly under Alaska's Rules of Civil  
Procedure as presently constituted, the pre-  
ferred procedure is to obtain the superior  
court's permission prior to making service  
of a motion on a party personally. Never-  
theless, this minor non-compliance with Civ-  
il Rule 5(b) does not require vacation of the  
judgment in question.<sup>8</sup>

[4, 5] At oral argument counsel for ap-  
pellant advanced an argument which dif-  
fered from those contained in appellant's  
brief. Appellant Alphonse now contends  
that appellee's motion to reduce the arrear-  
age to judgment was defective in that it  
contained no notice of a hearing date<sup>9</sup> and  
additionally failed to advise him of the  
right to file opposition to the motion. Al-  
though we think there is merit in appel-

referred to the Supreme Court's Standing Ad-  
visory Committee on Civil Rules. More par-  
ticularly, we think there is merit in providing, in  
matters such as enforcement procedures per-  
taining to child support and custody, explicit  
rules which would permit service, including  
appropriate notice, on the party rather than  
upon the attorney who represented the party at  
proceedings leading up to the judgment or or-  
der which is sought to be enforced.

9. On the basis of the record before us, we  
conclude that no hearing was held on the mo-  
tion.

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lant's contentions that service of the motion, without more, was procedurally defective, we have concluded that this procedural defect does not furnish sufficient grounds for vacation of the judgment pursuant to Civil Rule 60(b)(4) since the defect is neither jurisdictional nor does it rise to the level of a due process violation.<sup>10</sup> Furthermore, given the particular setting of the case at bar, the procedural defect does not give rise to any other ground for relief specified in Civil Rule 60(b). We note that Alphonse has not contested the amount of support arrearage which the superior court found to be due. In the absence of any showing of a meritorious defense, we hold that the superior court did not err in denying appellant's Civil Rule 60(b) motion.<sup>11</sup>

In his second specification of error, appellant asserts that the order for future child

support for both children "comprises a miscarriage of justice" because the facts before the court indicated that one of the children was no longer living with the mother. At oral argument counsel for appellee conceded that the order should be modified to require future support payments for only one minor child of the parties. Thus, on the basis of the concession by counsel for appellee, the superior court's order for future child support is to be modified accordingly.

Affirmed in part and modified in part.



10. This notice aspect of the general question will also be referred to the Standing Advisory Committee on Civil Rules. See note 8, *supra*.

11. In *Markland v. City of Fairbanks*, 513 P.2d 658 (Alaska 1973), we outlined the necessity that the Rule 60(b) movant establish a meritorious defense should the judgment be reopened.

*Cf. Aguchak v. Montgomery Ward Co., Inc.*, 520 P.2d 1352, 1354 (Alaska 1974) (Rule 60(b)(4) motion). Except in very unusual cases, we will not reverse the superior court's denial of a Rule 60(b) motion as an abuse of discretion where the movant has not made a showing of a meritorious defense.

from:

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REPORT BY THE U.S.

# General Accounting Office

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## U.S. Child Support: Needed Efforts Underway To Increase Collections From Absent Parents

The Department of Health and Human Services' (HHS') Child Support Enforcement Program was created in 1975 to help collect support from absent parents. The program is overseen by HHS' Office of Child Support Enforcement and operated through state and local agencies.

At the Senate Budget Committee's request, GAO reviewed collection activities at five state child support offices and seven local offices. GAO found that

- absent parents paid about half the support owed, and about two-thirds of these parents' payments were delinquent by more than 30 days at least once during the study year;
- there were few standards governing collection activities, and the agencies were not acting promptly or at all to collect past due amounts; and
- the availability of collection services for families not in the Aid to Families with Dependent Children program varied.

Enacted in August 1984, the 1984 Child Support Enforcement Amendments could significantly enhance collections and correct the deficiencies GAO noted.



GAO/HRD-85-5  
OCTOBER 30, 1984

SUMMARY OF CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984Section 1 - Contents

Section 2 - Purpose of the program.--Language is added to the statement of purpose assuring that services will be made available to non-AFDC families.

Section 3 - Improved child support enforcement through required state laws and procedures.--States are required to enact laws establishing the following procedures:

1. Mandatory wage withholding for all families (AFDC and non-AFDC) if support payments are delinquent in an amount equal to 1 month's support. States must also allow absent parents to request withholding at an earlier date.
2. Imposing liens against real and personal property for amounts of overdue support.
3. Withholding of state tax refunds payable to a parent of a child receiving services, if the parent is delinquent in support payments.
4. Making available information regarding the amount of overdue support owed by an absent parent, to any consumer credit bureau, upon request of such organization.
5. Requiring individuals who have demonstrated a pattern of delinquent payments to post a bond, or give some other guarantee to secure payment of overdue support.
6. Establishing expedited processes within the state judicial system or under administrative processes for obtaining and enforcing child support orders and, at the option of the state, for determining paternity.
7. Notifying each AFDC recipient at least once each year of the amount of child support collected on behalf of that recipient.
8. Permitting the establishment of paternity until a child's 18th birthday.
9. At the option of the state, providing that child support payments must be made through the agency that administers the state's income withholding system if either the custodial or noncustodial parent requests that they be made in this manner.

The Secretary of Health and Human Services may grant an exemption to a state from the required procedures, subject to later review, if the state can demonstrate that such procedures will not improve the efficiency and effectiveness of the state Child Support Enforcement program.

Service fees to non-AFDC families.--States will be required to charge an application fee for non-AFDC cases not to exceed \$25. The state may charge the fee against the custodial parent, pay the fee out of state funds, or recover the fee from the non-custodial parent.

In addition, states may charge absent parents a late payment fee equal to between 3 and 6 percent of the amount of overdue support. The state may not take any action which would have the effect of reducing the amount paid to the child and will collect the fee only after the full amount of the support has been paid to the child. The late payment fee provision is effective upon enactment.

The enforcement provisions are generally effective October 1, 1985.

Section 4 - Federal matching of administrative costs.--The federal matching share is gradually reduced from 70 percent to 68 percent in fiscal years 1988 and 1989, and 66 percent beginning in fiscal year 1990.

Section 5 - Federal incentive payments.--The current incentive formula which gives states 12 percent of their AFDC collections (paid for out of the federal share of the collections) is replaced with a new formula that will be equal to 6 percent of the state's AFDC collections and 6 percent of its non-AFDC collections. States may qualify for higher incentive payments, up to a maximum of 10 percent of collections, if their AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC components of the program as shown below.

<u>AFDC incentive payment</u>		<u>Non-AFDC incentive payment</u>	
<u>Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs</u>	<u>Incentive equal to this percent of AFDC collections</u>	<u>Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs</u>	<u>Incentive equal to this percent of non-AFDC collections</u>
less than 1.4 : 1	6.0	less than 1.4 : 1	6.0
1.4 : 1	6.5	1.4 : 1	6.5
1.6 : 1	7.0	1.6 : 1	7.0
1.8 : 1	7.5	1.8 : 1	7.5
2.0 : 1	8.0	2.0 : 1	8.0
2.2 : 1	8.5	2.2 : 1	8.5
2.4 : 1	9.0	2.4 : 1	9.0
2.6 : 1	9.5	2.6 : 1	9.5
2.8 : 1	10.0	2.8 : 1	10.0

The total dollar amount of incentives paid for non-AFDC families may not exceed the amount of the state's incentive payment for AFDC collections for fiscal years 1986 and 1987. Thereafter the incentive paid for non-AFDC collections will be capped at an amount equal to 105 percent of the incentive for AFDC collections in fiscal year 1988, 110 percent in fiscal year 1989, and 115 percent beginning in fiscal year 1990. For fiscal year 1985, the amount of the AFDC incentive will be calculated on the basis of AFDC collections without regard to the provision added by the Deficit Reduction Act of 1984 that requires that the first \$50 collected on behalf of an AFDC family in any month must be paid to the family without reducing the amount of the AFDC payment to the family.

States may exclude the laboratory costs of determining paternity from combined administrative costs for purposes of computing incentive payments.

States are required to pass through to local jurisdictions that participate in the cost of the program an appropriate share of the incentive payments, as determined by the state, taking into account program effectiveness and efficiency. Amounts collected in interstate cases will be credited, for purposes of computing the incentive payments, to both the initiating and responding states.

As part of the new funding formula, "hold harmless" protection is provided for fiscal years 1986 and 1987 which assures the states that for those years they will receive the higher of the amounts due them under the new incentive and federal match provisions, or no less than 80 percent of what they would have received in fiscal year 1985 under prior law.

The provision is effective beginning with fiscal year 1986 (Oct. 1, 1985).

Section 6 - Federal matching for automated management systems used in income withholding and other procedures.--The 90-percent federal matching rate currently available to states to establish an automatic data processing and information retrieval system may be used to develop and improve income withholding and other required procedures. The 90-percent matching is also available to pay for the acquisition of computer hardware.

The provision is effective October 1, 1984.

Section 7 - Continuing support enforcement for AFDC recipients whose benefits are terminated.--States must provide that families whose eligibility for AFDC is terminated will be automatically transferred from AFDC to non-AFDC status without requiring application services or payment of a fee.

The provision is effective October 1, 1984.

Section 8 - Special project grants to promote improvement in interstate enforcement.--The Secretary is authorized to make demonstration grants to states which propose to undertake new or innovative methods of support collection in interstate cases.

Section 9 - Periodic review of state programs; modifications of penalty.--The director of the federal Office of Child Support Enforcement is required to conduct audits at least every 3 years to determine whether the standards and requirements prescribed by law and regulations have been met. Under the penalty provisions, a state's AFDC matching funds must be reduced by an amount equal to at least 1 but no more than 2 percent for the first failure to comply substantially with the standards and requirements, at least 2 but no more than 3 percent for the second failure, and at least 3 but no more than 5 percent for the third and any subsequent consecutive failures.

Annual audits are required unless a state is in substantial compliance. If a state is not in substantial compliance, the penalty may be suspended only if the state is actively pursuing a corrective action plan, approved by the Secretary, which can be expected to bring the state into substantial compliance on a specific and reasonable timetable. If at the end of the corrective action period substantial compliance has been achieved, no penalties would be due. If substantial compliance has not been achieved, penalties would begin at the end of the corrective

action period if the state has implemented the corrective action plan. A state which is not in full compliance may be determined to be in substantial compliance only if the Secretary determines that any noncompliance is of a technical nature which does not adversely affect the performance of the Child Support Enforcement program.

The provision is effective beginning in fiscal year 1984.

Section 10 - Extension of sec. 1115 demonstration authority to the child support system.--The sec. 1115 demonstration authority is expanded to include the Child Support Enforcement program under specified conditions.

The provision is effective upon enactment.

Section 11 - Child support enforcement for certain children in foster care.--State child support agencies are required to undertake child support collections on behalf of children receiving foster care maintenance payments under title IV-E of the Social Security Act, if an assignment of rights to support to the state has been secured by the foster care agency. In addition, foster care agencies are required to secure an assignment to the state or any rights to support on behalf of a child receiving foster care maintenance payments under the title IV-E foster care program.

The provision is effective October 1, 1984.

Section 12 - Collecting spousal support.--Child support enforcement services must include the enforcement of spousal support, but only if a support obligation has been established with respect to the spouse, the child and spouse are living in the same household, and child support is being collected along with spousal support.

The provision is effective October 1, 1985.

Section 13 - Modifying annual report content.--The information requirements of the Secretary's annual report on Child Support Enforcement program activities are expanded to include the following data.

1. The total number of cases in which a support obligation has been established in the past year and the total amount of obligations;

2. The total number of cases in which a support obligation has been established and the total amount of obligations;

3. Cases described in (1) in which support was collected during a fiscal year and the total amount; and

4. Cases described in (2) in which support was collected during a fiscal year and the total amount.

Additionally, the annual report must include information on the child support cases filed and the collections made in each state on behalf of children residing in another state or cases against parents residing in another state. The annual report must also detail how much in administrative costs is spent in each functional expenditure category (including paternity). This information is to be separately stated for current and for past AFDC and non-AFDC cases.

The provision is effective beginning for the report issued for fiscal year 1986.

Section 14 - Requirement to publicize the availability of child support services.--States must frequently publicize, through public service announcements, the availability of child support enforcement services, together with information as to the application fee for services and a telephone number or postal address to be used to obtain additional information.

The provision is effective October 1, 1985.

Section 15 - State Commissions on Child Support.--The governor of each state is required to appoint a state Commission on Child Support. The commission must include representation from all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the judiciary, the governor, the legislature, child welfare and social services agencies, and others.

Each state commission is to examine the functioning of the state child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children, including but not limited to such specific problems as: (1) visitation, (2) establishment of appropriate objective standards for support, (3) enforcement of interstate obligations, and (4) additional federal and state legislation needed to obtain support for all children.

The commission shall submit to the governor, and make available to the public, reports on their findings and recommendations no later than October 1, 1985. Costs of operating the commissions will not be eligible for federal matching.

The Secretary may waive the requirement for a commission at the request of a state if he determines that the state has had such a commission or council within the last 5 years or is making satisfactory progress toward fully effective child support enforcement.

Section 16 - Requirement to include medical support as part of any child support order.--The Secretary is required to issue regulations to require state agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. The regulations must also provide for improved information exchange between the state IV-D agencies and the Medicaid agencies with respect to the availability of health insurance coverage.

Section 17 - Availability of federal parent locator services to state agencies.--The present requirement that the states exhaust all state child support locator resources before they request the assistance of the federal Parent Locator Service is repealed.

The provision is effective upon enactment.

Section 18 - Guidelines for determining support obligations.--Each state must develop guidelines to be considered in determining support obligations.

The provision is effective October 1, 1987.

Section 19 - Availability of social security numbers for purposes of child support enforcement.--The absent parent's social security number may be disclosed to child support agencies both through the federal Parent Locator Service and by the Internal Revenue Service.

The provision is effective upon enactment.

Section 20 - Extending Medicaid eligibility when support collection results in termination of AFDC eligibility.--If a family loses AFDC eligibility as the result (wholly or partly) of increased collection of support payments under the IV-D program, the state must continue to provide Medicaid benefits for 4 calendar months beginning with the month of ineligibility. (The family must have received AFDC in at least 3 of the 6 months immediately preceding the month of ineligibility).

The provision is effective upon enactment. It is applicable to families becoming ineligible for AFDC before October 1, 1988.

Section 21 - Collection of overdue support from federal tax refunds.--Current law requires the Secretary of the Treasury, upon receiving notice from a state child support agency that an individual owes past due support which has been assigned to the state as a condition of AFDC eligibility, to withhold from any tax refunds due that individual an amount equal to any past due support. The amendments extend this requirement to provide for withholding of refunds on behalf of non-AFDC families under specified conditions.

The provision is effective for refunds payable after the year ending December 31, 1985, and prior to January 1, 1991.

Section 22 - Wisconsin child support initiative.--The Secretary is required to grant waivers to the state of Wisconsin to allow it to implement its proposed child support initiative in all or parts of the state as a replacement for the AFDC and child support programs. The state must meet specified conditions and give specific guarantees with respect to the financial well-being of the children involved.

The provision is effective for fiscal years 1987-94.

Section 23 - Sense of the Congress that state and local governments should focus on the problems of child custody, child support, and related domestic issues.--State and local governments are urged to focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are within the jurisdictions of such governments.

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REMARKS

NESC has finally published their analysis of state laws to the new federal law. Call me if you have any questions

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## ALASKA

The federal Child Support Amendments of 1984 mandate certain legislative modifications of the Alaska Child Support program. The following provisions in Alaska law contain many of the features mandated by P.L. 98-378:

- o Sections 47.23.110-47.23.280, which create an administrative process for the enforcement of child support obligations;
- o Section 47.23.230, which provides for the imposition of liens against real and personal property;
- o Section 47.23.253, which provides for the intercept of any refund or disbursement by the Department of Revenue for the satisfaction of child support obligations;
- o Section 47.23.273, which approves the dissemination of information on the obligor's child support debts to any consumer credit bureau;
- o Section 47.23.060, the provision by which a court may require a parent to post a bond or security to insure collection of child support obligations;
- o Section 47.23.100, which provides equal treatment of non-AFDC and AFDC clients;
- o 15 Alaska Administrative Code 147.010(c), which provides guidelines to be used in the setting of support orders.

Modifications of Alaska law to meet the Child Support Enforcement Amendments of 1984 would include:

- o <sup>not necessary - see 09.65.132</sup> Altering Sections 47.23.070 and .250 to create a mandatory rather than a discretionary income withholding statute and to include:
  - ✓--recognition of income withholding order as top priority;
  - ✓--provision limiting obligor's defenses to mistakes of fact in contested withholding cases;
  - ✓--designation by state of publicly accountable agency to administer the withholding system;
  - \*--simplification of the process by the state, such as allowing employer to send in withheld amounts in one check;
  - ✓--provision for withholding income in interstate cases;
  - ✓--provision to terminate withholding;
  - ✓--provision in contested cases for state to notify obligor within 45 days whether withholding will occur;
- o ✓ Altering Sections 47.23.020 and .025 to reduce the optional late payment fee to meet the federal 3% to 6% standard.

The adoption of new provisions to Alaska law would include:

- ✓o Provision for withholding to be part of all support orders issued or modified after 10-1-85.

The following are areas not currently addressed by state statutes and may be implemented by statutory enactment, administrative plan, judicial procedure, or executive action:

- o The enforcement of spousal support when it is part of the support order;
- o Notification to AFDC recipients of the amount collected on their behalf in the past year;
- o Inclusion of medical insurance in the support order;
- o Continuation of medicaid benefits;
- o Provision to expand services to all children receiving foster care through federal-state assistance programs;
- o Publication of the availability of child support enforcement services through public service announcements;
- o Provision for continuation of child support services when AFDC is terminated;
- o Implementation of a fee for non-AFDC services.

Drafters of state law may wish to be aware of federal regulations affecting their state child support programs. Two pertinent examples are:

- \*o Procedure for employer to notify the state or local withholding agency of the termination of the obligor's employment and of the obligor's last known address as well as the name and address of the new employer, if known;
- ✓o Procedure to implement the withholding no later than the first pay period that occurs after 14 days from the mailing date on the notice.

#### FOR MORE INFORMATION

For more information contact Deborah Dale or Charles Brackney, National Conference of State Legislatures, 1125 17th Street, Suite 1500, Denver, Colorado 80202, 303/292-6600.

Public Law 98-378  
98th Congress

## An Act

To amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes.

Aug. 16, 1984  
[H.R. 4225]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Child Support  
Enforcement  
Amendments of  
1984.  
42 USC 1305  
note.

## SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Child Support Enforcement Amendments of 1984".

## TABLE OF CONTENTS

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose of the program.
- Sec. 3. Improved child support enforcement through required State laws and procedures.
- Sec. 4. Federal matching of administrative costs.
- Sec. 5. Federal incentive payments.
- Sec. 6. 90-percent matching for automated management systems used in income withholding and other required procedures.
- Sec. 7. Continuation of support enforcement for AFDC recipients whose benefits are being terminated.
- Sec. 8. Special project grants to promote improvements in interstate enforcement.
- Sec. 9. Periodic review of effectiveness of State programs; modification of penalty.
- Sec. 10. Extension of section 1115 demonstration authority to child support enforcement program.
- Sec. 11. Child support enforcement for certain children in foster care.
- Sec. 12. Enforcement with respect to both child and spousal support.
- Sec. 13. Modifications in content of annual report of the Secretary.
- Sec. 14. Requirement that availability of child support enforcement services be publicized.
- Sec. 15. State Commissions on child support.
- Sec. 16. Inclusion of medical support in child support orders.
- Sec. 17. Increased availability of Federal parent locator service to State agencies.
- Sec. 18. State guidelines for child support awards.
- Sec. 19. Availability of social security numbers for child support enforcement purposes.
- Sec. 20. Extension of eligibility under title XIX when support collection results in termination of AFDC eligibility.
- Sec. 21. Collection of past-due support from Federal tax refunds.
- Sec. 22. Wisconsin child support initiative.
- Sec. 23. Sense of the Congress that State and local governments should focus on the problems of child custody, child support, and related domestic issues.

## PURPOSE OF THE PROGRAM

SEC. 2. Section 451 of the Social Security Act is amended by striking out "and obtaining child and spousal support," and inserting in lieu thereof "obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this

42 USC 651.

42 USC 601 part to all children (whether or not eligible for aid under part A) for whom such assistance is requested.”

IMPROVED CHILD SUPPORT ENFORCEMENT THROUGH REQUIRED STATE LAWS AND PROCEDURES

42 USC 651 SEC. 3. (a) Section 454 of the Social Security Act is amended—  
 (1) by striking out “and” at the end of paragraph (18);  
 (2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof “; and”; and  
 (3) by adding after paragraph (19) the following new paragraph:

“(20) provide, to the extent required by section 466, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws.”

(b) Part D of title IV of such Act is further amended by adding at the end thereof the following new section:

“REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO IMPROVE EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT

42 USC 666. *Supra.* “SEC. 466. (a) In order to satisfy section 454(20)(A), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

“(1) Procedures described in subsection (b) for the withholding from income of amounts payable as support.

“(2) Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) at the option of the State, for establishing paternity. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision (in accordance with the general rule for exemptions under subsection (d)).

“(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

“(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;

“(B) the amount by which such refund is reduced shall be distributed in accordance with section 457 (b)(4) or (d)(3) in the case of overdue support assigned to a State pursuant to section 402(a)(26) or 471(a)(17), or, in the case of overdue support which a State has agreed to collect under section 454(G), shall be distributed, after deduction of any fees

*Ante*, p. 1345,  
*Post*, p. 1317.

42 USC 602.  
*Post*, p. 1318.

*Post*, pp. 1310,  
 1311, 1314.

imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

“(C) notice of the absent parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

“(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

“(5) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

“(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

“(7) Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less than \$1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State.

“(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

Notwithstanding section 454(20)(B), the procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

“(b) The procedures referred to in subsection (a)(1) (relating to the withholding from income of amounts payable as support) must provide for the following:

“(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and in being enforced under the State plan, so much of such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this

*Ante*, p. 1306.

Withholding of  
 income.

subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 303(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

"(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

"(3) An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

"(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

"(B) the date as of which the absent parent requests that such withholding begin, or

"(C) such earlier date as the State may select.

"(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

"(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on the date of the enactment of this section if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

"(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 457 under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

"(6)(A)(i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 457.

"(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

"(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

"(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

"(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

"(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

"(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.

"(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

"(10) Provision must be made for terminating withholding.

"(c) Any State may at its option, under its plan approved under section 454, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or \$25, whichever is less, shall be imposed on the requesting parent by the State.

"(d) If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

"(e) For purposes of this section, the term 'overdue support' means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 454. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section."

(c) Section 454(6)(B) of such Act is amended to read as follows: "(B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed \$25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in

administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and".

(d) Section 454 of such Act (as amended by subsection (a) of this section) is further amended—

(1) by striking out "and" at the end of paragraph (19);

(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (20) the following new paragraph:

"(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 466(e) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

"(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed."

(e) Section 454(5) of such Act is amended by inserting after "directly to the family" the following: "; and the individual will be notified at least annually of the amount of the support payments collected;".

(f) Section 454 of such Act is further amended by adding at the end thereof (after and below paragraph (21) (as added by subsection (d) of this section)) the following new sentence:

"The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21)."

(g)(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall become effective on October 1, 1985.

(2) Section 454(21) of the Social Security Act (as added by subsection (d) of this section), and section 466(e) of such Act (as added by subsection (b) of this section), shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act.

(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

FEDERAL MATCHING OF ADMINISTRATIVE COSTS

SEC. 4. (a) Section 455(a) of the Social Security Act is amended— (1) by inserting "(1)" after "(a)";

Ante, p. 1306

Ante, p. 1306

42 USC 654

Supra

Ante, p. 1310

Effective dates, 42 USC 654 note.

Supra

Ante, p. 1306

42 USC 651

42 USC 655

Optional payment procedure 42 USC 654

Exemption

(2) by striking out “, beginning with the quarter commencing July 1, 1975.”;

(3) by striking out paragraph (2) and redesignating paragraphs (1) and (3) as subparagraphs (A) and (B), respectively;

(4) by amending paragraph (1)(A) as so redesignated to read as follows:

“(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454, and”;

(5) in paragraph (1)(B) as so redesignated, by striking out “specified in clause (1) or (2)” and inserting in lieu thereof “specified in subparagraph (A)”;

“(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454, and”;

(6) by adding at the end thereof the following new paragraph: “(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

“(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

“(B) 68 percent for fiscal years 1988 and 1989, and

“(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.”

(b) Subsections (d)(1)(B), (d)(2)(A), (d)(2)(B), and (e) of section 452 of such Act are each amended by striking out “455(a)(3)” and inserting in lieu thereof “455(a)(1)(B)”.

(c) The amendments made by this section shall apply to fiscal years after fiscal year 1983.

FEDERAL INCENTIVE PAYMENTS

SEC. 5. (a) Section 458 of the Social Security Act is amended to read as follows:

“INCENTIVE PAYMENTS TO STATES

“SEC. 458. (a) In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this title, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e)) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b).

“(b)(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

“(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 402(a)(26) or section 471(a)(17) (with such total amount for any fiscal year being hereafter referred to in this section as the State’s ‘AFDC collections’ for that year), plus

“(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State’s ‘non-AFDC collections’ for that year).

12 USC 652

Effective date, 12 USC 652 note.

12 USC 655

12 USC 602, Ant. p. 1318.

“(2) If subsection (c) applies with respect to a State’s AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1)(A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State’s incentive payment under this subsection for that year.

“(3) The dollar amount of the portion of the State’s incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) if applicable) shall in no case exceed—

“(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) if applicable) in the case of fiscal year 1986 or 1987;

“(B) 105 percent of such dollar amount in the case of fiscal year 1988;

“(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

“(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

“(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 455(a)(1)(A) for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 455(a)(1)(A) if those sections (including the amendment made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

“(c) If the total amount of a State’s AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 454 for which payment may be made in der section 455 (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State’s ‘combined AFDC/non-AFDC administrative costs’ for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) (with respect to such collections) shall be increased to—

“(1) 6.5 percent, plus

“(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State’s combined AFDC/non-AFDC administrative costs for that year.

“(d) In computing incentive payments under this section, support which is collected by one State on behalf of individuals residing in another State shall be treated as having been collected in full by each such State.

“(e) The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall

Ante, p. 1311

Ante, p. 1312

42 USC 651, 42 USC 655

make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated."

Ante. p. 1306

(b) Section 454 of such Act (as amended by subsections (a), (d), and (f) of section 3 of this Act) is amended—

(1) by striking out "and" at the end of paragraph (20);

(2) by striking out the period at the end of paragraph (21) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (21) the following new paragraph:

"(22) in order for the State to be eligible to receive any incentive payments under section 458, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision."

Effective dates  
42 USC 658 note

(c)(1) The amendments made by the preceding provisions of this section shall become effective on October 1, 1985.

Ante. p. 1312

(2)(A) Effective until September 30, 1985, section 458(a) of the Social Security Act is amended by striking out "distributed as provided in section 457 to reduce or repay assistance payments" and inserting in lieu thereof "distributed as provided in paragraphs (1), (2), and (4)(A) of section 457(b)".

Ante. p. 1145  
42 USC 658 note

(B) The reference to provisions of section 457(b) of the Social Security Act in the amendment made by subparagraph (A) of this paragraph is a reference to such provisions as in effect after the effective date of section 2640(b) of the Deficit Reduction Act of 1984.

Ante. p. 1145

#### 90-PERCENT MATCHING FOR AUTOMATED MANAGEMENT SYSTEMS USED IN INCOME WITHHOLDING AND OTHER REQUIRED PROCEDURES

42 USC 651

SEC. 6. (a) Section 454(16) of the Social Security Act is amended by striking out "and (D)" and inserting in lieu thereof the following: "(D) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrears in support payments which may occur, and (E)".

Ante. p. 1311

(b) Section 455(a)(1)(B) of such Act (as redesignated by section 4(a) of this Act) is amended—

(1) by inserting after "automatic data processing and information retrieval system" the following: "(including in such sums the full cost of the hardware components of such system)"; and

(2) by inserting before the semicolon at the end thereof the following: "or meets such requirements without regard to clause (D) thereof".

(c) The amendments made by this section shall apply with respect to quarters beginning on or after October 1, 1984.

Effective date  
42 USC 651 note

#### CONTINUATION OF SUPPORT ENFORCEMENT FOR AFDC RECIPIENTS WHOSE BENEFITS ARE BEING TERMINATED

SEC. 7. (a) Section 457(c) of the Social Security Act is amended—

42 USC 657

(1) by striking out "may" in the matter preceding paragraph (1) and inserting in lieu thereof "shall"; and

(2) by striking out "the net amount of" in paragraph (2), and by striking out "to the family" and all that follows in such paragraph and inserting in lieu thereof "to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title."

42 USC 601

(b) The amendments made by subsection (a) shall become effective October 1, 1984.

Effective date  
42 USC 657 note

#### SPECIAL PROJECT GRANTS TO PROMOTE IMPROVEMENTS IN INTERSTATE ENFORCEMENT

SEC. 8. Section 455 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 655

"(c)(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

"(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

"(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

Reports

"(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 458(b) (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 454.

"(5) There is authorized to be appropriated the sum of \$7,000,000 for fiscal year 1985, \$12,000,000 for fiscal year 1986, and \$15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection."

Ante. p. 1312  
42 USC 651  
Appropriation  
authorization.

PERIODIC REVIEW OF EFFECTIVENESS OF STATE PROGRAMS;  
MODIFICATION OF PENALTY

42 USC 652

SEC. 9. (a)(1) Section 452(a)(4) of the Social Security Act is amended by striking out "not less often than annually" and inserting in lieu thereof "not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 403(h)(1), or which is operating under a corrective action plan in accordance with section 403(h)(2))".

Infra

42 USC 602

(2) Section 402(a)(27) of such Act is amended by striking out "operate a child support program in conformity with such plan" and inserting in lieu thereof "operates a child support program in substantial compliance with such plan".

42 USC 601

(b) Section 403(h) of such Act is amended to read as follows:  
"(h)(1) Notwithstanding any other provision of this Act, if a State's program operated under part D is found as a result of a review conducted under section 452(a)(4) not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by—

42 USC 651

Supra

"(A) not less than one nor more than two percent, or

"(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or

"(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.

"(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if—

"(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;

"(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and

"(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.

"(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—

"(i) the State has achieved substantial compliance,

"(ii) the State is no longer implementing its corrective action plan, or

"(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

"(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

"(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

"(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

"(3) For purposes of this subsection, section 402(a)(27), and section 452(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program."

(c) The amendments made by this section shall be effective on and after October 1, 1983.

Ante, p. 1316.

Ante, p. 1316.

Effective date.  
42 USC 602 note.

EXTENSION OF SECTION 1115 DEMONSTRATION AUTHORITY TO CHILD  
SUPPORT ENFORCEMENT PROGRAM

SEC. 10. (a) Section 1115(a) of the Social Security Act is amended—

42 USC 1315.

(1) by striking out "part A" in the matter preceding paragraph (1) and inserting in lieu thereof "part A or D";

(2) by striking out "402," in paragraph (1) and inserting in lieu thereof "402, 454,"; and

(3) by striking out "403," in paragraph (2) and inserting in lieu thereof "403, 455,".

(b) Section 1115 of such Act is further amended by adding at the end thereof the following new subsection:

42 USC 1315.

"(c) In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) to assist in promoting the objectives of part D of title IV, the project—

42 USC 651.

"(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

"(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

"(3) must not result in increased cost to the Federal Government under the program of aid to families with dependent children."

CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER CARE

SEC. 11. (a)(1) Section 457 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 657.

"(d) Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—

42 USC 670.

"(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate