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in developing local protocols. The Council on Domestic Violence and Sexual Assault will assist in development of local protocols, which are to be filed with the Council.

6) Endangering tne Welfare of a Minor

EXISTING

Under AS 11.51.100 it is a Class C felony if a person legally charged with the care of a child under the age of 10 intentionally deserts the child under circumstances creating a risk of physical injury to the child.

PROPOSED

SB 243, Section 2 would clarify that persons entrusted with the care of a child (babysitters, for example) are also liable for criminal penalties (Class A misdemeanor) for exposing a child to physical injury, and would expand the law's coverage to children under the age of 13.

7) Definition of Sexual Abuse

EXISTING

AS 11, the Criminal Code, establishes criminal penalties for sexual offenses against minors, but does not provide a definition of sexual abuse. The term "sexual abuse" is used throughout Title 47, but is not defined.

EXISTING

SB 243, Section 10 adds a definition of sexual abuse to Title 47. This definition would be used in determining when the state should provide services to children who are sexually abused by family members.

8) Temporary Restraining Orders

EXISTING

AS 23.35.010 - .020 provides for injunctive relief and emergency injunctive relief to be granted to victims of domestic violence. By definition, an injunction may be served only when the victim cohabits with the perpetrator.

PROPOSED

SB 243, Section 20 authorizes the state to enjoin or limit persons unrelated to a child victim from having contact with children.

In addition, SB 29 broadens the definition of domestic violence, and hence those who can file petitions for injunctive

relief, to include grandparents and children, regardless of whether they are cohabiting with the abuser.

SB 1 (HB 119), would give the superior court and district court compatible jurisdiction over domestic relations matters. SB 67 would require local law enforcement officers, rather than state troopers, to serve domestic violence injunctions. Both bills are intended to increase the effficiency of the existing TRO process.

CRIMINAL CODE PROVISIONS

1) Statute of Limitations

EXISTING

The general statute of limitations is five years (AS 12.10.010). AS 12.10.020(c) allows an extension of five additional years for a sexual offense committed against a person under age 16.

PROPOSED

SB 243, Section 5 would include prostitution related offenses among those to which the extension applies.

2) Rape Shield

EXISTING

AS 12.45.045 limits introduction in a sexual assault trial of the victim's previous sexual conduct.

PROPOSED

SB 243, Section 6 clarifies that these same protections apply to child victims as well.

3) Mandatory Prison Sentences For Sex Offenders

EXISTING

Current statutes establish presumptive terms for sex offenders. AS 12.55.125 provides for a maximum 30 year sentence with 8 years presumptive for sexual abuse of a minor in the first degree (sexual penetration), a maximum 10 year sentence for sexual abuse of a minor in the second degree (sexual contact under 13; incest), a maximum 5 year sentence for third degree (sexual contact over 13). Presumptive sentences apply in second offenses of second and third degree abuse.

A presumptive sentence provides for a set term, which can be reduced or increased based on aggravating and mitigating factors (AS 12.55.155); there is no parole eligibility under a presumptive sentence. By contrast, mandatory sentences provide for a minimum and maximum term, and the judge has discretion to sentence within that range; parole may be granted after 1/3 of the sentence has been served.

PROPOSED

The recent Serdahely decision in the Cleary case calls for a study (by July 1985) of the impact of presumptive sentencing on prisoner populations. The results of the study should be reviewed and possible recommendations for statutory revision considered.

4) Parole Requirements for Sex Offenders

EXISTING

Our current presumptive sentencing procedure does not provide for parole. Non-presumptive sentences can carry parole of the unserved portion of a sentence (generally 1/3 of the term), and probation as ordered by the court. AS 33.15.065 allows the victim to be notified of and comment on parole hearings.

CHILD IN COURTROOM

Article IV , Section 15 of the Alaska State Constitution authorizes the Supreme Court to promulgate rules governing procedure in civil and criminal cases in all courts. Rules may be changed by a two-thirds vote of the Legislature.

1) Consider the Child a Competent Witness

EXISTING

Evidence Rule 601 does not presume against a child's capacity to testify. All witnesses must demonstrate the difference between the truth and a lie, and the ability to be understood by the court either directly or through interpretation.

2) Permit Leading Questions

EXISTING

Evidence Rule 611 recognizes that leading questions are a proper part of cross-examination, and specifically addresses witnesses having difficulty in communicating because of immaturity.

3) Hearsay Evidence

EXISTING

Alaska Criminal Rule 6(r) allows hearsay evidence to be presented to the grand jury if there is compelling justification for its introduction.

PROPOSED

SB 3 would allow the out of court statement of a child under the age of 10 to be introduced at grand jury proceedings. The child must testify at the proceeding or be unavailable as defined in the bill. The grand jury must be informed of the reason for the child's unavailability, and corroborative evidence must be introduced.

4) Videotaping

EXISTING

AS 12.45.047 allows the court to videotape the testimony of a child victim (under age 16). The trial judge presides at the videotaping, and the defendant is afforded all rights applicable to defendants during trial.

PROPOSED

The videotape of a child victim's statement is considered hearsay evidence. Under proposed SB 3, a videotape could be introduced to the grand jury if the criteria of the bill are met.

5) Closed Circuit TV

EXISTING

Use of closed circuit TV, whereby the child's testimony is recorded in a separate room and televised in the courtroom, is not current practice in Alaska. The Juneau Court System has the capability (with VCRs and monitors) of using closed circuit TV, and has indicated interest in using it before the grand jury. Use of closed circuit TV at trial is currently being challenged in the California courts as a violation of the Sixth Amendment guarantee of the accused to confront the witness.

6) Remove Corroboration Rules

EXISTING

Alaska has no corroboration rules for child sexual assault cases.

7) Anatomical Dolls

EXISTING

Evidence Rules 401 and 402 deem all relevant evidence admissible. Evidence is relevant if it makes the existence of any fact more or less probable. The Alaska Court System currently allows the use of anatomical dolls as evidence.

8) Prompt Disposition of Cases

EXISTING

Criminal Rule 141 requires that trial begin within 120 days of the charge.

9) Bill of Rights for Child Victims

EXISTING

AS 12.61.010 assures that victims will be given certain assistance during the course of a criminal proceeding. Specific rights include: protection from harm, notification of date of trial, notification of procedure to obtain victim compensation, provision of medical assistance.

PROPOSED

10) Guardian Ad Litem

EXISTING

AS 25.24.310(c) allows the court to appoint an attorney or other person to provide guardian ad litem services to a minor in any legal proceeding involving the minor's welfare. If the parties are indigent, the Office of Public Advocacy (AS 44.21.410) serves as the guardian. The Office was established in 1984 and charged with providing public guardian and guardian ad litem services. Offices are located in Fairbanks and Anchorage, with contract services provided throughout the state. FY 85 budget was $2.176 million. In 1984, 700 guardians ad litem were appointed by the court.

PRIVACY PROTECTION

1) Protect child victim's identity from disclosure

EXISTING

AS 47.17.090 prohibits disclosure of all court records and information pertaining to a minor (age 18 and under). Children's Court Rule 26 prohibits release to the public of the name or picture of a child under its jurisdiction. In addition, AS 12.45.048 allows the exclusion of the public from the courtroom during the testimony of a child under the age of 16 who is the victim of a sexual offense.

EDUCATION AND PREVENTION

1) School District Curricula

EXISTING

AS 14.30.360 encourages school districts to conduct health education programs, including instruction in family health and appropriate use of health services. This is the only curriculum (other than bilingual-bicultural education) addressed in the statutes. Standard procedure in Alaska is for local districts to develop curricula through a public hearing process. The Department has developed model curricula, which serve as guidelines for the school districts.

PROPOSED

SB 8 would urge expansion of existing health curricula to include the identification and prevention of child abuse, child abduction, neglect, sexual abuse, and domestic violence. Assistance in developing curricula would be provided by the Department of Education and the Council on Domestic Violence and Sexual Assault.

2) Training for Teachers

EXISTING

AS 14.03.030 authorizes school districts to offer up to 10 days of in-service training. Training programs are left to local discretion.

PROPOSED

SB 28 would require that each school district devote one half day of inservice training to recognition and reporting of child abuse and neglect for both school teachers and administrative staff.

3) Training for Judges

EXISTING

Justice Rabinowitz, Chief Justice of the Alaska Supreme Court, supervises training for all justices, judges, and magistrates in Alaska. In the last year, the Judicial Conference has included training on domestic violence and will be including a session on child abuse this spring.

4) Training State Employees

EXISTING

AS 47.17.020 requires reporting by certain state employees and others of suspected incidents of child abuse and neglect.

PROPOSED

SB 28 would require state agencies that employ people who are required to report to provide ongoing training on the recognition and reporting of child abuse and neglect.

LICENSING AND BACKGROUND CHECKS

1) Criminal History Check on Supervisors of Children

EXISTING

AS 12.62.035 allows any employer to examine the criminal conviction records (sexual offenses only) of persons who hold or are applying for paid or volunteer positions which would give them supervisory or disciplinary power over children.

PROPOSED

SB 21 expands the type of convictions that may be released to include all crimes that might pose a risk to children, and allows the release of outstanding warrants for these crimes.

2) Criminal History Checks on Foster and Adoptive Parents

EXISTING

AS 25.23.100(d) requires that the Department of Health and Social Services, or another qualified agency, as ordered by the courts, determine the suitability of adoptive families. 7AAC 51.420, which governs home evaluations of adoptive families, does not specify that criminal history checks be performed.

7AAC 50.410 governs qualifications of foster parents, and allows for review of state and local law enforcement arrest and conviction records.

PROPOSED

SB 21 would require the Department to request a background check by the Department of Public Safety on persons seeking to adopt a minor and on foster parents.

3) Criminal History Checks on School Employees

EXISTING

The general provisions of AS 12.62.035 apply to school employees as well.

PROPOSED

SCR 3 would encourage local school districts to implement background checks on school employees. This resolution reflects the state board's policy of local control.

TREATMENT/REHABILITATION

1) State Payment for Treatment of Child Victim

EXISTING

The Department of Health and Social Services' policy is to provide initial treatment during the investigation/assessment phase of a child sexual abuse case, and to refer the child elsewhere for ongoing treatment. Some treatment providers charge no fees; others have sliding fee scales. The Department pays for the service when funds are available.

The Department's Preventive Youth Services Grant program provides funding to community mental health programs, local non-profits, and others specifically for treatment and counseling of victims of child abuse and neglect.

The Council on Domestic Violence and Sexual Assault also administers grants. The Council is currently funding 23 programs, 19 of which deal with child sexual assault. FY 85 funding was $4.3 million.

The Community Mental Health Services Act (AS 47.30.520-.620) provides state funding for locally developed and administered community mental health programs. 26 programs currently exist and many provide services to victims and families of sexual assault. FY 85 funding was $5.7 million.

Treatment resources are not adequate for the child victim. Some children are going untreated, particularly in rural areas of the state.

PROPOSED

Funding mechanisms and programs exist. However, many programs are not accepting new referrals or have month-long waiting periods because of insufficient staffing. FY 86 budget requests (per Governor's proposed budget):

Preventive Youth Services	$1,500,000
Council on Domestic Violence	4,985,000
Community Mental Health	6,280,000

2) Perpetrator Pay for Treatment of Child

EXISTING

The courts may order that restitution be made to the victim. Case law states that the amount of restitution must be determined at the time of sentencing, and that a hearing must be held to determine the perpetrator's ability to pay.

In addition, AS 18.67.101 authorizes the Violent Crimes Compensation Board to pay for costs of personal injury resulting from sexual assault, sexual abuse, and contributing to the

delinquency of a minor. This includes psychological counseling.

3) Rehabilitation of Offenders

EXISTING

The Department of Corrections offers treatment programs for sex offenders at the Fairbanks Correcticnal Center (capacity for 20 offenders) and at Highland Mountain (capacity for 60 offenders), and has recently awarded a contract to Juneau's Lemon Creek facility (40 offenders). Alaska has approximately 400 sex offenders in its corrections system. Policy is to offer treatment to prisoners in the last three years of their sentence, with priority placement based on the age of the victim, the number of victims, whether treatment has been ordered by the court, and the offender's willingness to receive treatment. Treatment continues on an outpatient basis throughout parole. Average annual cost per offender is $3-4,000. Some offenders are being released without treatment.

PROPOSED

The Department of Corrections' FY 86 budget proposes funding for the expansion of the Highland Mountain program to 80. the Cleary decision mandates an evaluation (by July) of the currently offered rehabilitation programs, and calls for additional offerings at specific facilities. The Department's findings should be reviewed and possible funding needs considered at that time.

PARENTAL KIDNAPPING

1) Penalties for Parental Kidnapping

EXISTING

Under AS 11.41.320-.333, "custodial interference" (a relative of the child taking the child from the lawful custodian) is a Class A misdemeanor. If the child is removed from the state it becomes a Class C felony.

CHILD PORNOGRAPHY AND PROSTITUTION

1) Production and Distribution of Child Pornography

EXISTING

Under AS 11.61.125 it is a Class C felony to bring child pornography into the state for commercial sale or distribution, or to possess or publish such material with intent to sell commercially.

PROPOSED

SB 243, Sections 3 and 4, removes the requirement that distribution be for commercial purposes, and defines distribution to include delivering, selling, renting, lending, giving, exhibiting, presenting, providing, and exchanging, whether or not for monetary or other consideration.

2) Allow for Expert Witnesses to Prove Age of Child

EXISTING

Criminal Rule 28 allows the court to appoint any expert witnesses agreed upon by the parties, and to appoint witnesses of its own selection as well.

3) Penalties for Those Aiding/Promoting Child Pornography

EXISTING

Under AS 11.41.455 it is a Class B felony to induce or employ, or as a parent permit, a child under the age of 18 to engage in pornography.

4) Penalties for Those Aiding/Promoting Child Prostitution

EXISTING

Under AS 11.66.110(a)(2) it is a Class A felony to induce a person under the age of 16 to engage in prostitution.

5) Penalties for Patronizing a Child Prostitute

EXISTING

Under AS 11.41.434 sexual penetration of a child under the age of 13 is an unclassified felony . Under AS 11.41.436, sexual abuse of a child under the age of 16 is a Class B felony.

CSSB 243 (HESS), Relating to the protection of children

SECTION-BY-SECTION ANALYSIS

Section 1

Under existing AS 11.51.100, endangering the welfare of a minor, it is class C felony offense for a parent or guardian to intentionally desert a child under circumstances which place the child in substantial danger of injury. Section 1 of this bill adds "in the first degree" to the title of the existing crime (sec. 2, below, adds a "second degree" form of the crime), and expands the law's coverage to children under the age of 13 (rather than under age 10).

Section 2

This section creates a new class A misdemeanor crime: endangering the welfare of a minor in the second degree. A person commits this crime if he has been entrusted with the care of a child under 13 and either: (1) negligently exposes the child to circumstances creating a substantial risk of injury or abuse, or (2) negligently exposes the child to physical injury by failing to provide the child with necessary care, food, shelter, or medical attention.

Sections 3 and 4

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. Section 3 strengthens existing law, by explicitly prohibiting sale, and further, prohibits sale and distribution whether or not for commercial consideration.

Section 5

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 4 of this bill amends the language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the laws relating to sexual offenses against children were revised in 1983.

Section 6

AS 12.45.045, which limits the introduction in a sexual assault trial of evidence of the victim's previous sexual conduct, was adopted in 1978 as part of the new criminal code. Virtually all states have adopted some version of such a "rape shield" statute. The statute is designed to protect the sexual assault victim from unwarranted invasion into her private life. As originally adopted in the new criminal code, serious sexual offenses against children were included in the general sexual assault statutes. The protections included in AS 12.45.045 thus applied in child abuse cases as well as adult rape cases.

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 6 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

Section 7

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 12 amends AS 47.10.081(c) to provide that the report must be provided to all parties six (rather than 10) working days before the hearing.

The present 10-day requirement presents considerable practical problems, and often requires a delay in the disposition proceedings. In delinquency dispositions where there are 30 or less calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to court. The ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detailed during that process. The present "10-day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed.

Section 8

This section would change the standard for assuming emergency custody in neglect cases to conform to the same standard used in abuse cases. It would thus allow earlier emergency intervention to protect neglected children. It would also allow assumption of custody of neglected children who need immediate medical attention rather than requiring that their life be endangered.

Section 9

Section 9 allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

Section 10

Section 10 defines the term "sexual abuse" for purposes of civil child in need of aid (CINA) proceedings under AS 47. Although the term "sexual abuse" is now used in AS 47, it is not defined. The proposed definition would prevent constitutional challenges to the state's assumption of jurisdiction over children who are sexually abused by their parents.

To allow DFYS intervention in all cases of suspected sexual abuse, the definition is quite broad. It includes all sexual conduct which is also a crime. Other forms of inappropriate touching are also included, but conduct reasonably necessary for normal caretaker or medical responsibilities is excluded.

Section 11

AS 47.17.010 is a statement of legislative intent that protective services should be provided to child victims of abuse and neglect to prevent further harm to the child, enhance the general well-being of children, and preserve family life. Section 11 clarifies that family life should be preserved whenever it is in the best interests of the child to do so.

Section 12

This section revises and expands existing law requiring persons in certain professions to report to DFYS suspected abuse of a child by a parent or other caretaker. Under existing law, a significant number of persons who regularly have access to information that a child has suffered harm as the result of abuse or neglect by a caretaker are not required to report that information. The revised statute focuses upon those individuals who regularly have contact with a child, or a child's family, and are therefore in a position to gain knowledge of child abuse and neglect. These changes are needed to insure that all children abused or neglected by caretakers come to the attention of DFYS.

Under present law, persons in the categories listed in AS 47.17.020 are required to report suspected child abuse or neglect only if the abuse or neglect is caused by or attributable to the actions of a person "responsible for the child's welfare." Thus, harm caused by a person not related to the child or residing in the child's home need not be reported to DFYS.

Section 12 adds a new provision to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS). The law should require that all instances of abuse or neglect be reported to the authorities, not just intrafamily abuse. All children should be protected under the law, without regard to the identity of the perpetrator or the relationship to the child victim.

If the person reporting the abuse is not aware of the perpetrator's relationship to the victim, Section 12 allows a report to be made to either DFYS or a law enforcement officer.

Section 13

Section 13 requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 21, below).

Section 14

The current scope of DFYS services does not extend beyond intra-family offenses. Section 14 clarifies that if, after a preliminary investigation, DFYS determines that the harm was not caused by a family member, the report shall be turned over to a local law enforcement officer.

Section 15 - 17

Sections 15, 16 and 17 amend the confidentiality, immunity, and privileged evidence provisions in existing AS 47.17 to make it clear that the applicability of these provisions applies to both civil and criminal proceedings. This clarification is necessary as a result of the appellate court's decision in State v. R.H. and Wetherhorn, 683 P.2d

269 (Alaska App. 1984). The Wetherhorn court held that the phrase "judicial proceeding," as used in AS 47.17.060 (dealing with evidence that is not privileged), refers only to civil proceedings.

Section 18

Section 18 contains a conforming amendment per the clarified definition of abuse in Section 21.

Section 19

This section contains a conforming amendment extending existing "B" misdemeanor penalties for failure to report suspected child abuse, as explained above regarding Section 13.

Section 20

Section 20 of this bill provides broad authority to the state to enjoin or limit persons who endanger children in the ways specified from having contact with children. While there may be common law authority for this view, statutory confirmation of this authority removes one issue from possible litigation in cases where the attorney general chooses to bring an action to enjoin or limit a person from contact with children. This addresses the problem of no regulation of day care providers who care for less than five children without burdening the public with regulation of all day care providers.

Section 21

This section clarifies the definition of abuse in AS 47.17 (reporting statute) in light of existing definitions of "neglect" and "child" in this section. Abuse as used in Title 47 would apply to all incidents of harm against children regardless of who the perpetrator is unless it is specifically stated that the perpetrator must be a person responsible for the child's welfare. This destinction is necessary, as DFYS's scope does not extend beyond intra-family abuses.

Section 22

Existing law requires "practitioners of the healing arts" to report suspected child abuse or neglect. This section expands the definition of this term to include dental hygienists, nurse practitioners and physician's assistants. Although these health care professionals are considered included in the current definition, this amendment clears up any possible uncertainty by specifically referring to persons who hold these positions.

Section 23

This section clarifies the definition of sexual exploitation in AS 47.17 (reporting statute).

Section 24

This section adds new definitions related to the expanded classes of persons who must report child abuse.

Sections 25 and 26

Section 25 amends AS 47.35.070(a) to bring this statute into conformity with the criminal code by making violations of child care licensing statutes and regulations a class B misdemeanor. Section 26 adds language that gives statutory authority to the Department of Health and Social Services to establish a system of civil enforcement (including the levy of up to $200 daily in civil penalties) for violations of its licensing statutes and regulations.

This authority will provide the department with a valuable regulatory tool. Presently, the department has only two choices with respect to licensees who violate statutes and regulations. The department can either revoke the license or do nothing. While the department can require the licensee to establish a plan of correction for violations, its only lever to enforce this requirement is the authority to revoke the license. If a system of civil penalties existed, the department would have the additional tool of fining licensees for minor violations of regulations and statutes. The new language makes it clear that imposition of a civil penalty would not preclude criminal prosecution in appropriate circumstances.

CHILD AND FAMILY PROTECTION

FINANCIAL IMPLICATIONS

Statistics kept by the Division of Family and Youth Services (DYFS), Department of Health and Social Services indicate a 219% increase in reports of child abuse and neglect during the six year period FY 78 to FY 83. Although a similar statistic has not been developed by the Department of Public Safety, the department's monthly reports indicate a corresponding increase in reports to law enforcement officials. Reports made to DFYS are generally intra-family abuses. Abuse by an individual not related to the child victim is handled by local law enforcement agencies and the state troopers.

Fiscal notes are currently being developed on the proposed legislation. Fiscal notes on the original versions of these bills were primarily for additional staff positions to handle the expected increase in the number of reports of abuse and the corresponding number of prosecutions, incarcerations, and counseling referrals. Many of these increased staffing needs exist now. The following is an identification of services that will be impacted.

The Governor's proposed FY 86 budget contains increased funding, as indicated below, for the following:

DFYS, Social Workers $1,873,600

Although the overall DFYS caseload has increased 173% since FY 78, there has been only an 18% increase in social work staff during that period. In many field offices the average number of cases per social worker exceeds the maximum caseload standard of 50, which limits services to a level little greater than crisis response. The Governor's proposed budget contains funding for an additional 15 social workers, 6 clerks, 3 licensing specialists, and 15 field support staff.

Department of Law Prosecutors $1,300,000

The increase of prosecutions in child sexual assault offenses will necessitate an increase in the number of both prosecutors and defense attorneys. The Governor's proposed budget contains funding for an additional 9 prosecuting attorneys and 6 paralegals.

The following agencies have submitted fiscal notes for costs that will be incurred due to the increase in prosecutions additional prosecuting attorneys will allow. The Governor's proposed FY 86 budget contains only maintenance level funding.

Public Defenders $437,200

The Public Defender Agency was established in the Department of Administration in 1969 to serve the needs of indigent defendants.

The agency has requested funding (through a fiscal note) for an additional 2 defense attorneys and 4 paralegals.

Alaska Court System $145,900

Judges statewide have indicated that additional judicial resources are necessary. The court system has requested funding for 2 additional judges and a clerk, to be assigned on a pro tempore basis.

Office of Public Advocacy $296,100

The Office of Public Advocacy was established in 1984 and charged with providing public guardian and guardian ad litem services in children's proceedings. The office has requested funding (through a fiscal note) for 4 new positions.

The following programs provide funds for education and treatment of victims of child abuse and their families. Figures noted here are from the Governor's proposed FY 86 budget, and for the most part do not represent increases over FY 85. At this funding level, treatment resources are inadequate for the child victim, and not all children are receiving treatment.

Council on Domestic Violence and Sexual Assault $4,985,000 = $575,000 increase over FY 85

The Council on Domestic Violence and Sexual Assault was established in the Department of Public Safety in 1981 to provide for planning and coordination of services to victims of domestic violence or sexual assault and their families, and to provide crisis intervention and prevention programs. The Council is currently administering grants for 19 programs which deal with child sexual assault.

Community Mental Health Programs $6,280,000

The Community Mental Health Services Act provides state grants for locally developed and administered mental health programs. Many of these programs provide services to victims and families of sexual assault.

Preventive Youth Services Grants, DH&SS $1,500,000

Administered by the Department of Health and Social Services, this grant program provides funding to community mental health programs, local non-profits, and others for education and treatment of victims of child abuse and neglect.

Violent Crimes Compensation Board $564,200

The Board is authorized to pay for costs of personal injury resulting from sexual assault, sexual abuse, and contributing to the delinquency of a minor. "Personal injury" includes psychological counseling.

In addition to these general costs:

SB 27 would appropriate $235,900 to the Council on Domestic Violence and Sexual Assault for training teams of community professionals on the prevention, intervention, investigation, and treatment of sexual and physical abuse of minors.

SB 8 carries a $20,000 fiscal note ~~from~~ the Department of Education for providing technical assistance to school districts in expanding health curricula.

Impacts on the state corrections system have not been measured.

DFYS Social Workers

APPENDIX A

Recommended Staff Augmentation
by Location

SUMMARY OF REQUEST	-	35 POSITIONS
Social Workers	-	15 Full-Time Positions
Community Care Licensing Specialists	-	5 Full-Time Positions
Administrative and Clerical Support	-	15 Positions 11 Full-Time Positions 8 Part-Time Positions

Southcentral Region - 17 Positions

Anchorage Service Unit

1 Social Worker IV
1 Social Worker III
2 Social Worker I's
2 Community Care Licensing Specialist I's
2 Clerk Typist III's

Kenai

2 Social Worker III's

Homer

1 Social Worker III
1 Clerk Typist III

Field Office Clerical Support

3 Clerk Typist III's
.5 Valdez
.5 Copper Center
.5 Unalaska
.5 Wasilla
.5 Cordova
.5 Dillingham

Regional Office

1 Administrative Assistant II
1 Accounting Clerk III

Northern Region - 11.5 Positions

Fairbanks Service Unit

2 Social Worker III's
2 Community Care Licensing Specialist I's
2 Social Services Associate III's
1 Clerk Typist III

Delta

.5 Clerk Typist III

Galena

1 Social Worker III

Northern Region (continued)

Barrow

1 Clerk Typist III

Regional Office

1 Administrative Assistant III
1 Accounting Clerk II

Southeastern Region - 6.5 Positions

Juneau Service Unit

1 Social Worker IV
1 Social Worker III

Ketchikan Service Unit

1 Social Worker III
1 Community Care Licensing Specialist I
1 Clerk Typist III

Craig

.5 Clerk Typist III

Regional Office

1 Administrative Assistant I

Department of Law / Prosecutors

The $1.3 million total accounts for almost all of the department's proposed increase of about 11 percent for FY 86.

* $119,200 for the First Judicial District (Juneau and Ketchikan).

* $214,100 for the Second Judicial District (Barrow and Kotzebue).

* $481,600 for the Third Judicial District (Southcentral).

* $179,800 for the Fourth Judicial District (Fairbanks).

* $311,100 for Legal Services.

Nine new attorneys and six new paralegals would be added to work solely on child protection statewide.

STATE OF ALASKA 19xx LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/22/85
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REQUEST
Bill/Resolution No.: HB 88
Title: "An Act relating to the protection of children"
Sponsor: Rules Committee
Requestor: House Judiciary
Date of Request: 1/18 85

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Due Process
Sub-Program or Subprogram(s) Affected: Public Defender Agency

ESTIMATED EXPENDITURES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING:						
PERSONAL SERVICES		347.7	363.6	390.7	414.1	439.0
TRAVEL		20.0	21.3	22.7	25.7	27.3
CONTRACTUAL		43.5	46.1	48.9	51.8	54.9
SUPPLIES		6.5	6.9	7.3	7.7	8.2
EQUIPMENT		9.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	437.2	453.4	480.6	509.3	539.9
CAPITAL:						
LABOR:						
TOTAL						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	437.2	453.4	480.6	509.3	539.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

PERMANENT FULL TIME	-0-	6.0	6.0	6.0	6.0	6.0
PERMANENT PART TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis

Prepared By: Dana Fabe, Public Defender Phone: 279-7541
Division: Public Defender Agency Date: 1/22/85

Approved by Commissioner: Lisa Rudd Date: 1/30/85
Agency: Department of Administration

Distribution (by Agency of sharing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Rev. 7/1/84

House Bill 88
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
January 22, 1985

This legislation has been introduced by the Governor as part of a total child protection package. The various sections of this legislation will increase the number and strength of prosecutions of persons charged with offenses against children, particularly sexual abuse of minors. As part of this child protection package, the Governor's operating budget requests new positions in the Department of Law and the Department of Health and Social services to accomplish this goal.

The increase of prosecutions in child sexual assault offenses will necessitate six new positions for this agency. These positions are the bare minimum necessary to handle the anticipated increase in workload and avoid inordinate delays in processing these cases through the courts:

Fiscal Analysis

Second Judicial District		
Attorney III (Nome/Kotzebue)		
Personal Services		83.1
Travel		5.0
Contractual		
(office space, experts, etc.)		10.0
Supplies		2.0
Equipment		
(one time expenditure)		2.0
subtotal		102.1
Third Judicial District		
Attorney IV (Anchorage)	70.8	
Paralegal Asst II (Kenai)	45.5	
Paralegal Asst II (Palmer)	44.2	
Personal Services		160.5
Travel		15.0
Contractual		
(office space, experts, etc.)		17.0
Supplies		3.5
Equipment		
(one time expenditure)		4.5
subtotal		200.5

(continued)

House Bill 88
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
January 22, 1985

Fourth Judicial District		
Paralegal Asst II (Fairbanks)	48.7	
Paralegal Asst II (Bethel)	55.4	
Personal Services		104.1
Travel		10.0
Contractual		
(office space, experts, etc.)		16.5
Supplies		1.0
Equipment		
(one time expenditure)		3.0
subtotal		134.6
TOTAL ALL DISTRICT		437.2

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/13/85

REQUEST
Bill/Resolution No.: HB 88
Title: An Act Relating to Child Protection
Sponsor: Senator Ferguson
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		123.9	131.3	139.2	147.6	156.5
200 TRAVEL		22.0	23.3	24.7	26.2	27.8
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		145.9	154.6	163.9	173.8	184.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		145.9	154.6	163.9	173.8	184.3
FEDERAL FUNDS						
OTHER						
TOTAL		145.9	154.6	163.9	173.8	184.3

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME		3	3	3	3	3
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
Division: Alaska Court System Date: 2/13/85

Approved by Commissioner: L Cole for A. Snowden Date: 2/13/85
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ALASKA COURT SYSTEM

HB 88 - CHILD PROTECTION
FISCAL IMPACT

PERSONAL SERVICES:	SALARY	BENEFITS	TOTAL COST
Pro Tem Superior Court Judge Ketchikan - 6 months	$9,203	$13,418	$22,621
Pro Tem Superior Court Judge Kenai - 6 months	9,847	13,563	23,410
Pro Tem Superior Court Judge Anchorage - 12 months	18,405	26,836	45,241
In-Court Clerk (Range 12B) Anchorage - 12 months	24,516	8,116	32,632
Total Personal Services			$123,904
TRAVEL			22,000
TOTAL			$145,904

Subsequent fiscal years adjusted to reflect six percent inflation.

ALASKA COURT SYSTEM

HB 88 - CHILD PROTECTION
FISCAL IMPACT

Judges statewide have indicated that this legislation will require additional judicial resources. It is the administrative director's assessment that assignment of additional judges on a pro tempore basis would provide adequate judicial coverage while minimizing the cost to the state. The original submission of this fiscal note overlooked the need for judges to travel to other superior court locations to hear these cases. Funds for judicial travel have been included in the revised fiscal note.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 88
Title: An Act relating to the protection of children.
Sponsor:
Requestor: Rules by Governor
Date of Request: January 18, 1985

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Due Process
BRU, Program or Subprogram(s) Affected: Office of Public Advocacy

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	0	155.1	164.4	174.3	184.8	195.9
200 TRAVEL	0	15.0	15.9	16.9	17.9	18.0
300 CONTRACTUAL	0	100.0	106.0	112.4	119.1	126.2
400 SUPPLIES	0	2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT	0	24.0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	296.1	288.4	305.8	324.1	343.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	296.1	288.4	305.8	324.1	343.5
FEDERAL FUNDS						
OTHER						
TOTAL	0	296.1	288.4	305.8	324.1	343.5

POSITIONS:

FULL-TIME	0	4	4	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Brant McGee
Phone: 274-1684
Division: Public Advocate
Date: January 25, 1985

Approved by Commissioner: Lisa Rudd
Date: 1/30/85
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Rev. 7/1/84

HB 88
Fiscal Note Analysis
Prepared by Division of Public Advocacy
Department of Administration
January 25, 1985

Governor Sheffield has introduced this legislation as part of his child protection package. One purpose of the bill is to increase the number of child sexual abuse investigations and prosecutions. The Governor's operating budget requests new positions in the Department of Law and the Department of Health and Social Services to accomplish this goal.

The addition of new staff in the two departments that generate legal action in child abuse cases will necessitate the creation of four new positions in the Office of Public Advocacy. These positions and the additional contractual funds requested to assure the representation of the nonoffending parent in children's proceedings are the minimum necessary to guarantee fulfillment of the Office's function as children's guardians ad litem.

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT
GRANT AWARDS

PROGRAM	FY 84 GRANT AMOUNT	FY 85 GRANT AMOUNT	SERVICES PROVIDED
ANCHORAGE			
ABUSED WOMEN'S AID IN CRISIS (AWAIC)	$530.0	$551.2	shelter, crisis line, client advocacy, preventio education, domestic violence victim counseling, childrens program, batterers' counseling
ALASKA WOMEN'S RESOURCE CENTER (AWRC)	115.0	118.0	crisis intervention, information/referral, preve education, rural outreach, legal advocacy
STANDING TOGETHER AGAINST RAPE (STAR)	215.8	236.3	sexual assault: counseling and advocacy, prevent education, crisis line, child sexual assault educ and prevention
MEN'S SUPPORT NETWORK (MSN)	17.5	18.3	prevention/education for men
BARROW			
ARCTIC WOMEN IN CRISIS (AWIC)	269.5	269.5	shelter, crisis line, client advocacy, victim counseling, prevention/education, rural outreach
BETHEL			
SW COUNCIL PREVENTION OF CHILD SEXUAL ABUSE (SWCPCSA)	-0-	10.0	education in rural villages on child sexual abuse
TUNDRA WOMEN'S COALITION (TWC) AND EMMONAK WOMEN'S SHELTER (EWS)	376.8	412.8	shelter, DV/SA counseling: prevention/education, rural outreach, childrens' programs, crisis line, sexual assault crisis intervention, batterers' counseling
CORDOVA			
CORDOVA WOMEN'S RESOURCE CENTER (CWRC)	-0-	30.0	safe homes, crisis line, public education, advocac
DILLINGHAM			
SAFE AND FEAR FREE ENVIRONMENT (SAFE)	90.0	110.0	safe homes, dv/sa counseling, client advocacy, prevention/education and community outreach, rural outreach, crisis line
FAIRBANKS			
WOMEN IN CRISIS-COUNSELING AND ASSISTANCE (WIC-CA)	400.0	445.0	shelter, crisis line, sexual assault crisis intervention and counseling, domestic violence counseling, batterers' counseling, client advocacy, rural outreach, childrens' programs prevention/ education
TANANA CHIEFS COUNCIL (TCC)	-0-	10.0	training for workers in rural areas on domestic violence and sexual assualt
HOMER			
SOUTH PENINSULA WOMEN'S SERVICES (SPWS)	90.0	103.0	safe homes, crisis line, prevention/education, rural outreach, dv/sa counseling
JUNEAU			
AIDING WOMEN FROM ABUSE AND RAPE EMERGENCIES (AWARE)	375.0	396.0	shelter, dv/sa counseling for adults and children, client advocacy, childrens programs, rural outreach crisis line, prevention/education, crisis intervent
JUNEAU WOMEN'S RESOURCE CENTER (JWRC)	55.0	52.0	crisis intervention, information/referral services, prevention/education
MEN, INC. (MEN)	100.0	107.5	batterers' counseling, prevention/education
KENAI/SOLDOTNA			
WOMEN'S RESOURCE AND CRISIS CENTER (WRCC)	141.3	200.4	safe homes, crisis line, client advocacy, dv/sa counseling, prevention/education
KETCHIKAN			
WOMEN IN SAFE HOMES (WISH)	300.3	300.3	shelter, domestic violence & sexual assault counseli and crisis intervention, batterers' counseling, clie advocacy, prevention/education, rural outreach, childrens' programs, crisis line
KODIAK			
WOMEN'S RESOURCE AND CRISIS CENTER (KWRCC)	175.0	187.5	shelter, dv/sa counseling, childrens' programs, clier advocacy, prevention/education, rural outreach, crisis line
NOME			
BERING SEA WOMEN'S GROUP (BSWG)	290.0	307.5	shelter, crisis line, client advocacy, domestic violence/sexual assault counseling, batterers' counseling, prevention/education, childrens' programs rural outreach
SITKA			
SITKAN'S AGAINST FAMILY VIOLENCE (SAFV)	130.0	137.0	shelter, domestic violence/sexual assault counseling client advocacy, prevention/education, childrens' programs, crisis line
UNALASKA			
UNALASKAN'S AGAINST SEXUAL ASSAULT AND FAMILY VIOLENCE (USAFV)	-0-	30.0	counseling, crisis intervention, information referral, education
VALDEZ			
ADVOCATES FOR VICTIMS OF VIOLENCE (AVV)	90.0	106.0	shelter, prevention/education domestic violence/sexual assault counseling, crisis line
WASILLA			
VALLEY WOMEN'S RESOURCE CENTER (VWRC)	165.0	172.5	shelter, domestic violence/sexual assault counseling, client advocacy, childrens programs, crisis line, prevention/education

DIVISION OF FAMILY AND YOUTH SERVICES

FY 85 PREVENTIVE YOUTH SERVICES GRANTS *

Grantee	Service	Funding
Fairbanks Community Mental Health	Coordinative services for delinquency prevention and child sexual abuse agencies, assessment, evaluation and consulting.	$ 78,000.00
Southwest Council for Prevention of Child Sexual Abuse	Child sexual abuse community education training and inter-agency coordination.	$ 64,000.00
Central Peninsula Mental Health (Kenai)	Psycho-therapeutic services in Kenai to treat and alleviate victims of child sexual/abuse and family members and delinquency.	$ 53,074.00
Craig Youth Center	Family and youth counseling. Parenting skills and training. Community education relating to delinquency prevention and child sexual abuse.	$ 45,610.00
Parents United (Anchorage)	Self help treatment program for families and victims of incest. Early prevention of child sexual abuse.	$ 50,000.00

*
These grant are specific to programs which address child sexual abuse. Many other grantees also provide service directly or indirectly to the child sexual abuse victim but services being funded are more general.

prevention/intervention - child abuse + neglect

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSB8 (HESS)
Title: ...Personal Safety Curriculum...
Sponsor: Kerttula
Requestor: Senate HESS
Date of Request: 2-20-85

FISCAL DETAIL

Agency Affected: Education
Program Category Affected: Elementary and Secondary Education
BRU, Program or Subprogram(s) Affected: Office of School Improvement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		20.0	10.0	5.0	5.0	5.0
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		20.0	10.0	5.0	5.0	5.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		20.0	10.0	5.0	5.0	5.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

FY-86 and FY-87 costs include staff training, identification of existing materials and resources, and telephone and duplication costs of guideline development. Post FY-87 costs are telephone and duplication cost estimates. This estimate does not include materials or curriculum development.

Prepared By: Steve Hole
Phone: 2800
Division: Commissioner's Office
Date: 2-20-85

Approved by Commissioner: Harold Raynolds, Jr.
Date: 2-20-85
Agency: Education

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

CHILD AND FAMILY PROTECTION

ADDITIONAL ISSUES

The following concepts have been identified vro continuing discussion:

1) presumptive vs. mandatory sentencing

2) parole term for sex offenders

3) mandatory background checks on licensees and employees of child care facilities

4) allocation of funds among the various line agencies/ duplication of services

5) enhancement of Public Safety's Missing Persons and Exploited Children unit

6) encourage school districts to offer parenting classes

7) kidnapping/enticement

8) curfew

In addition, formal letters are being drafted to:

1) The Department of Health and Social Services, asking that they inform licensees of current law allowing release of conviction records,

2) The Judicial Conference, endorsing their training program for judges on child abuse, and

3) The Department of Public Safety, requesting that they expand their existing protocols on sexual assault to address the child victim.

Sec 11 -

Letter of Intent

Child & family protection

judgment of social worker

training
qualified

in best for protection of child

See 7 - predisposition report =>

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James D. Smith
Signature of Camera Operator

10/31/89
Date

HB

92

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: HB 92

Sponsor: GOVERNOR

Date referred to committee: 4/16

Synopsis completed:

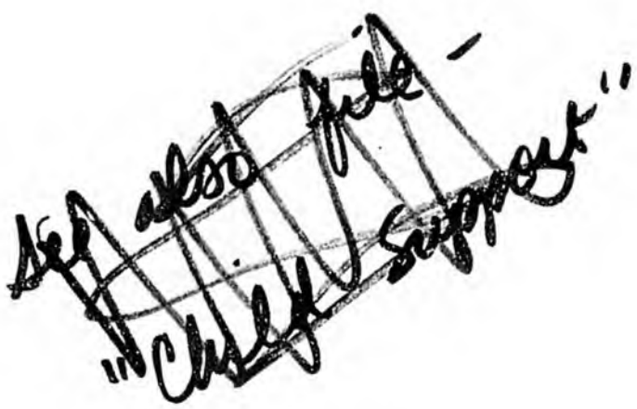
Fiscal note:

Further referrals: JUDICIARY, FINANCE

CONTACTS:

✓Holli Ploog 276-3441 - Child Support Enforcement Agency, Dept Revenue

✓Sherry Gall, Women's Lobby



COMMITTEE REPORT

SENATE

FURTHER: JUDICIARY
FINANCE

4/16/85

Date 4-23-85

Mr. President

The Committee on HESS considered CSHB 92(Jud)

child and spousal support; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS
Carl Trimble	

Chairman

Do Pass

Chairman recommendation

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 Altering Sections 47.23.070 and .250 to create a mandatory rather than a discretionary income withholding statute and to include: not necessary - see 09.65.132
  - ✓--recognition of income withholding order as top priority: 09.65.132(g)
  - ✓--provision limiting obligor's defenses to mistakes of fact in contested withholding cases; 09.65.132(d)
  - ✓--designation by state of publicly accountable agency to administer the withholding system; (Child Support Enforcement Agency, Dept. Revenue)
  - ✱--simplification of the process by the state, such as allowing employer to send in withheld amounts in one check; 09.65.132(j)
  - ✓--provision for withholding income in interstate cases; 47.23.020(a)(1)
  - ✓--provision to terminate withholding; 09.65.132.(1)
  - ✓--provision in contested cases for state to notify obligor within 45 days whether withholding will occur; 09.65.132(d)
- o ✓Altering Sections 47.23.020 and .025 to reduce the optional late payment fee to meet the federal 3% to 6% standard. 47.23.025

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. 09.65.132

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; 47.23.020(a)(8)
- 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; (47.23.020(a)(9)
- 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; 47.23.075
- ✓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. 09.65.132(e)

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.

ALASKA WOMEN'S LOBBY
POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

March 6, 1985

The Alaska Women's Lobby strongly supports CSHB 92 (HESS), An Act relating to child and spousal support, which will significantly enhance the collection of support payments for Alaskan children from absent parents.

We stress the importance of prompt passage of this legislation. The Federal Child Support Enforcement Amendments were signed into law last August. The various states have been given until October 1, 1985 to comply with these amendments or risk jeoparuizing federal funding.

The law is designed to strengthen child support enforcement techniques and to assure that assistance in obtaining support from parents will be available to all families. It also focuses atention on interstate enforcement of support orders.

The Alaska Women's Lobby supports the proposed HESS Committee amendment allowing for the inclusion of an automatic cost-of-living increase. A recent, nationwide, study aimed at finding ways to improve the economic status of single parent families found that many absent parents can afford to pay far more in child support than is now being ordered by most state courts. This amendment would provide a way for the support payments to increase due to changes in circumstances without a separate court order.

Problems of delinquency in child support payments are much discussed and wide-spread. A review done at the request of the U.S. Senate Budget Committee revealed that absent parents paid only 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.

In this light the Alaska Women's Lobby also supports the proposed change in the service of notice from certified or registered mail to first class mail. Testimony by custodial parents before the House HESS Committee clearly showed that the more restrictive service requirement often sets

up a barrier to collection when the delinquent parent refuses or neglects to claim the notice from the postmaster.

The more restrictive service which is required of the Child Support Enforcement Agency is not required when notice is served through a private attorney. Thus the ability of low income custodial parents who must turn to the agency to effect collection of past due support payments is hampered while those who can afford to pursue support collection privately have a better chance of securing the withholding order.

The Women's Lobby advocates equal protection for those low income parents and urges the passage of this legislation with the inclusion of this change.

Sherrie Goll

Sherrie Goll
for The Alaska Women's Lobby

For your info
FEB file w/ House child support bill
HB 92

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

FEB 2 6 1985

JANE MARONEY
4005 CONCORD TURNPIKE
WILMINGTON, DELAWARE 19803
HOME: 302-478-2672
HOUSE OFFICE: 302-736-4175

COMMITTEES
HEALTH & SOCIAL SERVICES, CHMN.

FEB 6 1985

Chairman, Senate Human Resources Committee
State Capitol
Juneau, Alaska

Dear Senator:

The Child Support Enforcement Amendments of 1984, P.L. 98-378, require States to have income withholding systems to enforce child support orders by October 1, 1985. This system must be extended to aid other States so that income derived in one State may be withheld to enforce a sister-State support order.

To help States meet this interstate income withholding requirement, the Federal Office of Child Support Enforcement requested its contractors, the American Bar Association and the National Conference of State Legislatures, to prepare the enclosed model Interstate Income Withholding Act. Implementing this Act in your State will assure that you meet the Federal law's interstate withholding requirements.

While State legislatures are free, of course, to modify this model Act to meet the income withholding requirements of their own States, certain basic elements must be maintained in order to comply with Federal law. These include the mandate that sister-State support orders be honored for income withholding purposes and that the State's intrastate withholding system be extended to interstate enforcement. Also, States which begin income withholding when the support order is first entered, will still have to provide the obligor with an opportunity to contest withholding and will have to enact procedures to ensure adequate due process protection for obligors in interstate cases. (See comments to section 4.)

I am pleased to be able to commend this Act to you. A measure of uniformity in such laws will simplify the withholding process for all State child support agencies, help to increase child support collections and thereby benefit the children of our nation who so richly deserve our support. Good luck with implementing this marvelous initiative after all the years of effort.

Sincerely,

Jane Maroney

Jane Maroney
Co-Chair, Committee on Children
Co-Chair, Committee on Human Resources

The FAMILY LAW REPORTER®

Monograph No. 5

October 23, 1984 THE BUREAU OF NATIONAL AFFAIRS, INC. Volume 10, No. 50

CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984: NEW TOOLS FOR ENFORCEMENT

by Diane Dodson and Robert M. Horowitz

Ms. Dodson and Mr. Horowitz are co-directors of the American Bar Association's Child Support Project, National Legal Resource Center for Child Advocacy and Protection, in Washington, D.C.

I. INTRODUCTION

In 1974 Congress enacted Title IV-D of the Social Security Act.[1] This title created a federal-state scheme for the establishment and enforcement of child support, under the auspices of the federal Office of Child Support Enforcement. States were required to establish child support enforcement plans administered by state IV-D agencies and partially funded by the federal government (originally at the 75% level). Congress' motive for entering the domestic relations field was a fiscal one. The costs to the Aid to Families with Dependent Children (AFDC) program, resulting from absent parents' failure to support their children, were staggering.

Title IV-D required states to establish child support enforcement programs which would use existing state laws and procedures to establish paternity and to establish and enforce support obligatons on behalf of minor children. Services were to be made available both to families receiving AFDC benefits and to others who asked for assistance, in hopes of helping them avoid the need for AFDC assistance.

While the improvements in child support collection in the decade since this Act have been significant, census bureau surveys continue to report that some 40 percent of families theoretically entitled to support orders do not have them, and that overall non-compliance with support orders is still at epidemic proportions.[2] Furthermore, due to the Federal funding scheme, collection on behalf of non-AFDC families received little attention over the past decade.

As a result, Congress reconsidered the basic premises of the program, and ten years after original passage of Title IV-D of the Social Security Act, passed the Child Support Enforcement Amendments of 1984, Public Law 98-378 [hereinafter referred to as the Act]. Unlike the 1974 law, these amendments mandate that states enact a number of specific remedies and procedures to improve their child support enforcement programs as a condition of continued state eligibility to participate in AFDC. It also seeks to equalize the treatment of AFDC and non-AFDC families. These new state laws and procedures should not only enhance the support collection practices of public agencies, but also provide private practitioners with important new support collection tools in many states.

This monograph will describe the new Act's requirements and will focus, where appropriate, on its implications and potential uses for the domestic relations practitioner.

II. MANDATORY STATE ENFORCEMENT PROCEDURES

At the heart of the Act are a set of mandatory procedures which states must provide to improve the collection of support.[3] In general, these procedures are based on successful support enforcement practices already employed in some states.[4] Where Congress had previously allowed states to provide support enforcement services under the IV-D program using existing state substantive law and procedures, this Act directs states to change their substantive family law to provide a specific set of enforcement remedies. In part this decision was based on the striking differences in the collection success rates of states that use the most stringent enforcement methods and those that do not.[5]

The Act's mandatory procedures must be used to enforce the support obligations owing to clients of the IV-D agency — whether AFDC recipients or not.[6] While by its terms the Act does not state that these remedies must be made available to private parties not the clients of IV-D agencies, most states will likely choose to make most of these remedies available to all parties, whether represented by the IV-D agency or by private counsel or appearing pro se. Arguably, it could constitute a denial of equal protection to provide these remedies only to those represented by the IV-D agency.

A. Income Withholding

The key mandated procedure is a requirement that states establish a system under which court- or agency-ordered support payments will be withheld from the wages or other income of obligors who are delinquent in making payments.[7] In requiring this procedure, Congress was attempting to establish a speedy and simple method for withholding of wages while protecting the due process rights of obligors. The concern Congress had for this

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provision is demonstrated by the detailed requirements of this new section. When fully implemented, this withholding system should have an enormous impact on the collection of support and should substantially change routine child support enforcement practice in many states by providing a far more effective remedy than any now available.

1. Requirement of a conditional order of income withholding in every support order; private right of action issue

The Act requires that commencing October 1, 1985,[8] every support order issued or modified in the state 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 necessity of filing application for services under this part."[9]

This provision requires that all support orders, whether issued in a support action or as part of a divorce, paternity, separate maintenance, civil protection or other proceeding include at least a conditional order of income withholding. It also requires that some form of income withholding to enforce the support order be available to all obligees, without their having to seek support enforcement services through the state IV-D agency. That is, this provision mandates that all states make some form of income withholding available to all obligees, including those represented by private counsel or appearing pro se.

The discussion that follows describes the substantive details and procedures the Act requires to be part of the mandatory income withholding scheme for IV-D clients. These details are required only in the cases of obligees represented by the IV-D agency. Hopefully, most states will simply establish one system of income withholding available to all obligees, whether represented by the agency or by private counsel. It would be difficult to imagine a rational justification for a difference in substantive legal rights when these differences are based solely on who is representing the obligee. Bar groups will no doubt wish to follow closely state legislative income withholding proposals to ensure access to this effective remedy for clients represented by private counsel as well as clients represented by the IV-D agency.

Some distinction between those who are and are not agency "clients" may be justified if a state chooses to use a purely administrative mechanism for income withholding. In such a scheme, all support payments might be made through the administrative agency for agency clients, with the agency itself issuing notices of proposed withholding, holding a hearing in contested cases, and issuing notices to employers to commence withholding.

2. Automatic "triggering" of wage withholding

The Act provides that income withholding must be commenced in every case in which the obligee is a client of the IV-D agency[10] and the appropriate support delinquency occurs. When the obligee is already the client of the IV-D agency, before a delinquency occurs, as would be the case with all AFDC recipients plus others who previously applied for support enforcement services through the agency, the agency must commence withholding proceedings without the obligee specifically requesting them.[11] Others who have not previously applied for IV-D enforcement services including persons represented by private counsel, may apply for services at the time of the delinquency and the agency must commence the withholding procedure in these cases as well. Non-AFDC clients should be allowed to withdraw their request for IV-D services if they do not wish the obligor's wages to be withheld, but the Act contains no requirement for notice to the obligee prior to beginning the withholding process. In order for withholding to commence in a timely fashion, most states will establish a support clearinghouse through which all support payments owing to those who are already IV-D clients will be paid and monitored.

Because of the entitlement to immediate enforcement action once the requisite delinquency occurs, attorneys may want to advise their clients to apply for IV-D services, or apply on their clients' behalf, as soon as a support order is entered. Should a delinquency occur, this will assure prompt commencement of withholding. The application fee for this service is only $25.00.

State law must provide that the paying parent becomes subject to withholding, on the date the obligor voluntarily requests it or the "date on which the payments which the absent parent failed to make under a support order are at least equal to the support payable for one month," whichever comes first.[12] Advance notice of proposed withholding must be sent on that day. The state may set an earlier date to commence withholding if it wishes.[13] For example, nothing would preclude a state from providing that all support payments must be withheld from wages from the time the original order is entered.[14] In such cases, notice to the absent parent and a hearing to contest withholding would be unnecessary as full due process protections would already have been provided.

Withholding would be triggered, for example, if enough weekly or biweekly support payments were missed to equal the payment due for one month. Similarly, a number of partially missed payments would trigger withholding when the unpaid amounts total one month's support.[15] Attorneys representing obligors should take heed that when support payments are made on a monthly basis, missing the payment date by a single day might trigger wage withholding because the "arrearage" would then be equal to "the support payable for one month."

3. Procedures to commence withholding

The Act requires that withholding must occur without need for amendment to the underlying support order or any further action (other than those actions required under the withholding sections) by the court or other entity which issued such order.[16] No time is specified for commencing withholding in uncontested cases; in contested cases notice of the withholding decision must be sent to the obligor within 45 days of the notice of proposed withholding.

Because the actions required under this part include only sending notices, resolving contested cases, and receiving and disbursing payments, it would not be acceptable to require the court or administrative agency to

hold a hearing in every case. Among other things this means that the state must establish a formula or schedule for the amount to be withheld which can be applied without a hearing and without requiring the exercise of discretion.

4. Procedural protections for the obligor

The procedure must commence by sending the obligor advance notice of the proposed withholding and of the procedures he or she may follow to contest it.[17] The notice must be sent on the day the triggering arrearage occurs.[18]

In addition, the state must carry out withholding "in compliance with all procedural due process requirements of the state." [19] The statute does not specify what elements of due process must be afforded apart from advance notice and an opportunity to contest. Taken together, these provisions indicate that the state must establish a mechanism for contesting the proposed withholding which at least meets state and federal constitutional due process requirements. Allowing a hearing before a court or administrative body is the current practice in states which already have wage withholding schemes.[20]

One of the trickier issues facing Congress was whether notice and an opportunity to contest would have to be provided in advance of commencing withholding. Some argument may be made that the Constitution requires this.[21] Yet several states have, for a number of years, been operating systems in which child support withholding or garnishment is commenced without prior notice to the obligor. In these states, an opportunity for a hearing is available only after the notice to commence withholding is sent to the employer.[22] Congress was reluctant to force a change in these effective systems. The issue was resolved by requiring advance notice and opportunity to contest as a general rule, but grandfathering in state procedures existed on the date of enactment and provided due process for obligors but did not provide for advance notice.[23]

The only ground on which withholding may be contested is "mistakes of fact" making withholding itself improper or the amount of the withholding incorrect.[24] The legislative history suggests that the meaning of the term "mistakes of fact" is quite limited:

"Such mistakes of fact would include, for example, errors in the amount of current support owed, errors in the amount of arrearage that had accrued, or mistaken identity of the alleged obligor. This provision is not intended to waive the withholding requirement if the obligor paid the past due support after receiving notice that withholding was being implemented. The obligor could not contest the proposed withholding on other grounds such as the inappropriateness of the amount of support ordered to be paid, changed financial circumstances of the obligor, or lack of visitation. These issues are important, but nonpayment of support should not be used to obtain relief with regard to these problems. They should be pursued independently through separate legal actions."[25]

If the withholding is contested, the state must resolve the dispute and notify the obligor of the decision within 45 days after the notice of proposed withholding was originally issued.[26] The notice must say whether or not the parent's wages will be withheld and the date withholding will begin, and must include the information which is being provided to the employer (which is limited to the information necessary to comply with the order).[27] The statute does not specify the day by which withholding must actually commence.

While this Act requires an income withholding hearing every time an obligor requests one, the actual number of hearings should be relatively small. The grounds on which withholding can be contested are to be limited. Increased use of clearinghouses to track and monitor payments should reduce the number of contests over amounts paid to insignificant numbers. Finally, it has been the experience of many states with withholding systems in place prior to this Act that the number of challenges to proposed withholding is quite small.

5. Amount to be withheld

The Act provides that the amount withheld from the obligor's wages must be equal to the current support obligation plus the employer's fee, so long as that amount is within the limits of the Consumer Credit Protection Act (CCPA) §303(b).[28] The Act and its legislative history,[29] as well as the CCPA suggest that the state may not set lower limits with respect to these two items. Those limits are 50 percent of disposable earnings in the case of an absent parent who has a second family and 60 percent in the case of an absent parent without a second family, increasing to 55 percent and 65 percent, respectively, in certain cases.[30]

In addition, if the current support payment and employer's fee do not equal the CCPA limit, some additional amount must be withheld toward the arrearage. The combined total payment for current support, employer's fee and arrearage may not exceed CCPA limits. However, the state need not withhold up to the maximum under the CCPA to collect arrearages.[31]

6. Termination of withholding

The Act requires that state law make provision for terminating withholding.[32] The legislative history of this provision, however, suggests that withholding was intended to be terminated only in very limited circumstances, such as the disappearance of the custodial parent and child for an extended period so that it becomes impossible to forward payments, the child reaching the age specified in the support order for termination of payments, or the child being legally adopted by someone else.[33] There is no indication Congress intended that withholding orders be time-limited or automatically expire (except on the child reaching majority). On the contrary, Congress intended the withholding system to be a means of ensuring stable support payments over a long period of time. Further, it would be unacceptable under the Act to allow withholding to be terminated while there was an arrearage of at least one month's support.

7. Employers' rights and obligations

Withholding is commenced by sending a notice to the obligor's employer directing that certain amounts be withheld from his or her wages.[34] The notice must contain only the information necessary for the employer to be able to comply with the support order.[35] On receiving notice, the employer must begin withholding the specified amount from the employee's wages no later than the first pay period that occurs 14 days from the mailing date on the notice and sending it to the designated agency.[36] If there is more than one child support order against a given employee, the proposed regulations specify that the employer must comply on a "first-come-first-served" basis and must honor all withholdings to the extent they do not exceed the Consumer Credit Protection Act limits.[37] The employer must notify the state agency when the employee ceases working for the employer, and forward the former employee's last known address and name and address of the new employer, if known.[38]

State law must provide that the employer will be held liable for any amounts he fails to withhold after receiving proper notice.[39] State law must also include a fine provision for any employer who fires, disciplines or refuses to employ an obligor because of the support withholding obligation.[40] In this regard the Act is more lenient than existing laws of many states, which permit the discharged employee to sue his or her employer.

On the other hand, the Act also attempts to minimize the burden the wage withholding system could impose on employers. State law must provide for a fee to the employer unless the employer waives it.[41] The employer may withhold the fee in addition to the support payment, and retain it.[42] An employer must be allowed to combine all support payments he is required to withhold for all employees into a single check, and send it to the designated agency, with a list showing the amount attributable to each employee.[43] The employer cannot be required to alter his normal payment and disbursement cycles in order to comply with the payment pattern specified in individual support orders.[44]

8. Priority of support collection

State law must give priority to child support withholding over any other legal process brought under state law against the same wages.[45]

9. What income may be withheld

The Act requires withholding from wages.[46] It also permits states to extend their withholding systems to apply to other sources of income.[47] Many states already extend withholding to such items as commissions, disability, annuity and retirement benefits, bonuses and worker's compensation. Indeed, some states use broad, catch-all language to define income, such as "earnings or other entitlements to money, without regard to source."[48]

The only limits on income which might not be subject to withholding are those set by other federal laws. In recent years Congress has taken steps to minimize such limitations. In 1982 it amended Title IV-D to require state laws to provide for collection of support from unemployment compensation benefits,[49] for example.

This year, through the Retirement Equity Act of 1984, Congress clarified that domestic relations orders could reach pension benefits covered by the Employee Retirement Income Security Act (ERISA) and explained the specifics of "qualified" domestic relations orders. Income withholding orders would have to conform to these specifics in order to reach pension benefits covered by ERISA.[50] Finally, the Conference Report specifically indicates that wages of federal employees and employees of the District of Columbia are reachable through these wage withholding procedures.[51]

10. Interstate wage withholding

Each state must extend its wage withholding system to allow withholding from income "derived" within the state in order to enforce support orders from sister states.[52] The proposed regulations indicate a general procedure to be followed in interstate cases.[53] The IV-D agency in the state which originally issued the order must notify the IV-D agency of the state where the absent parent is employed to initiate withholding by sending a notice with all information necessary to carry out withholding. Advance notice of the proposed withholding, opportunity to contest the withholding and notice to the employer must be provided by the state of employment. The law and procedures of the state of employment are to apply except with respect to when withholding must be implemented and the amount to be withheld. The "amount to be withheld" most likely refers to the amount of the original support and accumulated arrearage and not to calculations of the amount of arrearages to be withheld each pay period.

The Child Support Project of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection is currently developing a Model Interstate Wage Withholding Act which states may adopt to implement this requirement of the Act.

11. Administration of the wage withholding program

The state must designate a public agency to administer the wage withholding program, to distribute the amounts withheld, and to monitor payments. This may be the IV-D agency or some other agency, such as the courts. The state may, however, choose to use a private entity, such as a financial institution, to collect and distribute withheld funds, so long as the procedures are publicly accountable, allow prompt distribution, provide adequate records to document support payments, and permit tracking and monitoring of payments.[54]

It is expected that the public agency administering the support system in most states will establish some form of a clearinghouse through which support payments are made prior to commencement of wage withholding, although the Act does not require this. It is difficult to imagine how the agency will be able to initiate the wage withholding process on behalf of its IV-D clients without monitoring support payments as they are made. For that reason, it is expected that most states will require that all support payments be made through a public agency in the cases of clients who have applied for IV-D services. Provisions of the Act relating to clearinghouses are discussed in section IV-D, below.

12. Wage withholding, a tool for private enforcement

The withholding remedy holds obvious advantages to attorneys representing obligees, particularly where the full withholding procedure is made available through private counsel. Where the obligor is regularly employed, withholding should become the enforcement remedy of choice in most cases. Except where a contest is interposed, it should be available without a hearing, as would be required in contempt cases or in cases to reduce an arrearage to a judgment. It may be used on the occurrence of a fairly small arrearage and kept in place to ensure future payments on an ongoing basis over an extended period. Support withholding is to be given priority over other legal processes against the same wages under state law, which means the obligee can obtain priority over other creditors by use of this remedy.

Because of these obvious advantages and others, those representing obligees will want to make sure their clients are able to use this remedy. In the first instance, this may mean making sure that the support obligation is incorporated in the order issued by the court or administrative agency. The procedure is not required to be available to enforce separation agreement provisions not incorporated into a court order. The status of separation agreement provisions which have been "ratified and affirmed" by the court but not incorporated in the court order is uncertain, but they probably cannot be enforced through this remedy.

Attorneys may also wish to routinely advise their clients to have payments made from the outset through the state or local child support clearinghouse. This will ensure a clear record of payments for later withholding purposes. Others may want to suggest that clients apply for full IV-D services as soon as a support order is issued. The advisability of this depends on the local agency's track record in using the income withholding remedy.

At a minimum, attorneys should counsel their obligee clients of the availability of income withholding and what delinquency triggers entitlement to this remedy. Obligees' attorneys may also wish to seek voluntary wage withholding agreements from obligors as a routine part of settlement negotiations.

The obvious disadvantage of income withholding to obligors is that it will no longer be so easy to escape their support obligations. Obligors should be counselled about the potential consequences of missing payments equal to one month's obligation, and told of the importance of obtaining a support modification if their circumstances change and they cannot pay.

Attorneys representing obligors should not think income withholding has only disadvantages for their clients, however. Clients may voluntarily elect to have income withheld. Compared to other enforcement remedies, including contempt, it is relatively benign. Furthermore, where a client has trouble sticking to a personal budget, paying his or her obligation on a timely basis, or keeping financial records for tax and even proof of child support payment purposes, withholding solves these problems. Where the client has a second family, it effectively negates the temptations and pressures on the obligor to use all of his or her income for the new family, leaving nothing for his support obligation to the first family. Income withholding does not cut off other substantive rights. The obligor, for example, can always petition for support modification on the basis of changed circumstances. If successful, the amount of income withheld will be adjusted.

A potential disadvantage to both parties is that when the obligee is the client of the IV-D agency, it may be more difficult to bargain for a lump sum payment against arrears in return for a lower monthly withholding amount. This may result if state law prescribes a fixed formula or percentage for calculating the arrearage to be withheld each month.

B. Other Mandated State Enforcement Procedures

Other procedures mandated by the Act include state tax refund intercepts, liens, posting of bonds or giving security, and making payment information available to credit agencies. These procedures must be established by state law by October 1, 1985, or the delayed deadline for states with later legislative sessions. However, the state IV-D agency may exercise discretion in deciding which of these remedies to use in which cases. The state must establish guidelines for when to use and not use the various remedies based on the payment record of the obligor, the availability of other remedies, and "other relevant considerations." Using these guidelines, the state may determine that use of a particular remedy is inappropriate or would be ineffective.[55]

It should be noted that nothing in the Act forbids the use of a remedy, such as a state tax refund offset which would allow quick repayment of an arrearage, simply because wage withholding had commenced. Nor does the Act forbid the commencement of wage withholding, which must be used in every eligible case, because some other remedy had been used previously.

In devising these additional procedures Congress was particularly concerned with reaching self-employed obligors or obligors who have assets but who do not receive wages.

1. Liens

The Act requires states to have "procedures under which liens are imposed against real and personal property for amounts of overdue support." [56] Currently, many states provide for liens in child support cases, either as part of a child or family support statute[57] or a more general enforcement of money judgment provision.[58] Most, however, do not include liens on personal property, so new legislation will have to be enacted on this subject. Unlike income withholding, Congress did not mandate a specific kind of lien or lien enforcement procedure. Indeed the Act's lien requirement is all of one sentence.

Current lien practice varies greatly among the states. The most basic difference in existing state laws concerns when a child support lien may take effect. In some states, the support order itself, when recorded with the county clerk's office, recorder of deeds, or, especially in cases of personal property, other designated official, constitutes a lien [59] with the effect of a judgment lien. In some states the support order, duly recorded, becomes a lien only upon a default on child support payments.[60] In other jurisdictions, a lien is not created until the arrear-

ages are reduced to judgment and this judgment is recorded.[61] These distinctions can affect the lien's priority status; liens have priority only in the event property is sold, over subsequent judgment liens and all unsecured creditors.

Other statutory variances in lien practice include the duration of a lien, availability of administratively imposed liens, nature of property exempted from liens, definition of real property, and differences in the treatment of real and personal property. In many jurisdictions personal property is subject to a lien at the time of execution. Perhaps the only near universal rule is that judgment liens, including support liens, operate as general liens; they apply against all of the obligor's property situated in the county where the judgment was recorded or docketed.[62] Consequently, the address or description of the property is not required, and property acquired by the obligor after a lien is created is covered by the judgment lien.

The judgment lien itself merely places a charge or encumbrance on the property. The lien creates a cloud on the title; it impedes the debtor's ability to sell the property. Many support practitioners will choose to simply record their support lien and wait for the property to be sold, knowing that the support obligation must be satisfied and a release obtained from their client when it is sold.

But debtors do not always sell property and most states, therefore, have methods of enforcing judgment liens. The principal means of enforcement are foreclosure proceedings and/or levy and sale under a writ of execution. As with all lien practice, states vary as to which tool is available (both are available in many states) and what procedures are followed. The net result, however, is that the property is sold and the proceeds are used to satisfy any debt.

A potentially nettlesome question is whether arrearages, accrued after the child support lien is created but before the lien is executed, are secured. Some states have settled this in the affirmative by statute, making the child support lien, once properly recorded, cover the amount of each child support installment as it matures. The judgment or order does not become a lien for any sum prior to the date an installment becomes payable and due.[63] Thus, an independent jdugment lien entered after the child support lien may take priority over the child support payments due after the recording of the independent lien. Presumably this rule does not apply in states which do not allow liens on support orders themselves but only upon a recording of a judgment for a specific amount of arrearages.

Since judgment liens arise from state law, practitioners must familiarize themselves with applicable statutes and practices in their jurisdictions. Particularly where the support itself may constitute a lien when properly recorded, the prudent practitioner will automatically file the support order in every county in which the obligor is known to have property, as a precautionary measure. Obviously, arrearages may also be reduced to judgment and the judgment filed. Enforcement of the lien, however, calls for some practical considerations. Enforcement can be costly and cumbersome. The return must be worth the time, effort and money. Forced public sales of property often result in below-market-value sales prices. After payment of legal expenses, costs and other liens on the property which may have priority, the child support arrearages sought may outstrip the debtor's equity. Thus the practitioner, before executing on a lien, should try to ascertain the following: (1) are there prior liens or secured creditors? — a check with the recorder of deeds office or Department of Motor Vehicles are two sources of this information; (2) is the market currently depressed, making it a bad time to hold a public sale?; (3) what are the anticipated costs, such as towing and storing a motor vehicle?; and (4) what value has similar property brought at recent public sales?

The obligor's attorney also must be familiar with lien practice and procedures. Most lien laws have provisions which provide some protection to the debtor. Depending on the state, these may include exemptions, homestead provisions, redemption rights, limitations on sale at an unfair price, and the right to obtain a release of a lien on specific property when there is sufficient other property to secure the debt. Both obligor's and obligee's attorneys should be familiar with procedures for release of liens.

2. Bonds and other securities

The child support enforcement amendments also require states to enact "procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support." [64] This remedy may be particularly valuable where the obligor is self-employed or has other income beyond the reach of the state's income-withholding laws.

While many states already have statutory provisions to this effect,[65] practitioners should be aware of problems in their application. The bonding industry dislikes involvement with child support. The long-term commitment of the support obligation, the volatile nature of family problems, and the high rate of non-compliance with support obligations makes bonding in these cases too risky. All of this is compounded by the fact that bonds are usually required when there has already been a default, which is clear evidence of a credit risk. As a result of these factors, bonding companies generally refuse to issue child support bonds, even in states where bonds are mandated by state law in certain circumstances. Consequently, the practitioner should focus on trying to obtain some other security or guarantee. The type and amount of security is left to the judge's discretion. However, depending upon the law, attorneys may argue for an amount sufficient to cover overdue support, as well as current and future support.[67]

Under the Act, before the obligor may be required to post a bond or give security, he or she must be given notice and an opportunity to contest the proposed security arrangement. As with other features of the Act, the nature of the notice and hearing are to be determined by state law, in accordance with the state's due process requirements. Obviously, it is to be expected that federal constitutional requirements will be met as well.

3. State tax refund intercept

State tax refund intercept, a procedure states are mandated to develop, is described together with federal tax intercept in section IV-A, below.

4. Information on delinquencies to credit reporting agencies

The Act requires that information regarding the amount of overdue support owed by an obligor be provided to credit reporting agencies seeking that information.[64] States have an option whether or not to report overdue payments of less than $1,000; larger delinquencies must be reported. The state may charge the agency a fee, not to exceed the actual cost of the service, for providing the information. Before releasing the requested information the state must notify the obligor of the information it proposes to report and give him or her a chance to contest its accuracy.

III. AVAILABILITY OF SUPPORTING ENFORCEMENT SERVICES TO NON-AFDC CLIENTS

A key element of this legislation is its emphasis on providing support enforcement services through IV-D agencies to families who are not receiving Aid to Families with Dependent Children. From its inception in 1974, Title IV-D has required provision of support enforcement services to these families.[69] An obvious reason for doing so is that, by providing support collection services for families not receiving welfare payments, they may be able to avoid using such assistance in the future.

This provision, however, has never been vigorously enforced and there have been widespread reports of both enormous delays in commencing services to clients who are not receiving welfare benefits and of refusals to serve non-AFDC clients at all. This problem was only exacerbated by legislation passed in 1980 providing a greater federal fiscal incentive for states to collect support due to families receiving AFDC benefits than for those that do not. The extent of this problem in one state was documented in the case of Carter v. Morrow,[70] in which a federal district court found the North Carolina support enforcement program out of compliance with the federal law because it failed to provide services to non-AFDC clients.

Given this history it is significant that Congress chose to emphasize support enforcement services to non-AFDC clients of IV-D agencies. Fiscal incentives for support collections are changed so that they no longer emphasize AFDC collections at the expense of non-AFDC collections.[71] The Act's mandatory procedures must be used by IV-D agencies in both AFDC and non-AFDC cases.[72] For the first time the federal tax intercept program is made available to non-AFDC recipients.[73] For the first time, states are required to publicize the availability of support enforcement services through public service announcements and other means. Publicity must cover the availability of services, the application fee for those services and a telephone number or address for applying for services.[74]

Domestic relations attorneys may wish to routinely inform their clients of the availability of these low-cost support-enforcement services. This may be particularly helpful when clients are unable to pay for services although they are not receiving public assistance. Attorneys should inform themselves about the effectiveness of services available to non-AFDC families in their communities so that they can help their clients assess the quality and timeliness of the services they are likely to receive from the public agency. This is particularly important given the poor histories of many public agencies on providing services to non-AFDC families.

An application fee must be charged for furnishing IV-D services in non-AFDC cases.[75] The Secretary of HHS must set the amount of the fee, not to exceed $25 (in 1984 dollars). States may choose to charge the fee to the applicant, charge the obligor, or pay the fee as part of the provision of free state services (without federal help). The state may charge the fee on a sliding scale based on ability to pay. In addition, current law provides that the state must collect any actual costs of collection services in excess of the application fee from either the obligor or from the custodian, but they may be collected from the custodian only if the state has a procedure for notifying judges and others who set support awards that collection costs will be charged to the custodian.[76]

A separate $25 fee may be charged to persons who request that their support payments be made through the court registry or other state child support clearinghouse without requesting full support enforcement services, and an additional fee may be charged for use of the federal tax intercept program.

IV. OTHER REQUIREMENTS OF THE ACT

A. Tax Refund Intercept

The 1984 child support amendments significantly expand a prior enforcement tool: state and federal income tax refund intercepts or set-offs.[77] Under prior law, federal tax intercepts were available in AFDC cases only. Federal law did not previously address state tax intercepts. Most states with income taxes have such provisions, usually limited to debts owed state agencies. These apply to cover support to AFDC families when there has been an assignment of support rights to the public welfare agency.[78] The recent amendments open the federal tax intercept program to non-AFDC cases. It also requires states with income taxes to have a similar set-off system for both AFDC and non-AFDC cases. States will also have to enact legislation regulating access of state residents to the federal tax intercept program.

Tax refund intercepts, in effect, constitute withholding against the absent parent's federal or state income tax refund. There are, however, several important distinctions between the intercept and withholding remedies. First, the tax intercept program may be used only to collect past-due — and not current — support payments. Second, intercepts of federal tax refunds may be used only after other attempts to collect support have failed. Third, the limits of the federal Consumer Creditor Protection Act (15 U.S.C. § 1673) do not apply,[79] thereby permitting the attachment of the entire tax refund if necessary. And finally, unlike the other remedies of this Act, there will probably be no private-party right to seek tax intercepts; the state IV-D agency must be the intermediary, even in non-AFDC cases.

While the IV-D agency must take certain steps to obtain federal or state income tax refund intercepts, the private practitioner need not be familiar with the actual procedures followed. These will be described in the Code of Federal Regulations.[80] Nonetheless, attorneys should

learn the basic eligibility requirements for non-AFDC clients to participate in the federal and state programs, and the advantages and disadvantages of these remedies. For a small fee to the IV-D agency (not to exceed $25 for the federal intercept program, a reasonable amount deducted from the amount intercepted for the state program) attorneys may wish to refer their clients to the agency for this service or apply on their behalf.

Basic eligibility requirements of a state's intercept program are left to each state's discretion. The practitioner must, therefore, consult state law. For the federal program, eligibility requirements for non-AFDC applicants are set forth in the Act and the proposed regulations.[51] These are: support, under a court or administrative order of the requesting state, is owed to or on behalf of a minor child (unlike the federal tax intercept for AFDC cases, spousal support may not be collected); the amount of overdue support is not less than $500, which a state, at its discretion, may compute only since the IV-D agency began to enforce the support order; and, "reasonable efforts to collect the amounts of the obligation, using methods available under state law, as appropriate" have been attempted. This does not require exhaustion of other remedies. Efforts to collect by the private attorney, prior to application to the IV-D agency, will be counted. Finally, unlike AFDC cases, federal tax intercepts for non-AFDC families apply only to refunds payable, under Internal Revenue Code § 6402, after December 31, 1984 and before January 1, 1991.

If a client is eligible for the state or federal program, the attorney should then consider whether to pursue it. Several considerations come to play for both programs. The first is a simple question of timing. If the arrearages are small, or if there is reason to believe the obligor may have a small refund this year, deferral to another year may be prudent. Each application for the intercept program is limited to taxes paid that year. However, if the attorney knows the obligor filed back tax returns in a given year, he or she may reach all of them. Although the client may apply for a tax intercept each year if he or she meets the eligibility requirements, most obligor taxpayers will avoid getting burned twice. They can, once aware of the intercept possibilities, control their tax payment pattern to minimize any refund. No refund, no funds to intercept. Since, as previously stated, consumer credit protection limitations do not apply, the intercept program has the potential of wiping out large arrears at one time, if timely sought. Second, if the client previously had AFDC or foster care maintenance payments assigned to the state for arrears which still exist, the intercept may not benefit the client. The state will first recoup the assigned arrears before distribution to the obligee. Third, even if the potential intercept is small, its consequences on the obligor's future payment pattern may be rewarding. Most people "fear" IRS or state tax agencies; rather than confront these agencies in the future, they may prefer to meet their current support obligations.

If you represent an obligor-taxpayer from whom a federal or state tax intercept is being sought (the obligor must receive advance notice), there is an opportunity to contest it. However, defenses are limited: the State's determination that past-due support is owed and the amount owed may be challenged. When the obligor has remarried and filed a joint tax return with the new spouse, the spouse will receive notice at the time of the federal intercept of the steps to take to protect his or her share.[52] In the case of a state intercept, the new spouse may apply for a share of the refund, if appropriate, in accordance with state law. Similarly, the state must have procedures to refund amounts intercepted if they were collected in error or exceeded the amount necessary to satisfy the debt.

The new child support amendments do not affect the IRS "full collection" process for child support.[53] This little-used remedy, available to AFDC and non-AFDC clients of IV-D agencies, has more rigorous eligibility requirements than the federal tax intercept program. For example, it requires a state to first exhaust all other remedies. The program's benefit is that it taps into the full range of IRS collection remedies, including garnishment of wages and seizure and sale of property. Furthermore, the case remains open until it is closed, presumably upon the collection of all arrears. The IRS can enforce obligations in all jurisdictions of the United States and any foreign country with whom the U.S. has a treaty to levy against assets. Presently the fee for this program is $122.

B. Expedited Processes

The Act also requires states to have "expedited processes," judicial or administrative, "for obtaining and enforcing support orders" and, at the state's option, "for establishing paternity."[54] This requirement was the result of strong Congressional concerns about court delays slowing the establishment and enforcement of support obligations.[55] There was also an opinion that a non-judicial procedure might be less "adversarial." The Secretary of Health and Human Services may waive this requirement for political subdivisions within a state if their current court or other process is timely and effective. Therefore, areas of a state with crowded court dockets would have to use expedited processes in lieu of consideration by a judge, while areas with less crowded dockets may continue to use judicial decision-making.

Potentially this provision could have great impact on the way decisions are made in certain domestic relations cases. The Act itself specifies only that these procedures be used in cases that involve support alone, as is often the case when support is sought on behalf of children receiving AFDC benefits. Congress never stated, and presumably did not intend, that these expedited procedures must be used to resolve matters on which the support may be dependent, such as child custody. Nonetheless, once a state creates an alternative procedure, it is free to expand the kinds of cases the process may be used for.

Congress stopped short of mandating specific procedures to meet this requirement. There are several existing models states may choose from. These include administrative processes, statutorily created and run by an executive agency,[56] as well as quasi-judicial systems,[57] operated within the courts. Under either version appeals to higher courts are usually provided, assuring litigants access to the protections of the judicial system. In recent years the quasi-judicial procedures have been adopted in

a number of states. This system, which typically relies upon judge surrogates, masters, referees or court commissioners to conduct hearings and render decisions, usually subject to judicial ratification, may be particularly attractive to the private practitioner.

The proposed regulations provide some additional detail on the requirements for these "expedited" procedures.[87] States may choose either administrative or quasi-judicial procedures. Some details of each are specified. Unfortunately, some basic procedural protections routinely available in judicial proceedings are not required to be available in either the administrative or quasi-judicial procedures. For example, there is no requirement of sworn testimony, right to subpoena witnesses or evidence, or right to discovery. These are important protections in support determination cases in which parties are likely to understate income and assets and overstate expenses. Submitting the parties' financial statements to careful examination is particularly important. Hopefully most states will choose to provide such protections.

Another potential problem is the requirement that the administrative agency "use the formula [support guideline . . .] to establish or modify support orders." While all support decision-makers, including judges, should use the support guidelines, agency decision-makers should not be required to apply them mechanistically without the exercise of discretion. For example, it would be improper for a hearing officer to blindly follow a guideline when the child has extraordinary needs. The proposed regulations also provide that only appellate review may be provided of agency or quasi-judicial decisions. This would mean no hearing de novo before a judge could be called.

C. Support Guidelines

A provision of the Act which will have substantial impact on matrimonial practice is the requirement that states develop guidelines for the amount of support awards.[89] There has been considerable discussion of the use of support guidelines in recent years,[90] and support guidelines have been adopted in several states and local areas by legislation,[91] court decision,[92] court rule[93] or other means.[94]

Congress was concerned with several factors in enacting this provision: unfairly low support awards (and occasionally unfairly high ones); the fact that the economic situation of the custodial parent and children usually deteriorated following divorce while that of the non-custodial parent actually improved; and the disparity in support awards made in similar situations.[95] The guidelines issue, however, was a controversial one. In the end, both a delayed guidelines mandate[96] and a requirement for state commissions on child support which must consider guidelines, among other issues,[97] were included in the final legislation.

The statute mandates that each state establish support guidelines by October 1, 1987.[98] The guidelines may be established by statute or by judicial or administrative action. They must be made available to all judges and other officials who determine support amounts, although they are not required to be binding. The Secretary of HHS is to furnish technical assistance to the states in developing guidelines. Unfortunately, there is no requirement of public participation in the process of formulating support guidelines (although Congress may have hoped this would be the result of the state commissions on child support). Bar associations and other groups will certainly wish to ensure that they are included in the decision-making process.

Some states have already embarked on very careful studies of the guidelines issue[99] or experiments with the use of various approaches.[100] Yet at present, there is little empirical data on how various guidelines impact on different kinds of families. One attempt to collect this information is presently being conducted through the Institute for Court Management with funding through the federal Office of Child Support Enforcement, and results of the study should be available by the end of 1985.[101]

The development of fair guidelines is no easy chore. There are several competing, and different, theories on the fairest and most appropriate ways to set support awards.[102] Any set of guidelines must contend with such serious policy issues as how to treat obligations to second families, how to treat income from second spouses, whether to consider actual earnings or earning capacity, how to treat day care costs to allow the custodial parent to work, how to calculate parental income, how to handle the additional contribution of the custodial parent to child care, how to handle visitation time and expenses, how to handle cost-of-living differences within the state, how to handle separate income of the child, and whether guidelines should be any different at the upper and lower ends of the income scale.

Even when guidelines are developed they may not necessarily make the attorney's task easier. Litigants will still have to identify and prove the extent of parental assets, prove special circumstances and needs of a child or parent, anticipate future changes and the need for escalation or automatic modification provisions, and consider any post-emancipation needs of the child, such as college tuition. Furthermore, if the attorney proposes to stray from the support guidelines in an individual case, he or she must be prepared to prove a strong case or make a strong argument. Although the guidelines may be non-binding, appellate courts might look unkindly on courts which deviate from the standards without appropriate findings of fact.[103]

D. Clearinghouse

As previously indicated, states must establish a system for monitoring and tracking support payments which are withheld from the obligor's wages. The Act allows the state's tracking and monitoring system, at the state's option, to be administered by the IV-D or income withholding agency, or other agency designated to receive and disburse income withholding.[104] Furthermore, since the most effective tracking and monitoring systems require automated data processing, the Act allows 90 percent federal matching funds for the development of such systems.[105]

The statute also provides that states may, if they choose, establish a system by which regular support payments may be made through the state IV-D agency or wage withholding agency, even in the absence of any arrearage or before wage withholding is imposed. The federal government will pay a portion of the cost of this

service. Either parent must be allowed to request this service. In such cases the state must charge an annual handling fee, not to exceed $25, based upon actual costs.[106]

It is likely that most states will establish such a system in order to track regular support payments to IV-D clients so that wage withholding proceedings may be commenced when required. Many states currently utilize clearinghouses or central registries, often the clerk of the court, for this broader collection process. Furthermore, they often make this service available in non-IV-D cases. Where use of a clearinghouse is optional in each case, attorneys may be well advised to encourage their clients to use this service. This advice holds true for both obligee and obligor. Use of a clearinghouse creates an official payment record. This record will help avoid later protracted disputes over whether a current payment was made and the amount of any arrears.

E. Paternity Statute of Limitations

Congress has ended any question left open by the Supreme Court decisions in Mills v. Habluetzel [107] and Pickett v. Brown [108] with respect to how long a statute of limitations must be provided for bringing paternity cases. The Act requires that a state must allow establishment of paternity at least until a child's eighteenth birthday.[109]

In addition, Congress has increased the incentive to states to establish paternity by providing that the costs of laboratory tests to determine paternity need not be included in states' cost calculations for purposes of determining their entitlement to incentive payments.[110]

F. Collection of Alimony or Spousal Support

Prior to passage of these 1984 amendments, Title IV-D made collection of alimony obligations optional with the states.[111] This posed a problem for families in which child support payments were called alimony in order to take advantage of more favorable tax treatment in accordance with the case of Lester v. Commissioner.[112] They were not entitled to full collection services unless the state chose to offer them. This Act compels states to collect spousal support and alimony obligations if:

1. a support obligation has already been established for the spouse or former spouse, i.e., there is already an order;

2. the obligor's minor child is living with the alimony recipient; and

3. support collection services on the child's behalf are being provided by the IV-D agency.[113]

This should cover situations in which both alimony and child support payments were ordered, or in which a unitary payment was ordered, providing support for both the minor children and the custodial parent. Alimony collection services are still not required to be available when there are no minor children living at home. In addition, the federal tax intercept program is not available to collect alimony or spousal support.

G. Medical Support

In keeping with the effort to contain federal medical costs, Congress sought to encourage the use of private medical insurance, rather than Medicaid.[114] Accordingly, the Act requires state IV-D agencies to petition the court for the inclusion of medical support in any child support order whenever the obligor has health care coverge available at a reasonable cost.[115] It also requires the IV-D program and the Medicaid program to cooperate with one another to share information about the availability of health insurance.[116]

Arguably, the IV-D agency's clients, at least non-AFDC clients, could override this requirement because they preferred a larger basic health support payment, perhaps because they had health insurance available through their own employment. It is not clear that all states grant their courts, or other support decision-makers, authority to include in a support order an order that the obligor furnish health insurance to cover his other children.[117] Many state laws may need to be modified to include this authority.

H. Special Provisions for AFDC Recipients

Perhaps the most significant development in the child support field for AFDC recipients is not found in this Act, but in the Deficit Reduction Act of 1984, which provides that the first $50 of child support collected in any month is to go directly to the family, with no corresponding reduction in their AFDC benefits.[118]

This Act also provides certain benefits to AFDC recipients. Because AFDC recipients are required to assign their support rights to the state,[119] and the state collects the support directly, such families often do not know whether support is being collected on their behalf or how much has been paid. States now are required to notify each AFDC recipient, at least annually, of the amount of child support collected on their behalf.[120] Notice may be given more frequently. This information, among other things, should help AFDC recipients evaluate the amount of support which would be available to assist them if they were able to obtain employment.

Families that become ineligible for AFDC benefits wholly or partially because of support collections, but were eligible for AFDC benefits in three of the preceding four months, will continue to be eligible for Medicaid benefits for four additional months after they cease being eligible for AFDC benefits.[121] This provision ends on October 1, 1988. Families losing eligibility should also be aided by the requirement that the IV-D agency seek medical support through the obligor's health insurance plan,[122] as that assistance will continue after a family becomes ineligible for Medicaid benefits.

Finally, the agency must continue to provide support collection services for families whose AFDC benefits cease, without requiring them to reapply for services as non-AFDC recipients or to pay an application fee.[123] The agency must continue to provide collection services for three months in every case and must continue to do so thereafter for as long as the family wishes.[124]

I. Late Fee

States may impose a late fee of three to six percent on overdue support payments being collected by the IV-D agency.[125] The late fee is to be collected after and in addition to the overdue support: imposition of the late fee may not directly or indirectly decrease the amount of support paid.[126] Obviously, this possible penalty is something the obligor's attorneys should warn them about.

J. Child Support to be Collected in Foster Care Cases

The federal government participates in the cost of providing foster care to children who would be eligible for AFDC or SSI benefits if they were living with their families, but instead are in foster care because of parental inability to care for them or because of abuse of neglect.[127] This Act requires that the support rights of these children be assigned to the state that is providing foster care, and provides for support payments collected by the state IV-D agency on the child's behalf to be used first to reimburse the state for the costs of foster care and second for the child's benefit, up to the level of the current support obligation. Using the money for the child's benefit may mean making more money available to meet the child's present needs or setting money aside for future use.[128] If arrearages are collected, they may be used to reimburse the state for past foster care or AFDC payments, and when these costs are recouped the balance must be applied for the child's benefit.[129]

K. Interstate Enforcement of Support

While there was no dramatic overhaul of existing requirements with respect to interstate enforcement of support obligations, there were some significant changes that should pave the way for helpful improvements in interstate support enforcement if fully implemented. Most important is the requirement that states make their new wage withholding systems available to enforce the support orders of other states.[130] In addition, both the state in which a support recipient resides and the state in which support is actually collected, may count the full collection amount in calculating their entitlement to additional federal incentive payments [130] (based, in part, on the amounts collected).

The states' annual report to the Secretary of HHS on their IV-D support enforcement program must include data on the number of interstate cases the state handles from other states and sends to other states.[132] This should allow closer examination of each state's record in interstate support enforcement. State child support commissions must consider interstate enforcement issues.[133] Finally, Congress authorized appropriation of $7 million in FY 1985, $12 million in FY 1986, and $15 million in FY 1987 for a program of special grants to states to improve their interstate enforcement through special projects using new or innovative support collection methods.[134]

L. State Commissions on Child Support

Congress resolved a number of child support concerns by requiring that each state establish a child support commission.[135] A state may, under certain circumstances, be exempted from this requirement. These commissions are to study, among other things:

- the problems of establishment of support guidelines ("appropriate objective standards for support");
- visitation enforcement;
- interstate enforcement of support obligations;
- the availability, cost and effectiveness of support services both to families that receive AFDC benefits and those that do not;
- the need for additional state or federal legislation.

Commissions are to include representatives of all aspects of the child support system including custodial and non-custodial parents, the IV-D agency, the judiciary, the executive and legislative branches, and child welfare and social service agencies. While attorneys are not required to be included, bar groups may wish to seek representation on these panels.

Governors must appoint the commissions by December 31, 1984, and commissions must make their reports to the Governor on the above topics by October 1, 1985. Reports also must be made public and forwarded to Congress. States must bear the cost of the commissions. A state may be exempted from the requirement to establish a commission if it: (1) has developed and is using support guidelines, (2) has had a similar commission within the previous five years, or (3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so.

V. FISCAL AND ADMINISTRATIVE PROVISIONS

A. Modification of the Federal Share of Administrative Costs of the Program and of Incentive Payments

The federal share of the cost of the program is reduced from 70 percent to 60 percent for fiscal years 1988 and 1989 and to 66 percent for fiscal year 1990 and thereafter.[136]

The Act also changes the federal incentive payments for the child support program. Where current law provides an incentive only for non-AFDC collections, incentives for both non-AFDC and AFDC collections are now provided. All states will be entitled to receive incentive payments equal to six percent of their AFDC collections and six percent of their non-AFDC collections.[137] Higher incentives may be paid for cost-effective programs. The maximum incentive for non-AFDC payments is equal to 100 percent of the AFDC incentive in FY 1986 and 1987, 105 percent in FY 1988, 110 percent in FY 1989, and 115 percent in FY 1990.[138] For 1985 the AFDC incentive will be calculated without regard to the provisions of the Deficit Reduction Act of 1984. Where costs of child support operations are decentralized, an appropriate share of the incentive payments must be passed through to the local level.[139] Amounts collected in interstate cases will be credited to both initiating and responding states.

B. Higher Federal Share in Costs of State Wage Withholding and Payment-Tracking Program

Provisions in the current law make 90 percent Federal matching funds available for developing automated management systems. This will be amended to allow states to use these funds to implement and carry out the income-withholding and tracking and monitoring provisions of this Act if the state has already met the requirements of the present law.[140]

C. Waivers From Requirements of the Program

The Act contains two primary waiver provisions. The first provides that the Secretary of HHS may exempt a state from a particular requirement of the new mandated procedures, including wage withholding, liens and bonds and the like, for a specified period if the state can demonstrate that the procedures would not increase the effectiveness and efficiency of the state's support-en-

forcement program.[141] The second provision allows requirements of the Act to be waived if the intent of the waiver is to test modifications in the support program in order to improve it, the waiver would not disadvantage children needing support, and the waiver would not result in an increase in federal AFDC costs.[142] (A special provision is made for Wisconsin's experimental child support program.[143])

D. Modification of Child Support Reports

The statute is modified to strengthen data collection requirements by requiring changes in annual state child support reports. For example, improved reporting is required on interstate collection efforts and on the numbers of cases handled.[144]

E. Modification of Federal Monitoring and Penalty Provisions

Currently the Secretary of HHS is required to conduct annual compliance audits of state IV-D programs. The statute would allow audits every three years rather than annually except in states with prior compliance problems.[145] The new law also provides that penalties are to be imposed only if a state is not in "substantial" compliance with program requirements,[146] changes penalty formulas, and provides for penalties to be suspended if the state adopts and implements a corrective-action plan in a timely fashion.[147] Prior to this Act, the Secretary never penalized a program for noncompliance. By allowing a less severe penalty, it is hoped they will be used when appropriate.

F. Federal Parent Locater Service

States no longer need exhaust state procedures for locating absent parents before seeking aid from the federal parent locater service.[148]

G. Social Security Numbers

An obligor's social security number may now be released to child support agencies.[149]

VI. CONCLUSION

For both the public agency attorney and the private practitioner, this Act should expand the remedies available to enforce child support obligations. The income-withholding system alone, when fully implemented thoughout the country, should dramatically improve support enforcement, if it is widely used. The federal tax intercept similarly should prove as useful an enforcement tool in non-AFDC cases as it has proved to be in AFDC cases. Non-AFDC recipients should become more aware of their rights to public support enforcement services and advocacy groups may be expected to press for improved services to this group. The ease with which interstate claims can be pursued should be greater with the interstate wage withholding provisions and the interstate enforcement of support may be expected to show gradual improved as the changes in the Act are implemented. The widespread use of child support guidelines and the use of administrative or quasi-judicial decision-makers in support enforcement cases may also work significant changes in domestic relations practice.

(NOTE: Readers desiring additional information on this Act or on legal education programs should contact the authors at the American Bar Association's National Legal Resource Center for Child Advocacy and Protection, 1800 M St. N.W., Washington, D.C. 20036.)

FOOTNOTES

[1] 42 U.S.C. §§ 651-662. One of the earliest analyses of the law appeared in the Family Law Reporter. Hylden and Lodson, *The Social Security Amendment of 1974 — A Joint State-Federal Child Support Enforcement Program*, 1 FLR 4049 (1975).

[2] U.S. Dept. of Commerce, Bureau of the Census, *Child Support and Alimony: 1981* (Advance Report).

[3] Social Security Act § 466; to be codified as 42 U.S.C. § 626(a) and (b).

[4] National Conference of State Legislatures, *In the Best Interest of the Child: A Guide to State Child Support and Paternity Laws* (1982).

[5] Executiive Resource Associates, Inc., *Cost Benefit Analysis of Selected Child Support Enforcement and Collection Techniques* (1983).

[6] Social Security Act § 466(a); to be codified as 42 U.S.C. § 666(a).

[7] Social Security Act § 466(b)(1); to be codified as 42 U.S.C. § 666(b)(1).

[8] The mandated state procedures of § 466 are effective October 1, 1985. The Act also includes a waiver provision in the event a state's legislature does not meet in time to enact the changes required by the statute. Child Support Enforcement Amendments of 1984, § 1(g)(2)-(3).

[9] Social Security Act § 466(a)(8); to be codified as 42 U.S.C. § 666(a)(8).

[10] Social Security Act § 466(b)(1); to be codified as 42 U.S.C. § 666(b)(1).

[11] Id.

[12] Social Security Act § 466(b)(3); to be codified as 42 U.S.C. § 666(b)(3).

[13] Id.

[14] Wisconsin now has such a provision in effect in part of the state. Wis. Stat. Ann. § 767.25 (West 1981).

[15] H.R. Rep. No. 527, 98th Cong., 1st Sess. 31 (1983) [hereinafter cited as H. Rep. No. 527].

[16] Social Security Act § 466(b)(2); to be codified as 42 U.S.C. § 666(b)(2).

[17] Social Security Act § 466(b)(4); to be codified as 42 U.S.C. § 666(b)(4).

[18] Social Security Act § 466(b)(3); to be codified as 42 U.S.C. § 666(b)(3).

[19] Social Security Act § 466(b)(4)(A); to be codified as 42 U.S.C. § 666(b)(4)(A).

[20] See, e.g., Minn. Stat. Ann. § 256.872, 256.878, and 518.611 (West 1979) (Minnesota gives an obligor 15 days to pay an arrearage or request a court hearing after receiving notice of a delinquency in payment of support); Va. Code § 63.1-258 (1982) (Virginia conducts an administrative hearing for obligors who appeal an administratively established order for support).

[21] Cf. Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); Fuentes v. Shevin, 407 U.S. 67 (1972); Snaidack v. Family Finance Corp., 395 U.S. 337 (1969). But cf. Andicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924) (upheld an ex parte order for garnishment of a debtor's wages in a post-judgment context).

[22] See, e.g., Cal. Civ. Code § 4701 (1980); Or. Rev. Stat. § 23.777(i) (1979); and Roberts v. Roberts, 26 Or. App. 777, 554 P.2d 570 (1976).

[23] Social Security Act § 466(b)(4)(B); to be codified as 42 U.S.C. § 666(b)(4)(B).

[24] Social Security Act § 466(b)(4)(A); to be codified as 42 U.S.C. § 666(b)(4)(A).

[25] H. Rep. No. 527 at 33.

[26] Social Security Act § 466(b)(4)(A); to be codified as 42 U.S.C. § 666(b)(4)(A).

[57] Id. and Social Security Act § 466(b)(6)(A)(ii); to be codified as U.S.C. § 666(b)(6)(A)(ii).

[58] Social Security Act § 466(b)(1); to be codified as 41 U.S.C. § 666(b)(1).

[59] See Conf. Rep. No. 925, 98th Cong., 2d Sess. 31 (1984) [hereinafter cited as Conf. Rep. No. 925]; S. Rep. No. 387, 98th Cong., 2d Sess. 27 (1984) [hereinafter cited as S. Rep. No. 387].

[60] 15 U.S.C. § 1673(b). These amounts are increased to 55 and 65 percent respectively if there are arrearages which arose prior to the 12-week period which ends with the beginning of the pay period involved. The Consumer Credit Protection Act defines disposable earnings as that part of earnings remaining after the deduction of any amounts required by law to be withheld.

[61] Social Security Act § 466(b)(1); to be codified as 42 U.S.C. § 666(b)(1).

[62] Social Security Act § 466(b)(10); to be codified as 42 U.S.C. § 666(b)(10).

[63] H. Rep. No. 527 at 25.

[64] Social Security Act § 466(b)(6)(A)(i); to be codified as 42 U.S.C. § 666(b)(A)(i).

[65] Social Security Act § 466(b)(A)(ii); to be codified as 42 U.S.C. § 666(b)(6)(A)(ii).

[66] Social Security Act § 466(b)(6)(A)(i); to be codified as 42 U.S.C. § 666(b)(6)(A)(i); 49 Fed. Reg. 36,803 (1984) (to be codified as 45 C.F.R. § 303.100(d)(1)(x)) (proposed Sept. 19, 1984).

[67] 49 Fed. Reg. 36,803 (1984) (to be codified as 45 C.F.R. § 303.100(d)(1)(ix)) (proposed Sept. 19, 1984).

[68] 49 Fed. Reg. 36, 803 (1984) (to be codified as 45 C.F.R. § 303.100(d)(1)(xi)) (proposed Sept. 19, 1984).

[69] Social Security Act § 466(b)(6)(C); to be codified as 42 U.S.C. § 666(b)(6)(C).

[70] Social Security Act § 466(b)(6)(D); to be codified as 42 U.S.C. § 666(b)(6)(D).

[71] Social Security Act § 466(b)(6)(A)(i); to be codified as 42 U.S.C. § 666(b)(6)(A)(i).

[72] Id.

[73] Social Security Act § 466(b)(6)(B); to be codified as 42 U.S.C. § 666(b)(6)(B).

[74] Social Security Act § 466(b)(6)(C); to be codified as 42 U.S.C. § 666(b)(6)(C).

[75] Social Security Act § 466(b)(7); to be codified as 42 U.S.C. § 666(b)(7).

[76] Social Security Act § 466(b)(1); to be codified as 42 U.S.C. § 666(b)(1).

[77] Social Security Act § 466(b)(8); to be codified as 42 U.S.C. § 666(b)(8).

[78] See, e.g., Ill. Rev. Stat. Ch. 23 § 10-16.2(4) (1984); Mich. Comp. Laws Ann. § 552.602(b) (1983).

[79] 42 U.S.C. § 654(19)(A).

[80] The Retirement Equity Act of 1984, Pub. L. No. 98-397, § 104 (FLR RF 101:0131) (to be codified as 29 U.S.C. § 1056(d)).

[81] Conf. Rep. No. 925 30-31, discussing the applicability of Social Security Act § 459, 42 U.S.C. § 659 to wage withholding. The report indicates the disagreement of the conferees with an agreement raised in one state that an individual was immune to wage withholding for child support on the grounds that the private company for which he worked operated on Federal land.

[82] Social Security Act § 466(b)(9); to be codified as 42 U.S.C. § 666(b)(9).

[83] 49 Fed. Reg. 26,803 (1984) (to be codified as 45 C.F.R. § 303.100(g)) (proposed on Sept. 19, 1984).

[84] Social Security Act § 466(b)(5).

[85] Social Security Act § 466(a); to be codified as 42 U.S.C. § 666(a).

[86] Social Security Act § 466(a)(4); to be codified as 42 U.S.C. § 666(a)(4).

[87] See, e.g., Wis. Stat. Ann. § 767.30 (West 1981).

[88] See, e.g., Iowa Code Ann. § 624.23 (West Supp. 1983).

[89] See, e.g., Cal. Civ. Proc. Code § 697.320(a)(1) (West Supp. 1983).

[90] See, e.g., 1981 N.H. Laws § 161-C:10; W.Va. Code § 48-2-17 (Cum. Supp. 1984).

[91] See, e.g., N.C. Gen Stat. § 50-13.4(f)(8) (1977).

[92] But see, N.C. Gen Stat. § 50-13.4(f)(8) (1977) (Judgment for child support is not a lien on real property unless the judgment expressly so provides, sets out the amount of the lien and describes the real property affected). Wis. Stat. Ann. § 767.30 (West 1981) ("may impose charge upon any specific real estate of the party liable").

[93] See, e.g., Cal. Civ. Proc. Code § 697.350(c) (West Supp. 1983).

[94] See, e.g., Mo. Ann. Stat. § 454.515(2) (Vernon 1982); Neb. Rev. Stat. § 42-371(1) (1972).

[95] Social Security Act § 466(a)(4); to be codified as 42 U.S.C. § 666(a)(4).

[96] See, e.g., Del. Code Ann. tit. 13, § 516 (1984).

[97] Del. Code Ann. tit. 13, § 516 (1984).

[98] Social Security Act § 466(a)(7); to be codified as 42 U.S.C. § 666(a)(7).

[99] 42 U.S.C. § 654(6).

[100] 562 F. Supp. 311 (W.D.N.C. 1983).

[101] Social Security Act § 458; to be codified as 42 U.S.C. § 658.

[102] Social Security Act § 466(b)(2); to be codified as 42 U.S.C. § 466(b)(2).

[103] Social Security Act § 464; to be codified as 42 U.S.C. § 664(a).

[104] Social Security Act § 454; to be codified as 42 U.S.C. § 654(23).

[105] Social Security Act § 454(6)(B); to be codified as 42 U.S.C. § 654(6)(B).

[106] 42 U.S.C. § 654(6)(C).

[107] Social Security Act §§ 464(a), 466(a); to be codified as 42 U.S.C. § 664(a), 666(a).

[108] See, e.g., Va. Code §§ 58-19.6 to 9.21 (1982).

[109] Kokoszka v. Belford, 479 F.2d 990, aff'd 417 U.S. 642 (1974), reh'g denied 419 U.S. 886; 1978 Op. Ill. Atty. Gen No. S-1343.

[110] 49 Fed. Reg. 36,800-2, and 36,804 (1984) (to be codified as 45 C.F.R. §§ 303.72, 303.102) (proposed Sept. 19, 1984).

[111] 49 Fed. Reg. 36,800 (1984) (to be codified as 45 C.F.R. §§ 303.72) (proposed Sept. 19, 1984).

[112] Social Security Act § 464(a)(3)(A)(c); to be codified as 42 U.S.C. § 664(a)(3)(A)(c). These due process requirements address some of the constitutional defects in the original federal intercept program. Nelson v. Regan, 560 F. Supp. 1101, 9 FLR 2257 (D. Conn. 1983); Sorenson v. Sec. of Treasury of the United States, 557 F. Supp. 729, 9 FLR 2173 (W.D. Wash. 1982).

[113] 42 U.S.C. § 652(b); 26 U.S.C. § 6305.

[114] Social Security Act § 466(a)(2); to be codified as 42 U.S.C. § 666(a)(2).

[115] H. Rep. No. 527 at 36.

[116] See e.g., Va. Code §§ 63.1-249 to 63.1-273 (1982).

[117] See e.g., R.I. Gen. Laws § 8-10-3 (1980).

[118] 49 Fed. Reg. 36,803-804 (1984) (to be codified as 45 C.F.R. § 303.101) (proposed Sept. 19, 1984).

[119] Social Security Act § 467; to be codified as 42 U.S.C. § 667.

[120] Cassetty, J., The Parental Child Support Obligation (1983); Bruch, *Developing Standards for Child Support Payments: A Critique of Current Practice*, 16 U.C.D. L. Rev. 49 (1982); Cassetty and Dauthitt, *The Economics of Setting Adequate and Equitable Child Support Payment Awards*, Texas State Bar Section Report, Family Law, 1984 Special Child Support and Visitation Issue; Hunter, *Child Support Law and Policy: The Systematic Imposition of Costs on Women*, 6 Harv. Women's L. J. 1 (1983); Krause, *Child Support Enforcement: Legislative Tasks for the Early 1980's*, 15 Fam. L. Q. 349 (1982); Levin, *The Use (and Abuse) of Child Support Schedules in Illinois*, 71 Ill. B. J. 314 (1983).

[121] See e.g., Wis. Stat. §§ 767.25(1)(p), 767.39(3), 767.51(5)(m) (1979).
Some states have chosen to authorize local areas to establish their own support guidelines, overruling prior case law which forbade use of schedules, formulas or tables for determining support amounts. See e.g., Tex. Fam. Code Ann. § 14.05(a) (Vernon 1979).

[92] See e.g., Smith v. Smith, 290 Or. 675, 626 P. 2d 342 (1981); Melzer v. Witsberger, 299 Pa. Super. 13, 445 A.2d 499, 10 FLR 1545 (1984).

[93] See e.g., Delaware Supreme Court, Delaware Child Support Formula.

[94] See e.g., Fairfax County (Virginia) Bar Association, *Notice of Schedules of Pendente Lite Child and Spousal Support for Use in the Nineteenth Judicial District* (Nov. 10, 1981).

[95] See S. Rep. No. 387 at 40, H. Rep. No. 527 at 49.

[96] Social Security Act § 467; to be codified as 42 U.S.C. § 667.

[97] Child Support Enforcement Amendments of 1984, P.L. 98-378, § 15; See discussion at § IV-L below.

[98] Social Security Act § 467; to be codified as 42 U.S.C. § 667.

[99] See Special Task Force on Child Support Standards, Final Report; *Special Task Force on Child Support Standards Development and Implementation to The Subcommittee on Public Health and Welfare of the Texas State Senate* (1982).

[100] See e.g., Wis. Stat. §§ 767.25(1)(p), 767.39(3), 767.51(5)(m) (1979).

[101] The preliminary publications by this group (which was previously at The National Institute for Socioeconomic Research) are helpful in providing both a literature review and a review of guideline practices. National Institute for Socioeconomic Research, *A Review of Literature and Statutory Provisions Relating to the Establishment and Updating of Child Support Awards* (1984); ———, *Review of Selected State Practices in Establishing and Updating Child Support Awards* (1984).

[102] Eden, P., *Estimating Child and Spousal Support: Economic Guidelines for Judges and Attorneys* (1977); Garfinkel, I. & Melli, M., *Child Support: Weaknesses of the Old and Features of a Proposed New System* (Institute for Research on Poverty, University of Wisconsin-Madison, Special Report Series, 1982); Cassetty and Douthitt, *The Economics of Setting Adequate and Equitable Child Support Payment Awards*, 1984 Special Child Support and Visitation Issue; Franks, *Summing Up Child Support: A New Formula*, 7 Dist. Law. 28 (July/Aug. 1983); Sawhill, *Developing Normative Standards for Child Support Payments* in Cassetty, J., *The Parental Child-Support Obligation* (1983); Polikoff, *The Inequity of the Maurice Franks Custody Formula*, 8 Dist.Law 14 (Nov. Dec. 1983).

[103] Bakke v. Bakke, 351 N.W. 2d 287, 10 FLR 1566 (Minn. App. 1984) (trial court's consideration of certain types of expenses was not proper cause to deviate from guidelines).

[104] Social Security Act § 466(b)(5); to be codified as 42 U.S.C. § 666(b)(5).

[105] Social Security Act § 454(16)(D); to be codified as 42 U.S.C. § 654(16)(D).

[106] Social Security Act § 466(c); to be codified as 42 U.S.C. § 666(c).

[107] 456 U.S. 91, 8 FLR 3037 (1982) (one-year statute unconstitutional).

[108] 103 S. Ct. 2199, 9 FLR 3041 (1983) (two-year statute unconstitutional).

[109] Social Security Act § 466(a)(5); to be codified as 42 U.S.C. § 666(a)(5).

[110] Social Security Act § 458(c); to be codified as 42 U.S.C. § 658(c).

[111] 42 U.S.C. § 454(4)(B), (6)(A).

[112] 366 U.S. 299 (1961). This case provided that combined payments for the benefit of a spouse or former spouse and minor children, which are called alimony, would be treated as alimony for tax purposes; that is, taxed to the custodial parent, who is usually in a lower tax bracket.

[113] Social Security Act § 454(4)(B) and (6)(A); to be codified as 42 U.S.C. § 654(4)(B) and (6)(A).

[114] Conf. Rep. at 52.

[115] Social Security Act § 452; to be codified as 42 U.S.C. § 652; cf. 42 Fed. Reg. 35,468 (propsoed August 4, 1983) (proposed regulations governing medical support enforcement published prior to passage of P.L. 98-378).

[116] Medicaid regulations on this topic were previously issued.

[117] Many states have no statutory provision on this topic. Some do. See, e.g., N.Y. Fam. Ct. Act § 416 (McKinney 1975).

[118] The Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2640 (1984).

[119] 42 U.S.C. § 602 (a)(26) (1983).

[120] Social Security Act § 454 (5); to be codified as 42 U.S.C. § 654(5).

[121] Social Security Act § 406 (h); to be codified as 42 U.S.C. § 606(h).

[122] See discussion in § IV-G. infra.

[123] Social Security Act § 457 (c); to be codified as 42 U.S.C. § 657(c).

[124] Id.

[125] Social Security Act § 454 (21)(A); to be codified as 42 U.S.C. § 654 (21)(A).

[126] Social Security Act § 454 (21)(B); to be codified as 42 U.S.C. § 654 (21)(B).

[127] Social Security Act, Title IV-E, 42 U.S.C. § 670-676.

[128] Social Security Act § 471 (a)(17); to be codified as 42 U.S.C. § 671 (a)(17).

[129] Id.

[130] See discussion in § II-A.10, supra.

[131] Social Security Act § 458(d); to be codified as 42 U.S.C. § 658 (d).

[132] Social Security Act § 452 (a)(10)(C); to be codified as 42 U.S.C. § 652 (a)(10)(C).

[133] See discussion in § IV-L. infra.

[134] Social Security Act § 455 (e); to be codified as 42 U.S.C. § 655 (e).

[135] Child Support Enforcement Amendments of 1984, Pub. L. 98-378, § 15.

[136] Social Security Act § 455 (a)(2)(B)-(C); to be codified as § 655 (a)(2)(B)-(C).

[137] Social Security Act §§ 458 (b)(1)(A)-(B); to be codified as 42 U.S.C. §§ 658 (b)(1)(A)-(B).

[138] Social Security Act §§ 458 (b)(3)(A)-(D); to be codified as 42 U.S.C. §§ 658 (b)(3)(A)-(D).

[139] Social Security Act § 454 (22); to be codified as 42 U.S.C. § 654 (22).

[140] Social Security Act § 454 (16)(D); to be codified as 42 U.S.C. § 654 (16)(D).

[141] Social Security Act § 466 (d); to be codified as 42 U.S.C. § 666 (d).

[142] Social Security Act § 1115 (a); to be codified as 42 U.S.C. § 1315(a).

[143] Child Support Enforcement Amendments of 1984, Pub. L. 98-378, § 22.

[144] Social Security Act § 452 (a)(10)(C); to be codified as 42 U.S.C. § 652 (a)(10)(C).

[145] Social Security Act § 452 (a)(4); to be codified as 42 U.S.C. § 652 (a)(4).

[146] Social Security Act § 402 (a)(27); to be codified as 42 U.S.C. § 602 (a)(27).

[147] Social Security Act § 403 (h)(1)-(h)(2)(A)(i); to be codified as 42 U.S.C. § 603 (h)(1)-(h)(2)(A)(i).

[148] Social Security Act § 453 (f); to be codified as 42 U.S.C. § 653 (f).

[149] Social Security Act § 453 (b); to be codified as 42 U.S.C. § 653 (b).

Alaska State Legislature

House of Representatives

House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

LETTER OF INTENT
FOR CSHB 92(JUD)

It is the intent of the House Judiciary Committee, in amending AS 09.65.132(h) in sec. 1 of CSHB 92 (JUD), that either party in an income withholding proceeding may be ordered by the court to pay all court costs and that payment of attorney's fees will continue to fall under Civil Rule 82, Alaska Rules of Civil Procedure.

It is the further intent of the Committee that the term "alimony", as used in a number of other states, is included in the meaning of the term "spousal support".

It is also the recommendation of the Committee that the Revisor of Statutes consider placing all of the statutes relating to child and spousal support, presently found in Titles 9 and 47, in Title 35 of the Alaska Statutes, Marital and Domestic Relations.

Mike Miller, Chair

House Letter of Intent Addition

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: CSHB 92 JUD
Title: An Act relating to child support enforcement
Sponsor: Governor
Requestor: Governor
Date of Request: 4-2-85

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
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	*(69.6)	(69.6)	(69.6)	(69.6)	(69.6)	(69.6)

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

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: 4-2-85

Approved by Commissioner: Tom McDonald
Agency: Revenue
Date: 4/4/85

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

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.)

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to child support enforcement. This bill is intended to ensure that Alaska Statutes are in compliance with the federal Child Support Enforcement Amendments of 1984, PL 98-378, which strengthens enforcement techniques of state agencies. It is essential that these provisions be in effect by October 1, 1985, in order for the state to continue to obtain federal funding of 70 percent for support enforcement. Other provisions of the bill strengthen the remedies presently available by amending AS 47.23 and AS 09.65.132.

Sections 1 and 3 of the bill are necessitated by Sec. 466 of PL 98-378, which mandates that each state must have in effect a law that will permit the establishment of the parentage of a child at any time before the child's 18th birthday. Section 1 adds new AS 09.10.095, which acts as a statute of limitation. Section 3 amends AS 25.20.050, relating to establishment of paternity, to specify that such an action must be permitted until the child is 18. As a statute of limitation, a child's right to bring such an action would toll during his minority, so an action could still be maintained until age 20. AS 25.20.050 would not prohibit an action at that time, but simply reflects the federal mandate that parentage actions be permitted at least until the child reaches age 18.

Section 2 amends AS 09.65.132 to conform to federal requirements relating to income withholding orders. The use of the term "income withholding order" in substitution for "income assignment order" will provide for consistency in state and federal statutes. PL 98-378 requires that collections be deposited and distributed by a public agency designated by the state. In this case, the agency is the child support enforcement division of the Department of

Revenue (referred to as the "agency"). Since the agency will be required to administer any income withheld, and will be accountable for collection and distribution, the bill also requires that all applications for income withholding orders be filed through the agency. The effectiveness of AS 09.65.132 as an enforcement tool is strengthened by requiring an automatic procedure to trigger withholding without court intervention if an obligor does not request a hearing, and an expedited decision if a hearing is requested. The service requirement is also amended so that no more restrictive service provision is necessary than would be required under normal motion practice in a typical lawsuit. PL 98-378 also requires that employers who discharge an employee, discipline an employee, or refuse to hire a person, because of an income withholding order, be fined; therefore the bill adds a provision making commission of any of those acts a misdemeanor punishable by a fine of not more than $1,000. This misdemeanor is not classified; thus the imprisonment provisions of AS 12.55.135 do not apply.

Section 2 of the bill also amends AS 09.65.132(g) to remove the income exemption for collections from income under an income withholding order, because new subsection (h) requires that at least the amount of the support obligation be withheld, subject to the limits of 15 U.S.C. sec. 1673(b). 15 U.S.C. sec. 1673(b) allows withholding of 50 percent of an individual's disposable earnings, or 60 percent if the individual does not support a spouse or dependent child. The maximum amount allowed to be withheld is raised to 55 and 65 percent, respectively, if collection is for arrearages over 12 weeks old. Section 11 of the bill modifies AS 47.23.250(i) to also remove the income exemptions set out in that subsection.

Section 4 of the bill contains a new chapter, AS 25.26, the Interstate Income Withholding Act, which is also required by PL 98-378. This chapter draws heavily upon a Model Interstate Income Withholding Act, drafted by the Child Support Projects section of the American Bar Association and the National Conference of State Legislatures. The Model Act was prepared to assist states to meet the deadline of October 1, 1985 for implementation of the interstate withholding requirements. The Model Act enables states that enact similar provisions to order income withholding in another state in the same manner as they would impose intrastate withholding, without the necessity of filing a new action in the other state, as is necessary under the

existing Uniform Reciprocal Enforcement of Support Act (AS 25.25) or other enforcement statutes.

Sections 5, 7, and 8 of the bill amend several sections of AS 47.23 to reflect other requirements of PL 98-378. The child support enforcement agency will be responsible for enforcing existing spousal support orders where it is also enforcing a child support order. It must also attempt to obtain medical support orders as a part of a child support order if health care coverage is available to the obligor at a reasonable cost.

Section 6 of the bill reflects a change in the percentage of penalty that must be assessed, if any is imposed, to comport with PL 98-378. Under the federal law, the penalty rate must be between three and six percent; the bill imposes the highest penalty possible. Even at the six percent penalty rate, the present penalty is reduced by one-half from the 12 percent penalty now assessed.

Section 9 of the bill corrects an oversight. Section 11, ch. 144, SLA 1984, enacted AS 47.23.265, which currently sets out specific service provisions for all of AS 47.23. Service provisions contained in AS 47.23.150 should have been deleted at the same time, but were not. The amendment to AS 47.23.150 in sec. 9 of the bill accomplishes the deletion.

Section 10 of the bill amends AS 47.23.226 to refer to the general service provision in AS 47.23.265. Section 14 of the bill then modifies that general service provision so that no more restrictive service requirements are necessary than are appropriate under Rule 5 of the Alaska Rules of Civil Procedure. Civil Rule 5 allows service either upon a party or his attorney by first class mail. It has been perceived as a problem to some of the individuals handling child support cases on behalf of the agency that the previous requirement of service by registered or certified mail often set up a barrier to the receipt of the notice. Since the affected sections only relate to the enforcement of previously established support orders, the court has continuing jurisdiction to enforce those orders. Balchen v. Balchen, 566 P.2d 324 (Alaska 1977). In that case, the Alaska Supreme Court acknowledged that the proper service provision in enforcement actions is Civil Rule 5(b), and not Civil Rule 4 which requires personal or restricted delivery service. The court even commented that there would be merit to providing, in matters of support enforcement, that service could be made directly upon the party rather than

upon the attorney for the party from the earlier divorce proceeding.

Sections 12 and 13 of the bill simply change language in statutes pertaining to income assignment orders to reflect the new term, "income withholding" orders.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB92(Jud)

Title: "An Act relating to child" and sponsal support;..."

Sponsor: House Rules/Governor

Requestor: Governor's Ofc./OMB

Date of Request: 1/18/85

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: General Government

BRU, Program or Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary This bill is a housekeeping measure that is intended to streamline existing child support laws. The bill brings Alaska's child support statutes into conformance with PL 98-378, and it simplifies interstate child support enforcement actions. Because of this simplification, it is expected that interstate transactions will increase. Any impact caused by this increase should, however, be offset by the efficiencies that will be realized through streamlining the state's existing child support statutes. Consequently, there will not be a fiscal impact for the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 1/22/85

Approved by Commissioner: Richard I. Pegues/for Norman C. Gorsuch Date: 1/22/85

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84

HB 92

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CS HB 92 (Fin)

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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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 Phone: 465-3347

Division: Public Assistance Date:

Approved by Commissioner: John R. Taber Date: 1/30/85 fcc

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.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
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Senate
Committee on
Health, Education and Social Services

M I N U T E S

April 23, 1985 — Beltz Room
3:13 pm — Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Armstrong - De Vries
Senator Josephson
Senator Fischer

CALENDAR

SB 263, Relating to the disqualification for certain state loan programs for failure to pay child support.

HB 92, Relating to child and spousal support.

SB 51, State aid for school construction.

SB 226, Relating to the violation of compulsory education laws.

SCR 13, Relating to infant learning programs.

SB 263

Senator Faiks, Sponsor, explained that SB 263 would disqualify persons who have an overdue child support obligation from participating in state loan programs.

Holli Ploog, Child Support Enforcement Agency, Department of Revenue, testified in support of SB 263.

Senator DeVries moved SB 263 from committee with individual recommendations. There was no objection.

HB 92

Holli Ploog, Child Support Enforcement Agency, Department of Revenue, testified in support of CS HB 92 (Jud), which would bring the state Child Support Enforcement Agency programs into compliance with federal law.

Sherry Goll, Women's Lobby, spoke in support of the bill.

Senator Josephson moved CS HB 92 (Jud) from committee with individual recommendations. There was no objection.

SB 51

Senator Josephson moved to adopt CS SB 51 (HESS) and move it from committee with individual recommendations. There was no objection.

SB 226

Senator Paul Fischer, Sponsor explained that SB 226 would delete the provision of the state's compulsory education law which releases and discharges a parent from all penalties associated with their child's truancy at the end of the school year.

Lisa Nelson, Assistant Attorney General, Criminal Division, Department of Law, proposed an amendment that would repeal and reenact the appropriate section, to provide that a person violating the compulsory education laws would be guilty of a class B misdemeanor.

Don McKinnon, School Administrators Association, spoke in support of the bill.

Bob Greene, School Boards Association, spoke in support of the bill.

Senator Paul Fischer moved to adopt CS SB 226 (HESS) and move it from committee with individual recommendations. There was no objection.

SCR 13

Senator DeVries moved SCR 13 from committee with individual recommendations. There was no objection.

The committee adjourned at 3:42 pm.

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;

- 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

- 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

- 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;
- State enforcement agencies must collect child support on behalf of children receiving foster care;
- States must collect spousal support when it is also collecting support for the child with whom the former spouse is living;
- States can use the Federal Parent Locator Service for non-welfare families before exhausting State and local locate sources;
- States must regularly publicize the availability of enforcement services;
- Annual notice of support collected for welfare families.

II. STATE AGENCIES MUST USE PROVEN ENFORCEMENT TECHNIQUES

Wage/Income Withholding

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

Expedited Legal Processes

- 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

- 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;
- 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 [illegible] 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.

4/19/85

18-0

TO: BETTYE (You were a do pass out of committee.)

FROM: SANDRA

HB 92 CHILD AND SPOUSAL SUPPORT (GOVERNOR)

FOR THE MOST PART, AMENDS OUR EXISTING LAW ON CHILD SUPPORT ENFORCEMENT TO COMPLY WITH NEW FEDERAL REQUIREMENTS. NECESSARY FOR STATE TO BE IN COMPLIANCE, OR RISK LOSING UP TO $1.1 MILLION IN FEDERAL FUNDS FOR AID TO FAMILIES WITH DEPENDENT CHILDREN.

TWO CHANGES NOT REQUIRED BY FEDERAL LAW:

1. ALLOW INCOME WITHHOLDING ORDERS TO BE DELIVERED BY FIRST CLASS MAIL, RATHER THAN CERTIFIED MAIL, IF THE ABSENT PARENT WAS INFORMED AT THE TIME OF THE CUSTODY ORDER THAT INCOME WITHHOLDING WOULD OCCUR ONCE A PAYMENT IS 30 DAYS LATE.
2. REQUIRE EMPLOYERS AND UNIONS TO PROVIDE EMPLOYMENT INFORMATION TO THE CHILD SUPPORT ENFORCEMENT AGENCY, OR FACE UP TO A $1000 FINE.

QUESTIONS:

1. BY WHEN MUST THE STATE BE IN COMPLIANCE WITH FEDERAL LAW? (October 1, 1985, effective date of HB 92.)
2. HOW MUCH MONEY DO WE GET FROM THE FEDS. AND HOW MUCH IS AT RISK? (This year the state got $22 million for Aid to Families with Dependent Children. Maximum sanction would be 5%, or $1.1 million.)
3. THE FISCAL NOTE REFLECTS A LOSS IN REVENUE. WHY IS THIS? (Current state law had a 12% penalty for late payments, in addition to 12% interest. This has been repealed. In 1985 the state collected $585 in penalties, and $185 the year before. Administrative costs of collecting the penalty exceed this amount. So the loss represented on the fiscal note is not real, but is calculated based on 12% of all late payments.)
4. DOES ALASKA HAVE A PROBLEM WITH DELINQUENT PAYMENTS? (Yes. Currently 7,198 cases in arrears. Total arrearage $30 million.)