

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on January 25, 19⁸⁵ in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Frey, Hoferer, Burke, Feleciano, Langworthy, Parrish, Steineger, Talkington, Yost.

Committee staff present:

Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Elwaine F. Pomeroy, Kansas Adult Authority
Max W. Smith, Regional Representative for the Office of Child Support Enforcement
Linda Elrod, Washburn University Professor
Jim Robertson, Chief Counsel, Social and Rehabilitation Services
Brenda Hoyt, Office of Attorney General
Marjorie Van Buren, Office of Judicial Administrator

Elwaine Pomeroy presented three proposals to the committee for introduction as committee bills. He stated the Kansas Adult Authority feels the proposals are clarification and reaffirmation of legislative intent and not changes. The first proposal concerned parole eligibility dates. Parole eligibility date is established by law and not by what the person does. He proposed the language in K.S.A. 22-3717(f) be changed by deleting the eligibility date. The second proposal concerned the cost of returning a parole violator be included as part of restitution. The third proposal concerned the salary of the members of the Kansas Adult Authority be tied statutorily to that of the associate district judges. Senator Parrish made a motion that the committee request the introduction of the proposals as committee bills. Senator Hoferer seconded the motion. The motion carried.

Senate Bill 7 - Assignment of child support when caretaker relative receives aid for dependent child; Proposal No. 50

Senate Bill 8 - Income withholding to enforce child support and maintenance; Proposal No. 50

Dr. Robert Harder introduced Max W. Smith, Regional Representative for the Office of Child Support Enforcement. Mr. Smith commended the Judiciary Committee for promptly holding these initial hearings to strengthen the child support enforcement laws in the State of Kansas. A copy of his testimony is attached (See Attachment I). Committee discussion with him followed. Mr. Smith then pointed out the handout listing the laws required for full implementation of the Child Support Enforcement amendments of 1984 (See Attachment II).

Professor Linda Elrod, representative the Governor's Commission on Child Support, stated the commission does have comments. A five member subcommittee met and presented three policy-questions to look at. The first question concerned Senate Bill 8, the definition of income that is subject to withholding. That is new and something that needs to be examined. The second question is the length of time to hold people in the system; maybe need a re-evaluation system. The third question concerned who would be doing the withholding, which will be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 25, 1985.

Senate Bills 7 and 8

the biggest problem to deal with. There will be accounting problems and this needs to be looked at. The recordkeeping should be all in one place.

Jim Robertson stated SRS is very supportive of the commission. He then referred the committee to his handout "Crisis in Child Support" (See Attachment III), that stated even the most conservative statistics find that less than one-half of custodial parents, overwhelmingly women, received the full child support a court has awarded them. At the very least, more than 50 percent of noncustodial parents, overwhelmingly men, are in violation of their court orders. Mr. Robertson testified the purpose of Senate Bill 7 is to establish an assignment to SRS by operation of law of any support rights possessed by a parent who surrenders the physical custody of a child to a relative who then applies for and receives ADC for the child. Copies of his testimony and proposed amendments are attached (See Attachments IV).

Jim Robertson testified the income withholding mechanism established in Senate Bill 8 is the backbone of a series of federally mandated laws which must be enacted by the states to continue receiving federal financial participation in the ADC program. A copy of his testimony and a proposed amendment are attached (See Attachments V).

Brenda Hoyt of the Attorney General's office stated the office is interested in waiting until the commission has met. She does agree with Professor Elrod's comments and is concerned about administration. She stated that it would be best if the Attorney General's office would be the administrator. She stated she sees a conflict with SRS being the agency; support is not welfare and if people have to go to SRS to get this, they won't go. It is a role for a prosecutor.

Marjorie Van Buren appeared in support of the bill. She testified the Judicial Administrator is very supportive of the public policy intent of this proposed legislation, to assure that child support is being paid. A copy of the testimony is attached (See Attachment VI).

The meeting adjourned.

Copy of guest list attached (See Attachment VII).

KANSAS

SENATE JUDICIARY COMMITTEE

January 25, 1985

Testimony Senate Bill SB-8

By: Max W. Smith, Regional Representative, Office of Child Support Enforcement, Department of Health and Human Services, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone No. (816)374-3584.

Ladies and Gentlemen:

First of all, Mr. Chairman and members of this committee, I would like to commend you, for promptly holding these initial hearings to strengthen the child support enforcement laws in the State of Kansas. It is clear that you feel as deeply as Congress that the time has come to fix our child support enforcement system.

It is indeed unfortunate that the ideal of all parents supporting their children is a dream not a reality in this State, indeed in this country.

However, the startling facts are these, of the more than 4 million American women legally owed child support more than half --53.3%-- received only partial payment, and nearly one third received no payments at all. We can and we must promptly move to reverse these trends.

The legislation before you today, this week and next, will go a long way towards insuring that the children of the State of Kansas receive the child support to which they are so richly entitled. I urge that you promptly consider and pass this vital legislation.

Attach. I 1/25/85

Now I am sure that there are those among us who would urge caution and restraint and might even suggest that you adopt a go slow approach--that we have plenty of time. To these individuals and to you I would say that the children of the State of Kansas deserve more. The time for action is now.

Last year all of your sister States in the Region, Iowa, Missouri, and Nebraska adopted comprehensive wage and income withholding laws in anticipation of the Federal Child Support Enforcement Amendments of 1984. Thus, the children of these States are receiving the benefits of the existing legislation while the legislatures consider minor amendments to enhance the process. I urge that the Kansas legislature push forward accordingly.

Our experience in OCSE in this area indicates that implementation can take from one year to eighteen months after the passage of the legislation itself. Often full implementation in all appropriate cases can take even longer. It is important to keep in mind that the Federal Child Support Enforcement Amendments of 1984 mandate that by October 1, 1985 that the State not only have in effect all of the required laws but that they shall have implemented the procedures which are prescribed in or pursuant to such laws.

While other States pushed forward the State of Kansas last year elected to refer all child support enforcement legislation to an interim study committee. The legislation before you has had the benefit of that study and review. It is now absolutely imperative that the Kansas legislature after careful consideration adopt legislative proposals such as those before you this legislative year. We cannot afford further delay.

Attch. I

For every moment of delay means one more month that children of the State of Kansas will have to learn to do without the child support that is rightfully theirs.

Again, I would like to commend the Senate Judiciary Committee for promptly convening these hearings.

I would like to close my prepared testimony by quoting remarks of Secretary, Margaret M. Heckler, before Congress in regards to the federal legislation. Her words are very appropriate here:

We must always keep in mind that this problem of child support delinquency is solvable. In times wrought with so many complex problems, as ours are, we should seize this golden opportunity and solve this one, and we can.

For too long, proposals to help women and children have been afterthoughts in the legislative process. I think that this legislation, and the hearings you are holding, are strong evidence that things have changed.

The child support delinquency problem has grown steadily. But to match this growth, you have given child support enforcement the legislative independence it deserves, and I commend you for it.

Attach. I

1-25-85
max with

Laws Required for Full Implementation
of the
Child Support Enforcement Amendments of 1984

- (1) Income Withholding - when 30-day support arrearage develops
- (2) Expedited Legal Process - For the establishment and enforcement of support orders.
- (3) Offset of State Income Tax Refunds - to enforce Title IV-D support debts.
- (4) Liens Against Real and Personal Property.
- (5) 18-Year Paternity Statute of Limitations.
- (6) Imposition of Security or Bond - to ensure the payment of support.
- (7) Provision of Arrearage Information To Credit Agencies.
- (8) Assignment of Support Rights in Foster Care and Medical Assistance Cases.
- (9) Enforcement of Both Child and Spousal Support. (When both are contained in a single order.)
- (10) Requirement to include medical support as a part of any child support order. (If medical insurance can be obtained at a reasonable cost.)
- (11) Enforcement of Interstate Support Orders - by use of income withholding and setoff laws.

Crisis in Child Support

New Federal Legislation To Alleviate the Problem

Gladys Kessler

Even the most conservative studies find that less than one-half of custodial parents—overwhelmingly women—receive the full child support a court has awarded them. At the very least, more than 50 percent of non-custodial parents—overwhelmingly men—are in violation of their court orders.

The human toll is staggering. Twelve million children live in female-headed households, and more than 55 percent of these fall below the poverty line.

To correct the situation, Congress has enacted the Child Support Enforcement Amendments of 1984. They require all states to withhold wages when a parent falls one month behind in child-support payments.

Gladys Kessler is Associate Judge of the Superior Court of the District of Columbia and Presiding Judge of the Family Division.

A crisis is facing U.S. women and children who live in single-parent households. (I use the term "women" not out of any sexist bias but because 90 percent of the 8.4 million single-parent families in the United States today are headed by women.¹) They suffer economic deprivation and family dislocation of shattering proportions. Their crisis, and how we as a nation respond to it, will profoundly impact the future of these families and the extent to which their members will contribute to, or be dependent on, society.

There is no question that the problem of nonsupport of children has reached startling economic levels. In its 1983 report *Child Support and Alimony: 1981*, the Census Bureau estimated that in 1981, \$3.8 billion in court-ordered payments was collected.² In real terms, that means that mothers and children—family units struggling to survive in hard times—were deprived of \$3.8 billion in one year alone. That figure does not take into account the fact that more than 40 percent of the women bringing up their children without a father in the home do not even have a court order for child support.³

Just as the estimated loss of child support in absolute dollar figures is staggering (sneakers may be expensive but \$3.8 billion pays for a mind-boggling number of Nikes), so is the flagrant contempt of court orders to support children.

Grim Statistics

Statistics vary because the experience in state and local jurisdictions varies, because reliable economic data have not been kept until recent years, and because several important longitudinal studies that tracked the economic descent of women have only recently been completed. All these studies paint the same dark picture for women and children.

- Studies at the University of Wisconsin showed that 60 to 80 percent

of children eligible for child support receive none.⁴

- In November 1983, in my own home jurisdiction of the District of Columbia, 79 percent of child support orders were not being complied with.

- A 1977 study in Los Angeles showed that within six months after the entry of a final divorce decree, one in three men failed to comply with child support obligations.⁵

- A 1981 Census Bureau national study for the year 1978 found that only 59 percent of the 7.1 million women bringing up children without fathers were awarded any child support, and of those, only 49 percent received full payment. Thus, 51 percent—more than half—of the fathers involved throughout the nation failed to honor court orders for child support, and 28 percent of them failed to pay a dime to support their children.⁶ What is even more startling is that between 1978 and 1981, in real dollar terms, child support payments decreased by about 16 percent.

Just as one should not conclude from these studies that the failure to support children is limited to any one economic class or race or part of the country—the problem transcends all of these—one should also not conclude that these fathers are not supporting their children because they are unable to do so.

Quite the contrary:

- A California study found that after one year of divorce, the standard of living for men rose 42 percent while the standard of living for women and the children in their custody decreased 73 percent.⁷

- The same study also showed that men earning \$10,000 to \$50,000 a year are no more likely to pay their child support than those earning under \$10,000.⁸ So much for the myth that only those on the bottom rung of the economic ladder are not meeting their obligations!

- A Cleveland study determined that most ex-husbands retained 80 percent of their former personal in-

1/25/85
Attach. III

come after divorce, even after payment of all child support and alimony obligations.⁹

• Finally, a Colorado study found that two-thirds of the fathers in Denver were ordered to pay less for child support than they were providing for monthly car payments.¹⁰ What does that tell us about the level of child support awards, and people's priorities?

The Emotional Toll

And what do all these cold facts and figures convey about the reality of people's lives? As shocking a figure as \$3.8 billion in uncollected child support is, it cannot begin to convey the psychic pain children feel when they abruptly, and to them inexplicably, move to new homes and new neighborhoods, with the loss of old friends, old schools, and familiar surroundings. Nor can these cold hard figures begin to convey the ever-present anxiety and weariness of a custodial parent working overtime to make ends meet, who then comes home to cook dinner, do a load of wash, and clean an apartment. Nor do those cold hard figures begin to explain why that mother has little energy or warmth left in the evening for the listening and the loving that her children need every bit as much as they need dinner and clean clothes.

The children do suffer. A study of children and their parents in one California county over several years illuminates how lack of child support intensifies the emotional turmoil of separation and divorce.¹¹ As women's financial fortunes declined, major unsettling changes resulted in housing and child-care arrangements. A fifth of the children moved to less affluent surroundings within six months of their parents' separation; within three-and-one-half to four-and-one-half years after separation, approximately two-thirds of the children had moved, many of them three or more times, as the custodial parent searched for affordable housing. Obviously, the children were forced to make significant adjustments with each move. While the emotional toll of such family disruptions cannot be quantified as easily as unpaid child support, their effects are just as devastating.

Perhaps even more devastating to the children is the loss of their non-custodial parent. In analyzing data from a nationally representative sample of households, two University of Pennsylvania sociologists learned that disruption of the family meant the virtual cessation of contact between children and the parent living outside the home.¹² In the families surveyed, 49 percent of the children had had no contact with their noncustodial parent



The economic wasteland to which single-parent households are being consigned because of the refusal of fathers to support their children has been described as the 'feminization of poverty.' This is not just a catchy phrase dreamed up by the media. It pictures stark reality.



in the preceding year. Significantly, while there was some correlation between parents who provided child support and maintained contact with their children (although the level of child support made little or no difference), 45 percent of the parents who provided no support also had had no contact with their children in the last five years. Thus, it would appear that the payment of child support promotes a continuing relationship—no matter how tenuous—between children and their absent fathers.

The economic wasteland to which single-parent households are being consigned because of the refusal of fathers to support their children has been described as the "feminization of poverty." This is not just a catchy phrase dreamed up by the media. It pictures stark reality.

According to a new study from the

Census Bureau, 12 million children live in female-headed households, and more than 55 percent of those households fall below the poverty line.¹³ In other words, more than half the families in this country headed by women are poor. The flip side of that coin is that female-headed families make up 50 percent of all poor families.

What we have also seen since 1970, for a variety of reasons, is an ever-growing increase in the number of female-headed families (from 10.8 percent in 1970 to 18.8 percent in 1981), with a corresponding descent of women and children into the quicksand of poverty.¹⁴ Indeed, from 1960 to 1980, the number of persons in poor families headed by women rose 54 percent, while the number of persons in poor families headed by men decreased 50 percent.¹⁵ The National Advisory Council on Economic Opportunity has predicted that if the current trend continues, by the year 2,000, women and children will make up 100 percent of the poor in the United States.¹⁶

As sobering as these statistics are, the accelerating feminization of poverty impacts even more heavily on families headed by minority women. One or two figures will illustrate the point: In 1981, 27 percent of all Black and Hispanic children were poor.¹⁷ The poverty rate for persons in female-headed families with children was 68 percent for Blacks and 67 percent for Hispanics.¹⁸ Thus, while more than one-half of all female-headed households are poor, more than two-thirds of Black and Hispanic households headed by a woman fall below the poverty line.

The public is gradually starting to absorb the long-range societal implications of these stark facts of economic life. Significantly, they have emerged in large part thanks to women journalists who have unearthed the facts and have written stories, columns, and TV shows that graphically present the situation so that the public can grasp it. In the last three years, the consensus has grown that far more aggressive action must be taken by the legislature and the judiciary to ensure that child support is awarded, collected, and then paid to those in need in a timely and reliable fashion. While a number of approaches are being used, the most far-

reaching is that of federal legislation.

Congress Acts

Federal intervention in this area is unusual, since domestic relations and in particular child support and custody have traditionally been considered intrastate issues of no concern to the federal government. But just as the reality of interstate kidnapping of children in custody battles led Congress to enact the Federal Parental Kidnapping Prevention Act, so the reality of custodial parents being forced onto welfare rolls led Congress to enact remedial legislation.

On August 8, 1984—significantly only three months before the Presidential election—Congress passed H.R. 4325, the Child Support Enforcement Amendments of 1984. President Reagan signed the bill into law on August 16.¹⁹ Its core is a provision requiring all states to implement mandatory wage withholding when an absent parent fails one month behind in child-support obligations.

There is virtual unanimity among experts in this field that only through mandatory wage assignments—whether at the time of entry of the original court order (my personal preference) or after 30 days of nonpayment—can we ensure that the custodial parent will get her child support on time and in the proper amount, so she can pay the rent, the grocery bill, and the day-care center. This is the only effective mechanism to avoid accumulation of large arrearages which, as a practical matter, become uncollectible. A \$35,000 judgment for 10 years unpaid child support owed by a father earning \$15,000 a year is not worth the cost of the word processor that types the form orders.

It is important to note that the legislation contains major due process protections for the noncustodial parent. It requires advance notice of the wage withholding and an opportunity to challenge it. In essence, it gives the father a chance to prove—in advance—that he is not delinquent.

Significantly, the legislation's re-

quirement for wage-withholding procedures must be made available to both welfare and nonwelfare families. It would have been a bitter pill to swallow for middle-class working mothers who ask no governmental assistance if coverage had not been extended to them when welfare mothers could be assured of at least minimal payments from Aid to Families with Dependent Children (AFDC).

Similarly, the legislation requires that states with income taxes must provide for withholding child-support arrearages from tax refunds for both AFDC and non-AFDC cases.

States' paternity laws must allow establishment of paternity of all children up to the age of 18. With the development of accurate paternity indicators such as the HLA blood tests, there is no longer any scientific reason that a father cannot be identified with greater than 99 percent certainty no matter what the age of the child.

Even though the legislation reduces the level of federal matching funds from the present 70 percent to 66 per-

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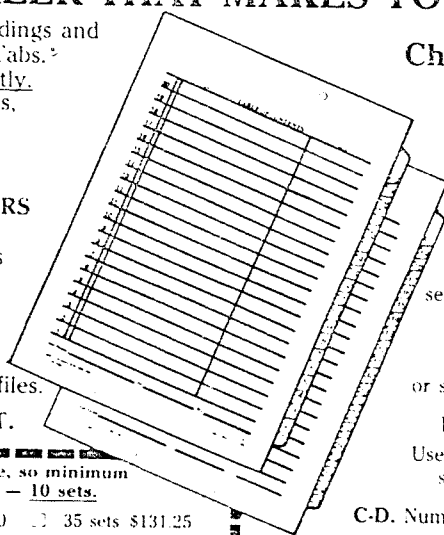
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cent by 1990, it provides attractive 90 percent grants to states for acquisition of computer hardware and for developing and improving income withholding and case-tracking procedures.

For the first time, this legislation provides financial incentives to the states to encourage child-support payments in non-AFDC cases, remedying earlier inequities that operated to penalize working mothers not on welfare.

The new legislation provides needed help in another vital area. No family can survive easily today without health care coverage. The legislation closes some important gaps that could, inadvertently, cause economic disaster for a family with no coverage that suddenly faces serious illness. First, it requires that medical care be included as part of any child-support order whenever the noncustodial parent can get health care coverage at a reasonable cost. Second, it requires that families which lose AFDC eligibility because they start getting child support retain Medicaid benefits for a four-month transition period. In short, the legislation represents

a political commitment by lawmakers to redress the economic adversity women and children have suffered by being denied the support to which they are entitled. Of those 8.4 million women raising children without a father, only 35 percent receive child-support payments. With vigorous enforcement of the 1984 Amendments, that 35 percent figure should soar and the \$3.8 billion in uncollected payments plummet. The women and children who reap the benefits will long be grateful. ■

Notes

- ¹ BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, CURRENT POPULATION REPORT, SERIES P-20, NO. 372, MARITAL STATUS AND LIVING ARRANGEMENTS: MARCH 1981 5 (1982).
- ² BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P-23, NO. 124, CHILD SUPPORT AND ALIMONY: 1981 (Advance Report) (1983).
- ³ REPORT OF THE SELECT COMMITTEE ON CHILDREN, YOUTH AND FAMILIES, U.S. CHILDREN AND THEIR FAMILIES: CURRENT CONDITIONS AND RECENT TRENDS, 98th Cong., 1st Sess. 20 (1983).

⁴ J. CASSETY, THE PARENTAL CHILD SUPPORT OBLIGATION, 3, 35, 79, 263 (1983); URBAN INSTITUTE WORKING PAPER 992-B, CHILD SUPPORT PAYMENTS IN THE UNITED STATES 90-109 (1976); J. CASSETY, CHILD SUPPORT AND PUBLIC POLICY 46-61 (1978).

⁵ Weitzman, Bruch & Wikler, *Support Awards and Enforcement*, in JUDICIAL DISCRETION: DOES SEX MAKE A DIFFERENCE? 54, 89 (NOW Legal and Education Fund 1981).

⁶ BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P-23, NO. 112, CHILD SUPPORT AND ALIMONY: 1978 2 (1981).

⁷ Weitzman, *The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards*, 28 UCLA L. REV. 1181, 1251 (1981).

⁸ *Id.* at 1236.

⁹ G. STERNIN & J. DAVIS, DIVORCE AWARDS AND OUTCOMES: A STUDY OF PATTERN AND CHANGE IN CUYAHOGA COUNTY, OHIO 1965-1978 8 (1981).

¹⁰ Yee, *What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court*, 57 DEN. L.J. 21, 50 (1979).

¹¹ J. WALLERSTEIN & J. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE 23-25, 183, 231 (1980).

¹² Furstenberg, Peterson, Nord, & Zili, *The Life Course of Children of Divorce: Marital Disruption and Parental Contact*, 48 AM. SOC. REV. 656, 665 (1983); F. Furstenberg & C. Nord, Parenting Apart: Patterns of Childbearing After Marital Disruption 5 (Dec. 1983) (unpublished manuscript; copies available from authors at Dept. of Sociology, Univ. of Penn.).

¹³ BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P-60, NO. 145, MONEY, INCOME AND POVERTY STATUS OF FAMILIES AND PERSONS IN THE UNITED STATES: 1983 table 115 (1984).

¹⁴ U.S. COMMISSION ON CIVIL RIGHTS, A GROWING CRISIS: DISADVANTAGED WOMEN AND THEIR CHILDREN 5 (1983).

¹⁵ *Id.* at 2.

¹⁶ NATIONAL ADVISORY COUNCIL ON ECONOMIC OPPORTUNITY, CRITICAL CHOICES FOR THE 80's 19 (1980).

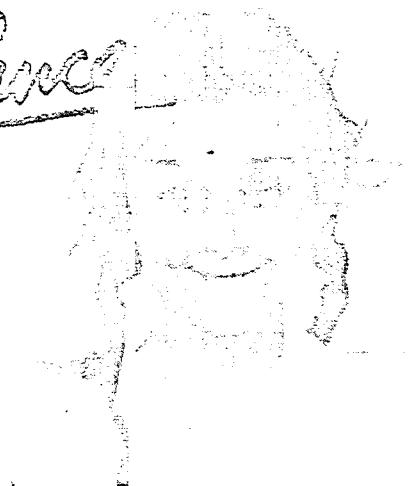
¹⁷ U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 14, at 62.

¹⁸ *Id.*

¹⁹ Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, reprinted in 1984 U.S. CODE CONG. & AD. NEWS (98 Stat.) 1305.

The ABA's National Legal Resource Center for Child Advocacy and Protection provides information about the Child Support Enforcement Amendments of 1984. The Center is located at 1800 M Street, N.W., Washington, DC 20036.

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State Department of Social and Rehabilitation Services

Testimony Regarding S.B. 7

The purpose of the bill before you is to establish an assignment to SRS by operation of law of any support rights possessed by a parent who surrenders the physical custody of a child to a relative who then applies for and receives ADC for the child. Such an assignment is necessary to insure that support payments follow the child for whom they were intended. Without this amendment, a parent who is not caring for the child and who does not have physical custody can continue to receive support payments pursuant to a court order. With the amendment, if SRS provides ADC for the child, the agency would be assigned the legal custodians support rights concerning the child while the child is in the physical custody of another person. This amendment closes a loop-hole which is commonly used by some custodial parents to "have their cake and eat it too" by continuing to receive support payments and having the child and a relative receive ADC payments. If this loop-hole is not closed, the state comes up the financial loser.

One amendment to the bill is suggested:

The word "relinquishes" on lines 81, 84, 85, and 103 should be changed to "surrenders" to avoid any connection with parental relinquishment statutes which establish a formal procedure for "relinquishment" of a child. The purpose of this amendment is to deal with public assistance situations when a parent merely allows a relative to keep physical custody of a child. Consequently, it should be made obvious that a formal "relinquishment" of parental custody is not necessary to activate the assignment of support rights.

11/25/85
Attach. IV

SENATE BILL No. 7

By Special Committee on Judiciary

Re Proposal No. 50

12-19

1-25-85
0018 AN ACT concerning social welfare; relating to assignment of
0019 child support to social and rehabilitation services in certain
0020 instances; amending K.S.A. 1984 Supp. 39-709 and repealing
0021 the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1984 Supp. 39-709 is hereby amended to
0024 read as follows: 39-709. (a) *General eligibility requirements for*
0025 *assistance for which federal moneys are expended.* Subject to
0026 the additional requirements below, assistance in accordance
0027 with plans under which federal moneys are expended may be
0028 granted to any needy person who:

0029 (1) Has insufficient income or resources to provide a reason-
0030 able subsistence compatible with decency and health. Where a
0031 husband and wife are living together the combined income or
0032 resources of both shall be considered in determining the eligi-
0033 bility of either or both for such assistance unless otherwise
0034 prohibited by law. The secretary, in determining need of any
0035 applicant for or recipient of assistance shall not take into account
0036 the financial responsibility of any individual for any applicant or
0037 recipient of assistance unless such applicant or recipient is such
0038 individual's spouse or such individual's minor child or minor
0039 stepchild if the stepchild is living with such individual. The
0040 secretary in determining need of an individual may provide such
0041 income and resource exemptions as may be permitted by federal
0042 legislation.

0043 (2) Is a citizen of the United States or is an alien lawfully
0044 admitted to the United States and who is residing in the state of
0045 Kansas. If any person transfers or assigns property without ade-

2
Attch. IV

0046 quate consideration or for the purpose of becoming eligible for
0047 assistance (A) within the two-year period immediately preceding
0048 the application if the value of the property so transferred or
0049 assigned is \$12,000 or less or (B) within a period of time in excess
0050 of two years, as established by rules and regulations of the
0051 secretary, if the value of the property so transferred or assigned is
0052 in excess of \$12,000, such person shall thereby become ineligi-
0053 ble to receive assistance for such period of time as the value of
0054 the property assigned or transferred would have reasonably
0055 maintained such person at a standard compatible with decency
0056 and health. If any person without the consent of the secretary
0057 assigns or transfers property without adequate consideration
0058 while on the assistance rolls, after making application for assist-
0059 ance or while receiving assistance, such person shall thereby
0060 become ineligible to receive assistance for such period of time as
0061 the value of the property assigned or transferred would have
0062 reasonably maintained such person at a standard compatible
0063 with decency and health.

0064 (b) *Assistance to families with dependent children.* Assist-
0065 ance may be granted under this act to any dependent child, or
0066 relative, subject to the general eligibility requirements as set out
0067 in subsection (a), who resides in the state of Kansas or whose
0068 parent or other relative with whom the child is living resides in
0069 the state of Kansas. Such assistance shall be known as aid to
0070 families with dependent children.

0071 (c) *Applying for or receiving aid to families with dependent*
0072 *children constitutes an automatic assignment of support rights*
0073 *and limited power of attorney.* By applying for or receiving aid
0074 to families with dependent children such applicant or recipient
0075 shall be deemed to have assigned to the secretary on behalf of
0076 the state any accrued, present or future rights to support from any
0077 other person such applicant may have in such person's own
0078 behalf or in behalf of any other family member for whom the
0079 applicant is applying for or receiving aid. *In any case wherein an*
0080 *order for child support has been established and the legal*
0081 *custodian and obligee under the order relinquishes physical*
0082 *custody of the child to a caretaker relative without obtaining a*

Substitute the word "surrenders" for "relinquishes."

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0083 modification of legal custody, and the caretaker relative's sup-
 0084 port rights are assigned pursuant to this section, the relin-
 0085 quishment and the assignment shall transfer, by operation of
 0086 law, the child support obligation under the order to the secre-
 0087 tary in behalf of the state. Such assignment is to all accrued,
 0088 present or future rights to support. The assignment of support
 0089 rights shall automatically become effective upon the date of
 0090 approval for or receipt of such aid without the requirement that
 0091 any document be signed by the applicant ~~or~~, recipient or obligee.
 0092 The assignment shall remain in full force and effect so long as
 0093 such person is an applicant for or recipient of such aid or ~~until~~
 0094 ~~such other time as the secretary and the applicant or the recipi-~~
 0095 ~~ent of such aid may agree a caretaker relative no longer has~~
 0096 *physical custody of the child and aid to dependent children is*
 0097 *discontinued.* Upon the discontinuance of such aid, the assign-
 0098 ment shall remain in effect as to unpaid support obligations due
 0099 and owing at the time of the discontinuance of such aid until the
 0100 claim of the secretary of social and rehabilitation services for
 0101 repayment of the unreimbursed portion of such aid is satisfied.
 0102 By applying for or receiving aid to dependent children assist-
 0103 ance, or by relinquishing physical custody of a child to a
 0104 caretaker relative whose support rights are assigned, the appli-
 0105 cant ~~or~~, recipient or obligee is also deemed to have appointed the
 0106 secretary, or the secretary's designee, as an attorney in fact to
 0107 perform the specific act of negotiating and endorsing all drafts,
 0108 checks, money orders or other negotiable instruments repre-
 0109 senting support payments received by the secretary in behalf of
 0110 any person applying for, receiving or having received such
 0111 assistance or in behalf of an obligee whose child receives aid to
 0112 dependent children because of the child's placement with a
 0113 caretaker relative. This limited power of attorney shall be effec-
 0114 tive from the date the secretary approves the application for aid
 0115 and shall remain in full force and effect as to the respective
 0116 support rights assigned to the secretary under this subsection (c).
 0117 The secretary retains the power to endorse all drafts, checks,
 0118 money orders or other negotiable instruments representing sup-
 0119 port to which the secretary retains a partial claim pursuant to

Substitute the word "surrender" for "relinquishment."

Substitute the word "surrendering" for "relinquishing."

Attch. IV

State Department of Social and Rehabilitation Services

Testimony Regarding S.B. 8

The Income Withholding mechanism established in this bill is the backbone of a series of federally mandated laws which must be enacted by the states to continue receiving federal financial participation in the ADC program. The mandate to establish income withholding legislation is found in the Child Support Enforcement Amendments of 1984 (P.L. 98-378; Title IV-D of the federal social security act §466; 45 CFR 301-305 and 307). It is worthy of note that these federal child support amendments were unanimously passed in a non-partisan effort by both houses of congress in an attempt to remedy an extremely serious national problem concerning the failure of a huge percentage of parents to support their children and the resulting cost to society in terms of skyrocketing public assistance expenses and the suffering of an alarming number of custodial parents and children.

National statistics (which are thought to be indicative of the status of Kansas children as well) show that in cases where courts have ordered the payment of support, fewer than 50% of obligors pay as directed by the court and that fewer than 40% of dependent children in this country even have a court order requiring the payment of support. Often, custodial parents are forced to give up one-third to one-half of the potential support payments due and owing to pay legal fees to enforce support because the support remedies available to them are costly, inadequate and inefficient. While the improvements in child support collection in the decade since the Title IV-D program was created have been significant, these statistics illustrate that overall non-compliance with parental support responsibilities is still at epidemic proportions and that something significant must be done legislatively to help solve the problem.

The Department of Social and Rehabilitation Services supports this bill whole-heartedly as a benefit to all Kansas citizens despite the numerous additional tasks and responsibilities which must be assumed by our agency. It is our position that the enactment of these sections should not only enhance the support collections practices of public agencies, but also provide private legal practitioners and custodial parents with an important new collection tool.

In addition to satisfying each federally required element in the withholding statute, New section 10 would also satisfy a second federal mandate to enact a law which provides for the posting of a bond or other guarantee to ensure the payment of support. Section 10 is written so that the bond or guarantee could be ordered at the discretion of the court in cases where the obligor is self-employed or receives income which is not subject to the court's jurisdiction.

New sections 1-13 establish a mechanism which would require the courts to issue an order directing any current or subsequent payor of income to withhold and pay over certain percentages of income owed to an obligor who falls more than 30 days behind in the payment of either child support or spousal support. The amounts withheld would be used to satisfy the current periodic support obligation plus defray arrearages. The bill is drafted so that withholding can be used to enforce support owed in any case - not just IV-D cases in which the state has an interest in the amounts collected.

1/25/85
Cottch .V

However, in IV-D cases (ADC and non-ADC), SRS must initiate the withholding when a 30 day (or more) arrearage develops by actively monitoring and tracking all such cases. If a private, non-IV-D custodial parent wishes to use the income withholding mechanism, they may do so freely - without representation by SRS - either with or without legal counsel.

A withholding order may be obtained from the court which issued the support order by following the procedure set out below:

The obligee, private attorney, or SRS must first send a notice of delinquency to the obligor which fully informs him/her about the process and what will occur. The obligor may contest the action by filing a motion for hearing within 10 days after receiving the notice. If a hearing is held, the court must make a speedy decision concerning whether the withholding will occur within 45 days from the date the obligor received the notice of delinquency. (This time frame is federally mandated.)

If the obligor does not contest the action, the obligee must then file an affidavit with the court which includes statements that at least a 30 day arrearage exists and that a notice of delinquency was sent to the obligor. Once the court receives such an affidavit, the court must automatically issue a withholding order which will remain effective until further order of the court. Any payor of income served a withholding order is required to withhold income from each pay period starting 10 days after receipt of the order. If a payor fails to abide by the court's order, judgment can be taken against them for the total amount which should have been withheld or for the total arrearage. Any payor who discharges, refuses to employ, or takes disciplinary action against the obligor can be found guilty of a class-A misdemeanor (\$2,500 fine and/or one year in county jail). Federal law mandates payor penalty provisions.

A withholding order for support has priority over any other legal process against the same income. However, the total amount withheld each pay period cannot exceed the limits found in the Consumer Credit Protection Act (50-65%). In recognition of the burden placed on employers as part of the cost of doing business, the bill allows the payor to deduct a \$2 cost recovery fee for each withholding. Also, if the payor is required to withhold income in more than one case from the same court, the payor may combine the total amount withheld in one check.

The withholding order may be modified, suspended, or terminated at anytime by the court at the request of the obligee, obligor, or a public office. However, the statute emphasizes that if withholding has occurred for three years and all arrearages are paid, the obligor may request termination of the order.

The advantages income withholding has over the typical garnishment are that it is always continuing in nature, it applies to current or future income, amounts are taken from each pay period, it has priority status over other types of execution, it is simpler and less costly to use and the right to implement the procedure once a 30-day arrearage develops is automatic.

Attach V

Legislation similar to the bill before you has already been successfully implemented in Illinois, Colorado, Missouri, Washington, Wisconsin, and 18 or 19 other states.

Sections 14 and 15 of the bill amend the existing Kansas Uniform Reciprocal Enforcement of Support Act (URESAs) to ensure that income withholding orders are used to enforce interstate support orders.

Section 16 deals with the existing income assignment statute found at K.S.A. 60-1613. This section substitutes new procedures for old and emphasizes that previously established income assignments remain valid.

Several relatively minor amendments to the bill to make it more viable are suggested by SRS:

- (1) On page 2, line 59, the definition of "payor" should be revised to state: "Payor" means any individual or entity owing income to an obligor or any self-employed obligor." This amendment to the bill is suggested to clarify the definition and to make it clear that self-employed persons are subject to the act.
- (2) On page 4, line 125, a revision is suggested which would make it clear that the obligor must receive actual notice of the impending withholding. This is accomplished by allowing service of the notice of delinquency "by certified mail, return receipt signed by the obligor" or by personal service.
- (3) Clarification should be added on page 5, line 167, to make it clear that the amount to be withheld from each pay period should not be the entire amount of the current support order if the current order requires bi-monthly or monthly payments and income is paid at more frequent intervals. Without further explanation, confusion may result in overwithholding. To resolve the problem, the following two sentences should be added after the word "arrearages" on line 0167: "If the obligor's current support order requires bi-monthly or monthly payments and periodic income is paid at more frequent intervals, the payor shall withhold and pay over an equal amount at each pay period which is cumulatively sufficient to pay the bi-monthly or monthly support obligation. In such cases, the additional amount to be applied toward liquidation of arrearages shall be withheld from each pay period."
- (4) On page 6, line 227, we suggest that new section 4, subsection (b) be reworded to make it clear that the intent is to give a priority to the collection of current support in any circumstance. This can be accomplished more simply by stating on line 227: "Withholding of income for an obligee or a public office for enforcement of current support shall have priority over the withholding of income for an obligee or public office seeking to collect arrearages only"
- (5) On page 8, line 268, "within 45 days" should be deleted as repetitious.

Attch. II

- (6) An amendment to the bill is suggested on page 9, lines 313-317 to make it clear that the only time SRS must be notified is when support rights remain assigned to the agency. In its current form, the bill requires notification of SRS if public assistance was ever received regardless of whether the agency retains a claim to support.
- (7) An amendment to new section 10, page 10, line 357, is suggested to ensure that the proceeds of forfeited bonds or other security may be paid out as child support. To accomplish this result, the following sentence should be added: "If the obligor fails to pay support as ordered by the court, the court may collect on the bond or forfeit all or a portion of the security or other guarantee and apply the amounts collected as payment on the support arrearage." Also, to make it clear that the act applies to self-employed obligors, a statement to this effect is added.
- (8) Section 18, page 12, line 436 contains an important error. The effective date should be January 1, 1986, rather than July 1, 1986. The January date must be used to comply with federal law and to correspond with the earlier section requirement that all orders issued after January 1, 1986, contain a conditional withholding order.

Attch. IV

SENATE BILL No. 8

By Special Committee on Judiciary

Re Proposal No. 50

12-19

1-25-85
0018 AN ACT concerning support; relating to income withholding to
0019 enforce orders of child support and maintenance; amending
0020 K.S.A. 23-473, 23-475 and 60-1613 and repealing the existing
0021 sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. As used in sections 1 through 13:

0024 (a) "Arrearage" means the total amount of unpaid support
0025 which is due and unpaid under an order of support, based upon
0026 the due date specified in the order for support or, if no specific
0027 date is stated in the order, the last day of the month in which the
0028 payment is to be made.

0029 (b) "Income" means any form of periodic payment to an
0030 individual, regardless of source, including but not limited to
0031 wages, salary, trust, royalty, commission, bonus, compensation as
0032 an independent contractor, worker's compensation, disability,
0033 annuity and retirement benefits and any other payments made
0034 by any person, private entity or federal, state or local government
0035 or any agency or instrumentality thereof. "Income" does not
0036 include: (1) Any amounts required by law to be withheld, other
0037 than creditor claims, including but not limited to federal and
0038 state taxes, social security tax and other retirement and disability
0039 contributions; (2) any amounts exempted by federal law; (3)
0040 public assistance payments; and (4) unemployment insurance
0041 benefits except to the extent otherwise provided by law. Any
0042 other state or local laws which limit or exempt income or the
0043 amount or percentage of income that can be withheld shall not
0044 apply.

0045 (c) "Obligee" means the individual to whom a duty of sup-

attach. I²

0046 port is owed.

0047 (d) "Obligor" means the individual who owes a duty to make
0048 payments under an order for support.

0049 (e) "Order for support" means any order of a court or admin-
0050 istrative agency, authorized by law to issue such an order, which
0051 provides for payment of funds for the support of a child or
0052 maintenance of a spouse or ex-spouse and includes such an order
0053 which provides for modification or resumption of a previously
0054 existing order; payment of an arrearage accrued under a pre-
0055 viously existing order; a reimbursement order, including but not
0056 limited to an order established pursuant to K.S.A. 39-718a and
0057 amendments thereto; or an order established pursuant to K.S.A.
0058 23-475 and amendments thereto.

0059 (f) "Payor" means any ~~payer of income to an obligor.~~

0060 (g) "Public office" means any elected or appointed official of
0061 the state, or any political subdivision or agency thereof, who is or
0062 may become responsible by law for enforcement of, or who is or
0063 may become authorized to enforce, an order for support, includ-
0064 ing but not limited to the department of social and rehabilitation
0065 services, court trustees and county or district attorneys.

0066 (h) "Title IV-D cases" means those cases required by part D
0067 of title IV of the federal social security act (42 U.S.C. ½ 651 *et*
0068 *seq.*), as amended, to be processed by the department of social
0069 and rehabilitation services under the state's plan for support
0070 enforcement.

0071 New Sec. 2. (a) Upon entry of any new or modified order for
0072 support on or after January 1, 1986, the court shall issue a
0073 separate order requiring the withholding of income to enforce
0074 the order of support. Unless the order provides that it shall take
0075 effect immediately, the order shall take effect only upon: (1)
0076 Development of an arrearage in an amount equal to or greater
0077 than the amount of support payable for one month; and (2)
0078 compliance with the requirements of this section.

0079 (b) In any proceeding in which the court has issued an order
0080 for support but has not issued a conditional order requiring
0081 income withholding as provided by subsection (a), the obligee or
0082 a public office may apply for such an order by filing with the

individual or entity owing income to an obligor or any self-employed obligor.

Attch. V

, court an affidavit stating: (1) That an arrearage exists in an
0084 amount equal to or greater than the amount of support payable
0085 for one month; (2) that a notice of delinquency has been served
0086 on the obligor in accordance with subsection (f) and the date and
0087 type of service; (3) that the obligor has not filed a motion to stay
0088 service of the income withholding order; and (4) a percentage of
0089 the income or support order which shall be withheld by the
0090 payor to be applied toward liquidation of arrearages. Upon the
0091 filing of the affidavit, the court shall issue an order requiring the
0092 withholding of income without the requirement of a hearing,
0093 amendment of the support order or further notice to the obligor.
0094 The court shall not be relieved of its duty under this subsec-
0095 tion to issue an income withholding order if the obligor pays the
0096 arrearage subsequent to receiving the notice of delinquency.
0097 For purposes of this subsection, an arrearage shall be com-
0098 puted on the basis of support payments due and unpaid on the
0099 date the notice of delinquency was served on the obligor.

0025 0100 (c) An order issued under this section shall be directed to any
0101 payor of the obligor and shall require the payor to withhold from
0102 any income due, or to become due, to the obligee a specified
0103 amount sufficient to satisfy the order of support and to defray any
0104 arrearage, subject to the limitations set forth in section 4. The
0105 order shall include notice of and direction to comply with the
0106 provisions of sections 3 and 4.

0107 (d) An order issued under this section shall be served on the
0108 payor and returned by the officer making service in the same
0109 manner as an order of attachment.

0110 (e) An income withholding order issued under this section
0111 shall be binding on any existing or future payor on whom a copy
0112 of the order is served and shall require the continued withhold-
0113 ing of income from each periodic payment of income until
0114 further order of the court. If the obligor changes employment or
0115 has a new source of income after an income withholding order is
0116 issued by the court, the new employer or income source, if
0117 known, must be served a copy of the income withholding order
0118 without the requirement of prior notice to the obligor.

0045 0119 (f) No sworn affidavit shall be filed with the court issuing the

Attach IV

0120 support order pursuant to subsection (b) unless it contains a
0121 declaration that the obligee or public office has served the
0122 obligor a written notice of delinquency because an arrearage
0123 exists in an amount equal to or greater than the amount of
0124 support payable for one month and that the notice was served on
0125 the obligor by certified mail, return receipt requested, or in the
0126 manner for service of a summons pursuant to article 3 of chapter
0127 60 of the Kansas Statutes Annotated at least 10 days before the
0128 date the affidavit is filed. If service is by certified mail, a copy of
0129 the return receipt shall be attached to the affidavit. The notice of
0130 delinquency served on the obligor must state: (1) The terms of
0131 the support order and the total arrearage as of the date the notice
0132 of delinquency was prepared; (2) the amount of income that will
0133 be withheld; (3) that the provision for withholding applies to any
0134 current or subsequent payors; (4) the procedures available for
0135 contesting the withholding and that the only basis for contesting
0136 the withholding is a mistake of fact concerning the amount of the
0137 support order, the amount of the arrearage, the amount of income
0138 to be withheld or the proper identity of the obligor; (5) the period
0139 within which the obligor must file a motion to stay service of the
0140 income withholding order and that failure to file such motion
0141 within the specified time will result in payors' being ordered to
0142 begin withholding; and (6) the action which will be taken if the
0143 obligor contests the withholding.

0144 In addition to any other penalty provided by law, the filing of
0145 an affidavit with knowledge of falsity of the declaration of notice
0146 is punishable as a contempt. The obligor may, at any time, waive
0147 in writing the notice required by this subsection.

0148 (g) On request, an obligor may establish a withholding order
0149 which shall be honored by a payor regardless of whether there is
0150 an arrearage.

0151 New Sec. 3. (a) It shall be the duty of any payor who has
0152 been served an order for withholding under this act to deduct
0153 and pay over income as provided in this section. The payor shall
0154 deduct the amount designated in the order for withholding
0155 beginning with the next payment of income which is payable to
0156 the obligor after 10 days following service of the order on the

signed by the obligor

Attch. IV

0157 payor. At the time the obligor is normally paid, the payor shall
0158 pay the amount withheld to the obligee, public office or clerk of
0159 court as directed by the order for withholding and in accordance
0160 with any subsequent notification received from the public office
0161 redirecting payments.

0162 (b) If the withholding is to collect current support and an
0163 arrearage, the payor shall be required to withhold an amount of
0164 income equal to the order for support plus an additional sum, set
0165 out in the affidavit provided for in subsection (b) of section 2 as a
0166 percentage of the amount of the support order, to be applied
0167 towards liquidation of arrearages. If the withholding is to collect
0168 an arrearage only, the payor shall be required to withhold an
0169 amount of income equal to a percentage of income set out in the
0170 affidavit provided for in subsection (b) of section 2.

0171 (c) The payor shall continue to withhold income to be ap-
0172 plied towards liquidation of arrearages until the amount of the
0173 arrearage stated in the income withholding order has been paid
0174 in full or until notice to discontinue that portion of the with-
0175 holding attributable to arrearages is received from the obligee,
0176 public office or the court. After arrearages are paid in full, a
0177 withholding order requiring withholding for current support
0178 shall continue in the amount of the support order until further
0179 order of the court.

0180 (d) From income due the obligor, the payor may withhold
0181 and retain to defray the payor's costs a cost recovery fee of \$2 for
0182 each withholding of income which shall be in addition to the
0183 amount withheld as support.

0184 (e) Any payor subject to withholding orders for more than
0185 one obligor may combine the withheld amounts in a single
0186 payment to each clerk of court or public office requesting the
0187 withholdings if the payor separately identifies the portion of the
0188 single payment which is attributable to each individual obligor.

0189 (f) If more than one order for withholding requires with-
0190 holding from the same source of income of a single obligor, the
0191 payor must comply on a first-come-first-served basis and must
0192 honor all withholding orders, subject to subsection (g).

0193 (g) The entire sum withheld by the payor, including the cost

If the obligor's current support order requires bi-monthly or monthly payments and periodic income is paid at more frequent intervals, the payor shall withhold and pay over an equal amount at each pay period which is cumulatively sufficient to pay the bi-monthly or monthly support obligation. In such cases, the additional amount to be applied toward liquidation of arrearages shall be withheld from each pay period.

Attch. #

0194 recovery fee, shall not exceed the limits provided for under
 0195 section 303(b) of the consumer credit protection act (15 U.S.C.
 0196 1673(b)).

0197 (h) The payor shall promptly notify the obligee, or public
 0198 office initiating the withholding order of the termination of the
 0199 obligor's employment or other source of income and provide the
 0200 obligor's last known address and the name and address of the
 0201 individual's current employer, if known.

0202 (i) Any payor of income to an obligor shall cooperate with and
 0203 provide relevant employment information to an obligee or public
 0204 office seeking to use the provisions of this act to establish,
 0205 maintain or reestablish an incoming withholding order.

0206 (j) Payment as required by an order for withholding issued
 0207 under this act shall be a complete defense by the payor against
 0208 any claims of the obligor or the obligor's creditors as to the sums
 0209 paid.

0210 (k) If a payor fails to withhold and pay over income as
 0211 required by a withholding order issued under this act, the court
 0212 shall enter a judgment against the payor for the total amount
 0213 which should have been withheld and paid over and may enter
 0214 judgment against the payor to the extent of the total arrearage
 0215 owed.

0216 (l) Any payor who discharges, refuses to employ or takes
 0217 disciplinary action against an obligor because of a withholding
 0218 order issued under this act shall be guilty of a class A misde-
 0219 meanor.

0220 New Sec. 4. (a) An income withholding order issued under
 0221 this act shall have priority over any other legal process under
 0222 state law against the same income. Withholding of income under
 0223 this section shall be made without regard to any prior or sub-
 0224 sequent garnishments, attachments, wage assignments or other
 0225 claims of creditors.

0226 (b) Withholding of income under this section for an obligee
 0227 ~~or for the department of social and rehabilitation services acting~~
 0228 ~~on behalf of an obligee pursuant to K.S.A. 39-756 and amend-~~
 0229 ~~ments thereto or enforcing an assignment of current support~~
 0230 ~~rights pursuant to K.S.A. 39-709 and amendments thereto shall~~

or a public office for enforcement of current support shall have priority over the withholding of income for an obligee or public office seeking to collect arrearages only.

00724. IV

0231 ~~have priority over the withholding of income for a public office~~ delete
0232 ~~seeking to collect assigned arrearages only.~~

0233 (c) Except as provided by this act, any state law which limits
0234 or exempts income from legal process or the amount or percent-
0235 age of income that can be withheld shall not apply to withhold-
0236 ing income under this act.

0237 New Sec. 5. (a) An obligor may prevent an income with-
0238 holding order issued under this section from being served on the
0239 payor by filing with the court a motion to stay service of the
0240 withholding order and serving a copy of the motion on the
0241 obligee or public office filing the notice of delinquency within
0242 10 days after being served with the notice of delinquency. The
0243 grounds for obtaining the stay shall be limited to a showing of a
0244 mistake of fact in the notice of delinquency concerning the
0245 amount of the order for support, the amount of the arrearage, the
0246 amount of income to be withheld or the proper identity of the
0247 obligor. If the obligor files a motion to stay service of the income
0248 withholding order, the obligor shall specify the mistake of fact
0249 alleged to be the basis for the motion. If the amount of the order
0250 for support or the amount of the arrearage is challenged, the
0251 obligor shall specify the amount of the order for support or the
0252 arrearage which is uncontested.

0253 (b) If the obligor files a motion to stay service of the with-
0254 holding order, the court, upon notice of the date, time and place
0255 of hearing to the obligor and the obligee or public office that
0256 filed the affidavit, shall hear the matter within 15 days after the
0257 obligor's motion is filed with the court. The court shall enter an
0258 order granting or denying relief, amending the notice of delin-
0259 quency or otherwise resolving the matter. If the court finds that
0260 an arrearage existed when the notice of delinquency was served
0261 in an amount at least equal to one month's support obligation, the
0262 court shall order immediate service of the order for withholding.
0263 If the court cannot promptly resolve any dispute over the total
0264 amount of the arrearage, the court shall order immediate service
0265 of the order for withholding if the undisputed arrearage is at least
0266 equal to the amount of one month's support obligation and may
0267 continue the hearing on other disputed amounts. In any case, the

Attach. II

delete (as repetitious)

0268 court, ~~within 45 days~~, must notify the obligor and the obligee or
0269 public office of whether or not the withholding is to occur within
0270 45 days of the date the obligor was served the notice of delin-
0271 quency. If the court upholds the issuance of a withholding order
0272 in a contested case, the court must include in its order notice of
0273 the time within which the withholding will begin and the infor-
0274 mation given to the payor as required in sections 3 and 4.

0275 New Sec. 6. (a) At any time, an obligor, obligee or public
0276 office may petition the court to: (1) Modify, suspend or terminate
0277 the order for withholding because of a modification, suspension
0278 or termination of the underlying order for support; (2) modify the
0279 amount of income withheld to reflect payment in full of the
0280 arrearage by income withholding or otherwise; or (3) suspend
0281 the order for withholding because of the inability to deliver
0282 income withheld to the obligee or children for a period of three
0283 months due to the obligee's failure to provide a mailing address
0284 or other means of delivery. If the withholding is suspended
0285 because payment is undeliverable, all undeliverable payments
0286 shall be returned to the obligor.

0287 (b) The obligor may petition the court to terminate the with-
0288 holding of income because payments pursuant to the order for
0289 withholding have been made for at least three years and all
0290 arrearages have been paid. Upon receipt of a petition under this
0291 subsection, the court may suspend the order for withholding
0292 unless it finds good cause for denying the petition because of the
0293 obligor's payment history or otherwise. If a withholding order is
0294 terminated for any reason and the obligor subsequently becomes
0295 delinquent in the payment of the order for support, the obligee
0296 or public office may obtain another order for withholding by
0297 complying with all requirements for notice and service pursuant
0298 to this act.

0299 (c) The clerk of court shall serve on the payor a copy of any
0300 order entered pursuant to this section that affects the duties of
0301 the payor.

0302 New Sec. 7. If the court determines that income has been
0303 improperly withheld, the court may order the payor, the obligee,
0304 the clerk of court or the public office, depending on who has

Attch. IV

0305 possession of the income or who ultimately received it, to
 0306 promptly refund the improperly withheld amount to the obligor.
 0307 New Sec. 8. (a) If an obligee is receiving income withhold-
 0308 ing payments under this act, the obligee shall give written notice
 0309 of any change of address, within seven days after the change to
 0310 the payor, if the obligee receives the payments directly from the
 0311 payor or the public office or clerk of the district court through
 0312 which the obligee receives the payments.

0313 (b) ~~An obligee who is or has been a recipient of aid to~~
 0314 ~~dependent children assistance or whose child is or has been in~~
 0315 ~~the custody of the secretary of social and rehabilitation services~~
 0316 ~~pursuant to K.S.A. 1984 Supp. 38-1601 et seq. or K.S.A. 1984~~
 0317 ~~Supp. 38-1501 et seq. and amendments thereto~~, shall serve a
 0318 copy of any notice of delinquency filed pursuant to this act on the
 0319 secretary of social and rehabilitation services. If current support
 0320 or all or a part of the arrearage remains assigned to the secretary
 0321 of social and rehabilitation services pursuant to K.S.A. 39-709
 0322 and amendments thereto and the secretary has on file with the
 0323 court a notice of assignment as provided for in K.S.A. 39-754 and
 0324 amendments thereto, payments from the payor shall be dis-
 0325 bursed as the notice of assignment directs. When the secretary of
 0326 social and rehabilitation services is no longer authorized to
 0327 receive payments for the obligee, the secretary shall provide
 0328 written notice to the payor, or the clerk of the court disbursing
 0329 the payments, to redirect all or part of the payments to the
 0330 obligee.

0331 (c) The obligee or public office shall provide written notice
 0332 to the payor and clerk of the court of any other support payments
 0333 made, including but not limited to a setoff under federal or state
 0334 law, a collection of unemployment compensation pursuant to
 0335 K.S.A. 44-718 or a direct payment from the obligor. The clerk of
 0336 the court issuing the support order or other designated person
 0337 shall record the amounts reported in such notices as if the
 0338 payment had been made through the court.

0339 (d) Any public office and clerk of court which collects, dis-
 0340 burses or receives payments pursuant to orders for withholding
 0341 shall maintain complete, accurate and clear records of all pay-

—————If support rights remain assigned to the department of social and
 rehabilitation services pursuant to the provisions of K.S.A. 39-709
 and amendments thereto, the obligee

Corrected IV

0342 ments and their disbursement. Certified copies of payment rec-
0343 ords maintained by a public office or clerk of court shall, without
0344 further proof, be admitted into evidence in any legal proceedings
0345 under this act.

0346 New Sec. 9. An obligor whose income is being withheld or
0347 who has been served with a notice of delinquency under this act
0348 shall provide written notice to the obligee, the public office, or
0349 the clerk of court of any new payor or change of address, within
0350 seven days of the change.

0351 New Sec. 10. If an obligor derives income from self-
0352 employment, receives income from some source not subject to
0353 the jurisdiction of the court or receives income by any other
0354 method which makes the application of this act impracticable,
0355 the court may require the obligor to post security or bond or give
0356 some other guarantee to secure the payment of current and
0357 overdue support.

0358 New Sec. 11. (a) Nothing in this act shall limit the authority
0359 of an obligee or public office to use any and all civil and criminal
0360 remedies in addition to withholding to enforce an order for
0361 support including but not limited to the setoff provisions of
0362 K.S.A. 75-6201 *et seq.*, and amendments thereto, and section 464
0363 of part D of title IV of the federal social security act.

0364 (b) Nothing in this act shall limit the filing of any action to
0365 modify the support order by the obligor.

0366 (c) The rights, remedies, duties and penalties created by this
0367 act are in addition to and not in substitution for any other rights,
0368 remedies, duties and penalties created by any other law.

0369 (d) Nothing in this act shall be construed as invalidating any
0370 assignment of income executed prior to January 1, 1986, despite
0371 the priority status given to withholding orders under this act.

0372 New Sec. 12. The judicial administrator and the secretary of
0373 social and rehabilitation services shall cooperate to design sug-
0374 gested legal forms and informational materials which describe
0375 procedures and remedies under this act for distribution to all
0376 parties in support actions.

0377 New Sec. 13. The department of social and rehabilitation
0378 services is designated as the state income withholding agency for

If the obligor fails to pay support as ordered, the court may collect on the bond or may forfeit all or a portion of the security or other guarantee and apply the amounts collected as payment on the support arrearage. An obligor who derives income from self-employment shall be subject to the provisions of this act as a payor of income to himself or herself.

Attch. F

0379 the purpose of keeping adequate records to document, track and
0380 monitor support payments in title IV-D cases and to initiate the
0381 income withholding process in such cases.

0382 Sec. 14. K.S.A. 23-473 is hereby amended to read as follows:
0383 23-473. If the responding court finds a duty of support it may
0384 order the obligor to furnish support or reimbursement therefor
0385 and subject the property of the obligor to the order. *Any such*
0386 *support order shall be accompanied by the conditional order for*
0387 *withholding of income required by section 2.* Support orders
0388 made pursuant to this act shall require that payments be made to
0389 the clerk of the court of the responding state. The court and
0390 prosecuting attorney of any county in which the obligor is pres-
0391 ent or has property have the same powers and duties to enforce
0392 the order as have those of the county in which it was first issued.
0393 If enforcement is impossible or cannot be completed in the
0394 county in which the order was issued, the prosecuting attorney
0395 shall send a certified copy of the order to the prosecuting attor-
0396 ney of any county in which it appears that proceedings to enforce
0397 the order would be effective. The prosecuting attorney to whom
0398 the certified copy of the order is forwarded shall proceed with
0399 enforcement and report the results of the proceedings to the
0400 court first issuing the order.

0401 Sec. 15. K.S.A. 23-475 is hereby amended to read as follows:
0402 23-475. (a) In addition to the foregoing powers, a responding
0403 court may subject the obligor to any terms and conditions proper
0404 to assure compliance with its orders and in particular to:

0405 (1) Require the obligor to furnish a cash deposit or a bond of a
0406 character and amount to assure payment of any amount due;
0407 (2) require the obligor to report personally and to make
0408 payments at specified intervals to the clerk of the court; and
0409 (3) punish under the power of contempt the obligor who
0410 violates any order of the court.

0411 (b) *A responding court shall issue orders for withholding of*
0412 *income to enforce its orders of support, as provided by section 2.*

0413 Sec. 16. K.S.A. 60-1613 is hereby amended to read as fol-
0414 lows: 60-1613. ~~The court may order the person obligated to pay~~
0415 ~~support or maintenance to make an assignment of a part of the~~

Attch. II

0416 person's periodic earnings or trust income to the person entitled
0417 to receive the support or maintenance payments. The assign-
0418 ment is (a) *The provisions of section 2 shall apply to all orders of*
0419 *support issued under K.S.A. 60-1610 and amendments thereto.*
0420 (b) *Any assignment previously ordered under this section*
0421 *remains binding on the employer, trustee or other payor of the*
0422 *earnings or income two weeks after service upon the payor of*
0423 *notice that the assignment has been made. The payor shall*
0424 *withhold from the earnings or trust income payable to the person*
0425 *obligated to support the amount specified in the assignment and*
0426 *shall transmit the payments to the district court trustee or the*
0427 *person specified in the order. The payor may withhold from the*
0428 *earnings or trust income payable to the person obliged to pay*
0429 *support an additional sum not exceeding \$2 as reimbursement*
0430 *for expenses for each payment. An employer shall not discharge*
0431 *or otherwise discipline an employee as a result of an assignment*
0432 *authorized by previously ordered under this section.*

0433 Sec. 17. K.S.A. 23-473, 23-475 and 60-1613 are hereby re-
0434 pealed.

0435 Sec. 18. This act shall take effect and be in force from and
0436 after ~~July~~ 1, 1986, and its publication in the statute book.

January

Getch. II

1-25-85

January 25, 1985

Testimony on SB 8

Marjorie J. Van Buren

Office of Judicial Administration

The Judicial Administrator is very supportive of the public policy intent of this proposed legislation, to assure that child support is being paid.

A number of major questions are involved in meeting the federal mandate for automatic wage withholding: for example, who keeps the records of payment; what agency is charged with enforcement; and a related question, before whom will the expedited process hearings be held?

The federal act on child support enforcement and the federal administrative regulation which is being considered for adoption are complex. The administrative regulation will not be adopted in final form until next month.

I understand that Kansas has four months after the end of the 1986 legislative session before any penalty for noncompliance with federal requirements will be assessed. Under the circumstances there is time to consider fully what should be done.

The recently appointed Commission on Child Support should be permitted to study the issues in some depth so that you will get the full benefit of their experience and expertise.

On balance, I encourage you not to take immediate action on this bill. If you should decide to do so, I have attached suggested minor amendments which would enhance its workability.

1/25/85
Attch. VI

0046 port is owed.

0047 (d) "Obligor" means the individual who owes a duty to make
0048 payments under an order for support.

0049 (e) "Order for support" means any order of a court or admin-
0050 istrative agency, authorized by law to issue such an order, which
0051 provides for payment of funds for the support of a child or
0052 maintenance of a spouse or ex-spouse and includes such an order
0053 which provides for modification or resumption of a previously
0054 existing order; payment of an arrearage accrued under a pre-
0055 viously existing order; a reimbursement order, including but not
0056 limited to an order established pursuant to K.S.A. 39-718a and
0057 amendments thereto; or an order established pursuant to K.S.A.
0058 23-475 and amendments thereto.

0059 (f) "Payor" means any payor of income to an obligor.

0060 (g) "Public office" means any elected or appointed official of
0061 the state, or any political subdivision or agency thereof, who is or
0062 may become responsible by law for enforcement of, or who is or
0063 may become authorized to enforce, an order for support, includ-
0064 ing but not limited to the department of social and rehabilitation
0065 services, court trustees and county or district attorneys.

0066 (h) "Title IV-D cases" means those cases required by part D
0067 of title IV of the federal social security act (42 U.S.C. 1/3 651 *et*
0068 *seq.*), as amended, to be processed by the department of social
0069 and rehabilitation services under the state's plan for support
0070 enforcement.

0071 New Sec. 2. (a) Upon entry of any new or modified order for
0072 support on or after January 1, 1986, the court shall ~~issue~~ a
0073 separate order requiring the withholding of income to enforce
0074 the order of support. Unless the order provides that it shall take
0075 effect immediately, the order shall take effect only upon: (1)
0076 Development of an arrearage in an amount equal to or greater
0077 than the amount of support payable for one month; and (2)
0078 compliance with the requirements of this section.

0079 (b) In any proceeding in which the court has issued an order
0080 for support but has not issued a conditional order requiring
0081 income withholding as provided by subsection (a), the obligee or
0082 a public office may apply for such an order by filing with the

prepare

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0084 court an affidavit stating: (1) That an arrearage exists in an
 0085 amount equal to or greater than the amount of support payable
 0086 for one month; (2) that a notice of delinquency has been served
 0087 on the obligor in accordance with subsection (f) and the date and
 0088 type of service; (3) that the obligor has not filed a motion to stay
 0089 service of the income withholding order; and (4) a percentage of
 0090 the income or support order which shall be withheld by the
 0091 payor to be applied toward liquidation of arrearages. Upon the
 0092 filing of the affidavit, the court shall issue an order requiring the
 0093 withholding of income without the requirement of a hearing,
 0094 amendment of the support order or further notice to the obligor.

0094 The court shall not be relieved of its duty under this subsec-
 0095 tion to issue an income withholding order if the obligor pays the
 0096 arrearage subsequent to receiving the notice of delinquency.

0097 For purposes of this subsection, an arrearage shall be com-
 0098 puted on the basis of support payments due and unpaid on the
 0099 date the notice of delinquency was served on the obligor.

0100 (c) An order issued under this section shall be directed to any
 0101 payor of the obligor and shall require the payor to withhold from
 0102 any income due, or to become due, to the ~~obligee~~ a specified
 0103 amount sufficient to satisfy the order of support and to defray any
 0104 arrearage, subject to the limitations set forth in section 4. The
 0105 order shall include notice of and direction to comply with the
 0106 provisions of sections 3 and 4.

obligor

0107 (d) An order issued under this section shall be served on the
 0108 payor and returned by the officer making service in the same
 0109 manner as an order of attachment.

0110 (e) An income withholding order issued under this section
 0111 shall be binding on any existing or future payor on whom a copy
 0112 of the order is served and shall require the continued withhold-
 0113 ing of income from each periodic payment of income until
 0114 further order of the court. If the obligor changes employment or
 0115 has a new source of income after an income withholding order is
 0116 issued by the court, the new employer or income source, if
 0117 known, must be served a copy of the income withholding order
 0118 without the requirement of prior notice to the obligor.

0119 (f) No sworn affidavit shall be filed with the court issuing the

Order. VI

0268 court, within 45 days, must notify the obligor and the obligee or
 0269 public office of whether or not the withholding is to occur within
 0270 45 days of the date the obligor was served the notice of delin-
 0271 quency. If the court upholds the issuance of a withholding order
 0272 in a contested case, the court must include in its order notice of
 0273 the time within which the withholding will begin and the infor-
 0274 mation given to the payor as required in sections 3 and 4.

0275 New Sec. 6. (a) At any time, an obligor, obligee or public
 0276 office may petition the court to: (1) Modify, suspend or terminate
 0277 the order for withholding because of a modification, suspension
 0278 or termination of the underlying order for support; (2) modify the
 0279 amount of income withheld to reflect payment in full of the
 0280 arrearage by income withholding or otherwise; or (3) suspend
 0281 the order for withholding because of the inability to deliver
 0282 income withheld to the obligee or children for a period of three
 0283 months due to the obligee's failure to provide a mailing address
 0284 or other means of delivery. If the withholding is suspended
 0285 because payment is undeliverable, all undeliverable payments
 0286 shall be returned to the obligor.

0287 (b) The obligor may petition the court to terminate the with-
 0288 holding of income because payments pursuant to the order for
 0289 withholding have been made for at least three years and all
 0290 arrearages have been paid. Upon receipt of a petition under this
 0291 subsection, the court may suspend the order for withholding
 0292 unless it finds good cause for denying the petition because of the
 0293 obligor's payment history or otherwise. If a withholding order is
 0294 terminated for any reason and the obligor subsequently becomes
 0295 delinquent in the payment of the order for support, the obligee
 0296 or public office may obtain another order for withholding by
 0297 complying with all requirements for notice and service pursuant
 0298 to this act.

0299 (c) The clerk of court shall ~~serve~~ on the payor a copy of any
 0300 order entered pursuant to this section that affects the duties of
 0301 the payor.

0302 New Sec. 7. If the court determines that income has been
 0303 improperly withheld, the court may order the payor, the obligee,
 0304 the clerk of court or the public office, depending on who has

cause to be served

Chen . VII

0305 possession of the income or who ultimately received it, to
 0306 promptly refund the improperly withheld amount to the obligor.
 0307 New Sec. 8. (a) If an obligee is receiving income withhold-
 0308 ing payments under this act, the obligee shall give written notice
 0309 of any change of address, within seven days after the change to
 0310 the payor, if the obligee receives the payments directly from the
 0311 payor or the public office or clerk of the district court through
 0312 which the obligee receives the payments.

0313 (b) An obligee who is or has been a recipient of aid to
 0314 dependent children assistance or whose child is or has been in
 0315 the custody of the secretary of social and rehabilitation services
 0316 pursuant to K.S.A. 1984 Supp. 38-1601 *et seq.* or K.S.A. 1984
 0317 Supp. 38-1501 *et seq.*, and amendments thereto, shall serve a
 0318 copy of any notice of delinquency filed pursuant to this act on the
 0319 secretary of social and rehabilitation services. If current support
 0320 or all or a part of the arrearage remains assigned to the secretary
 0321 of social and rehabilitation services pursuant to K.S.A. 39-709
 0322 and amendments thereto and the secretary has on file with the
 0323 court a notice of assignment as provided for in K.S.A. 39-754 and
 0324 amendments thereto, payments from the payor shall be dis-
 0325 bursed as the notice of assignment directs. When the secretary of
 0326 social and rehabilitation services is no longer authorized to
 0327 receive payments for the obligee, the secretary shall provide
 0328 written notice to the payor, ~~or~~ or the clerk of the court disbursing
 0329 the payments, to redirect all or part of the payments to the
 0330 obligee.

court trustee,

0331 (c) The obligee or public office shall provide written notice
 0332 to the payor and clerk of the court of any other support payments
 0333 made, including but not limited to a setoff under federal or state
 0334 law, a collection of unemployment compensation pursuant to
 0335 K.S.A. 44-718 or a direct payment from the obligor. The clerk of
 0336 the court issuing the support order or other designated person
 0337 shall record the amounts reported in such notices as if the
 0338 payment had been made through the court.

or

0339 (d) Any public office ~~and~~ and clerk of court which collects, dis-
 0340 burses or receives payments pursuant to orders for withholding
 0341 shall maintain complete, accurate and clear records of all pay-

Order VI

0379 the purpose of keeping adequate records to document, track and
0380 monitor support payments in title IV-D cases and to initiate the
0381 income withholding process in such cases.

0382 Sec. 14. K.S.A. 23-473 is hereby amended to read as follows:
0383 23-473. If the responding court finds a duty of support it may
0384 order the obligor to furnish support or reimbursement therefor
0385 and subject the property of the obligor to the order. *Any such*
0386 *support order shall be accompanied by the conditional order for*
0387 *withholding of income required by section 2.* Support orders
0388 made pursuant to this act shall require that payments be made to
0389 the clerk of the court of the responding state. The court and
0390 prosecuting attorney of any county in which the obligor is pres-
0391 ent or has property have the same powers and duties to enforce
0392 the order as have those of the county in which it was first issued.
0393 If enforcement is impossible or cannot be completed in the
0394 county in which the order was issued, the prosecuting attorney
0395 shall send a certified copy of the order to the prosecuting attor-
0396 ney of any county in which it appears that proceedings to enforce
0397 the order would be effective. The prosecuting attorney to whom
0398 the certified copy of the order is forwarded shall proceed with
0399 enforcement and report the results of the proceedings to the
0400 court first issuing the order.

or a public office

0401 Sec. 15. K.S.A. 23-475 is hereby amended to read as follows:
0402 23-475. (a) In addition to the foregoing powers, a responding
0403 court may subject the obligor to any terms and conditions proper
0404 to assure compliance with its orders and in particular to:

- 0405 (1) Require the obligor to furnish a cash deposit or a bond of a
- 0406 character and amount to assure payment of any amount due;
- 0407 (2) require the obligor to report personally and to make
- 0408 payments at specified intervals to the clerk of the court; and
- 0409 (3) punish under the power of contempt the obligor who
- 0410 violates any order of the court.

or a public office

0411 (b) *A responding court shall issue orders for withholding of*
0412 *income to enforce its orders of support, as provided by section 2.*

0413 Sec. 16. K.S.A. 60-1613 is hereby amended to read as fol-
0414 lows: 60-1613. ~~The court may order the person obligated to pay~~
0415 ~~support or maintenance to make an assignment of a part of the~~

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60-1607. Interlocutory orders. (a) Per-

missible orders. After a petition for divorce, annulment or separate maintenance has been filed, the judge assigned to hear the action may, without requiring bond, make and enforce by attachment, orders which:

(1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;

(2) restrain the parties from molesting or interfering with the privacy or rights of each other;

(3) provide for the custody of the minor children and the support, if necessary, of either party and of the minor children during the pendency of the action;

(4) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case; or

(5) require an investigation by court service officers into any issue arising in the action.

(b) *Ex parte orders.* Orders authorized by subsections (a)(1), (2) and (3) may be entered after *ex parte* hearing upon compliance with rules of the supreme court, but no *ex parte* order shall have the effect of changing the custody of a minor child from the parent who has had the sole *de facto* custody of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued *ex parte*, the court shall hear a motion to vacate or modify the order within 10 days of the date that a party requests a hearing whether to vacate or modify the order. In the absence, disability, or disqualification of the judge assigned to hear the action, any other judge of the district court may make any order authorized by this section, including vacation or modification or any order issued by the judge assigned to hear the action.

(c) *Support orders.* (1) An order of support obtained pursuant to this section may be enforced by an order of garnishment as provided in this section.

(2) No order of garnishment shall be issued under this section unless: (A) Ten or more days have elapsed since the order of support was served upon the party required to pay the support, and (B) the order of support contained a notice that the order of support may be enforced by garnishment

and that the party has a right to request an opportunity for a hearing to contest the issuance of an order of garnishment, if the hearing is requested by motion filed within five days after service of the order of support upon the party. If a hearing is requested, the court shall hold the hearing within five days after the motion requesting the hearing is filed with the court or at a later date agreed to by the parties.

(3) No bond shall be required for the issuance of an order of garnishment pursuant to this section. Except as provided in this section, garnishments authorized by this section shall be subject to the procedures and limitations applicable to other orders of garnishment authorized by law.

(4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of the district court stating that:

(A) The order of support contained the notice required by this subsection;

(B) ten or more days have elapsed since the order of support was served upon the party required to pay the support; and

(C) either no hearing was requested on the issuance of an order of garnishment within the five days after service of the order of support upon the party required to pay the same or a hearing was requested and held and the court did not prohibit the issuance of an order of garnishment.

History: L. 1963, ch. 303, 60-1607; L. 1976, ch. 251, § 25; L. 1977, ch. 204, § 2; L. 1979, ch. 183, § 3; L. 1982, ch. 152, § 7; Jan. 1, 1983.

Source or prior law:

G.S. 1868, ch. 80, § 644; L. 1889, ch. 107, § 4; L. 1905, ch. 331, § 1; L. 1909, ch. 182, § 669; L. 1919, ch. 236, § 1; R.S. 1923, 60-1507.

Revisor's Note:

Enforcement of orders, see *Kansas Benchbook*, Kansas Judicial Council, pp. 160, 183.

Attorney fees, see *Kansas Benchbook*, Kansas Judicial Council, p. 184.

Orders *ex parte*, compliance with court rule, see *Kansas Benchbook*, Kansas Judicial Council, pp. 183-184.

Cross References to Related Sections:

Violation of restraining order as constituting criminal trespass, see 21-3721.

Findings by court, see 60-252.

Application for support order, see Sup. Ct. Rule No. 139 (60-2702a).

Research and Practice Aids:

Divorce⊃134; Husband and Wife⊃205; Marriage⊃253.

Attach. II