

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

12:30 ~~xxx~~/p.m. on February 26, 1985 in room 519-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Feleciano, Gaines,
Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Linda Elrod, Governor's Commission on Child Support
Dr. Robert Harder, Social and Rehabilitation Services
Jim Robertson, Chief Counsel, Social and Rehabilitation Services
Judge James Buchele, Shawnee County District Court
Jim Clark, Kansas County and District Attorneys Association
Woody Houseman, Divorced Dads of Topeka
Larry Rute, Kansas Commission on Child Support Enforcement

Senate Bill 51 - Enforcement of child support and spousal maintenance.

Linda Elrod, Governor's Commission on Child Support, testified the commission recommends the passage of the bill as amended. She stated this is the right start to comply with federal mandates as framework and then can start refining the law. There are three policy issues; naming of a withholding agency, enforcement of withholding functions, and expedited process. A copy of her testimony is attached (See Attachment I).

Dr. Robert Harder, Social and Rehabilitation Services, testified in support of the bill. He stated the department endorses the hard work done by the commission.

Jim Robertson, Chief Counsel, Social and Rehabilitation Services, stated he was appearing on behalf of the recommendations made by the commission. He explained the federal government has mandated that states enact a number of specific remedies and procedures to improve their child support enforcement programs as a condition of continued state eligibility to participate in AFDC. A copy of his testimony is attached (See Attachment II). A ballooned copy of the bill indicating the amendments to satisfy the federal mandates is attached (See Attachment III). Committee discussion with Mr. Robertson followed.

Judge James Buchele, Shawnee County District Court, was present to respond to questions by the committee. A committee member inquired what impact this bill would have on the courts? Judge Buchele replied with the expansion of the jurisdiction of the magistrates powers of the district court trustees, they feel Shawnee County can handle it. Most of these cases are handled by the magistrates.

Jim Clark, Kansas County and District Attorneys Association, stated he was appearing to discuss the philosophical issues. The nonADC child support is no longer a welfare issue; it is a child support enforcement issue. What agency is to enforce it? The association's position has been the SRS office for assistance on issues of incentive payments. If you decide SRS is the agency to handle this, it is still up to the prosecuting attorneys to do the paternity cases. The county attorney gets no assistance, he feels this ignores the whole incentive cases. Under incentive, prosecuting attorneys would be required to do the job under scheme of 4-D program. The chairman responded, we could offer incentives for what the county attorneys do.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 519-S, Statehouse, at 12:30 ~~xm~~/p.m. on February 26, 1985.

Senate Bill 51 continued

During committee discussion, Judge Buchele responded, it is his understanding the district and county attorneys would not be required to handle any civil enforcement.

Jim Robertson stated there are still some limited cases. The numbers would be limited. They are trying to remove prosecuting attorneys from that role.

Judge Buchele stated many county attorneys are doing a fine job. In some counties, they won't file them, and it is a hit and miss proposition.

Woody Houseman, Divorced Dads of Topeka, stated the bills supporting stricter enforcement of child support payments do not guarantee anything to the children for which this money has been designated. This legislation places no responsibility on the custodial parent to use the child support payment for proper child care for which the support has been ordered. A copy of his statement is attached (See Attachment IV). A committee member stated, it is provided in the bill that right of visitation be connected with obligation to pay. Mr. Houseman replied, the court is taking on responsibility of enforcement of child support payments and not visitation orders. Judge Buchele added most of what Mr. Houseman said is true. The commission felt since visitation is not part of the federal mandate, they will deal with it later. Committee discussion continued.

Jim Clark stated the prosecutor's office in the state of Washington handles the issue of visitation as a policy matter of the office. The program tries to treat the whole problem.

Larry Rute, Kansas Commission on Child Support Enforcement, stated the commission is very interested in the visitation issue. They have tried initially with Senate Bill 51 as written. For the future meetings they will be dealing with visitation. The issue is important in two ways; the custodial parent is asking for child support; the court expedite the method. The denial of visitation when child support is being paid; need to expedite that process.

The meeting adjourned.

A copy of a position statement on Child Support Enforcement from the Children's Coalition is attached (See Attachment V).

Copy of the guest list is attached (See Attachment VI).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-26-85
12:30 pm

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Doug Brehm	Topeka	Intern-Atty General
Mary Rice	Lawrence	" "
Denise Kuten	Topka Topka	OJA
North (Lori) Class	Topeka	United Way
James P. Bychele	Topeka	Ks Comm on Child Support
W. Brady Houseman	Topeka	Divorced Dad of Topka
Gregg Tolbrink	"	"
Gene Robertson	Topeka	SRS
SARAH RUT	Topeka	Ks Comm. on C.S. Enforcement
Shirley Elrod	Topeka	gr Commission on Child Support
Jim Clark	Topeka	KC DAA
Don Miller	Topeka	Assoc. Credit Bureau
Marjorie Van Buren	Topeka	OJA
Lynn Barclay	"	KCSL
WILLIAM C. PREIFER	Top.	Dist. Court Trustee
Patricia Bombardieri	Topeka	Intern Joan Magmond
Jerry Sloan	"	OJA
Mike Slotky	Lawrence	Intern San Patrick
Celia Whitfield	Topeka	SRS
Robert C. Hurd	Topeka	SRS
Charles Stevenson	Topeka	SRS
Hennis Zacharias	Lawrence	City of Lawrence
Ryan S. Evans	"	" " "

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TESTIMONY ON SENATE BILL 51 BY LINDA ELROD, VICE CHAIRMAN OF GOVERNOR'S COMMISSION ON CHILD SUPPORT

February 26, 1985

The Governor's Commission on Child Support recommends passage of Senate Bill 51 as amended. The Commission has tried to reconcile the somewhat incompatible goals of ensuring that Kansas is in compliance with the federal Child Support Amendments of 1984 with as little intrusion on the rights of individual citizens as possible and at the least possible cost to the taxpayers.

Highlights and cornerstones of S.B. 51:

1. Naming of a Withholding Agency Sec. 13

By October 1, 1985, all states are required to have in place the machinery for wage withholding automatically upon an arrearage of 30 days in support payments. The Commission supports naming the Department of Social and Rehabilitation Services as the Title IV agency and the withholding agency.

Reasons: SRS is the existing Title IV agency in Kansas. It currently has the machinery in place to handle ADC cases and is preparing to handle nonADC cases. The Commission feels that at the present time SRS is in the best position at the least cost to be designated as the withholding agency.

2. Enforcement of Withholding Functions Sec. 12 and 40

The Governor's Commission supports the use of existing court trustees to enforce support orders. The Commission hopes to see more court trustee offices established, especially in the single county judicial districts.

Reasons: The existing court trustees in Johnson and Shawnee counties are operating efficiently and effectively in the enforcement of child support orders. The key in section 40 is to require all support payments to be made through the clerk of the district court or the court trustee. With additional computer hardware, the court trustees can monitor and track all support payments just as they are currently doing for those now ordered to be paid through their offices.

3. Expedited Process Sec. 40(d)

The federal law requires states to provide an expedited process for the establishment and enforcement of support orders. The Commission supports authorizing the Kansas Supreme Court to establish by rule an expedited judicial process within the existing system.

Reasons: Support orders are judgments of the court. The Commission feels that the Supreme Court is in the best position to provide for an expedited process that can be adapted to the varying judicial districts. The bill increases the powers of court trustees and district magistrates to help with this function.

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State Department of Social and Rehabilitation Services

Testimony Regarding S.B. 51

The comprehensive child support bill under consideration is a composite of nearly 20 different support establishment and enforcement issues, most of which must be enacted by Kansas to comply with very specific mandates found in the Federal Child Support Enforcement Amendments of 1984 (P.L. 98-378; Title IV-D, social security act § 466) and proposed federal regulations (45 CFR 301-305 and 307). Essentially, the federal government has mandated that states enact a number of specific remedies and procedures to improve their child support enforcement programs as a condition of continued state eligibility to participate in AFDC. 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 the 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. 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 support orders is still at epidemic proportions.

To help resolve these problems, federal law requires each state to enact a series of support-related laws (as well as make numerous program changes) which have proven effective in many jurisdictions around the country. Briefly, the laws which must be amended or enacted in Kansas include:

- (1) Income withholding for use in both intrastate and interstate cases when a 30 day arrearage develops;
- (2) Expedited judicial or administrative processes to speed up and make less costly the establishment and enforcement of support orders;
- (3) State income tax refund offset for non-ADC and interstate support enforcement;
- (4) Liens against personal property when support arrearages accrue;
- (5) Eighteen year paternity statute of limitations;
- (6) Imposition of security or bond to secure the payment of support;
- (7) Provision of arrearage information to credit agencies;
- (8) Medical and Foster Care assignment of support rights when public assistance is provided; and
- (9) Enforcement of both child and spousal support.

S.B. 51 was drafted to satisfy each of the enumerated federal mandates with the exception of the expedited judicial or administrative process. Since expedited procedures have the greatest potential for disagreement, the Kansas Interim Committee on Judiciary and SRS recommended that this issue be studied by the federally mandated and recently established Governor's Commission on Child Support with the hope that this Commission could recommend legislation appropriate for Kansas. The proposed amendments to this bill include a

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mechanism which would allow for the establishment of an expedited judicial process which is recommended by the commission. Therefore, if S.B. 51 is passed as amended, all federal mandates could be satisfied.

It is the recommendation of SRS and the Kansas Commission on Child Support that S.B. 51, as amended, be passed rather than S.B.'s 4-8 since the former bill incorporates all of the provisions of the latter bills in addition to satisfying all other federal mandates. It is essential that S.B. 51 be enacted from the SRS prospective since it includes foster care and medical assignment provisions which, by federal mandate, must be made operational this year.

It is the position of SRS that the enactment of the following sections should not only enhance the support collection practices of public agencies, but also provide private legal practitioners and Kansas citizens with important new collection tools.

- I New sections 1-13 satisfy the federal mandate that Kansas enact income withholding and legislation to require the posting of security or bond to guarantee support payments. A mechanism is established which would require the courts to issue an order directing the payor of wages or other 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 or spousal support. Amounts withheld would be used to satisfy the current 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 - ADC and Non-ADC).

If a 30 day arrearage develops, SRS or its contractors must initiate the withholding process in all IV-D cases. The obligee 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 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.

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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%). The payor may deduct a \$2 cost recovery fee for each withholding and 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 any time by the court on the request of the obligee, obligor, or some responsible 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 action 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 to use and the right to implement the procedure once a 30-day arrearage develops is automatic. This portion of the bill is similar to laws already in effect in Illinois, Colorado, Missouri, Washington, Wisconsin and several other states.

- II New sections 14-26 are based on the Model Interstate Income Withholding Act which was drafted by the American Bar Association to satisfy the federal mandate that States use their income withholding provisions for the enforcement of other states' support orders and that appropriate orders are referred to other states for enforcement by use of income withholding. These sections pertain only to Title IV-D cases (ADC and Non-ADC). However, amendments to the Uniform Reciprocal Enforcement of Support Act (URESA) are proposed by the bill which could be used by anyone seeking to enforce a support order by income withholding.

Federal law prescribes the specific tasks which must be performed by the Kansas IV-D agency (SRS) in referring all IV-D cases with a 30 day arrearage or more to the state where the obligor receives income. Rather than County or District Attorneys, SRS has the sole responsibility in IV-D cases for compiling the referral and evidence necessary to register a Kansas order in a foreign jurisdiction. Similarly, SRS must process all incoming IV-D case referrals from other states and, if necessary, represent the out-of-state obligee in District Court if the withholding is contested.

Although interstate enforcement by withholding will result in an extreme increase in the numbers of cases being processed by SRS, this law is desperately needed to enforce support in numerous situations where the obligor resides in a different jurisdiction than his or her children. Existing laws are woefully inadequate for support enforcement across state boundaries.

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III New section 27 concerns the referral of support arrearage information to Credit Bureaus as required by federal law. This section requires SRS to furnish debt information in cases with arrearages which exceed \$1,000 to consumer reporting agencies upon their request. At the discretion of the secretary of SRS the names of persons owing less than \$1,000 in past due support may be so referred.

In any case, prior to referring arrearage information to credit bureaus, SRS must give prior notice to the obligor and provide information about how the obligor may contest the arrearage figures.

IV New section 28 would satisfy the federal mandate that Kansas establish a law which would subject certain personal property of a support debtor to a lien. If the obligor accumulates a 30 day or greater support arrearage, the obligee may establish a lien upon any aircraft, vessel, or vehicle owned by the obligor.

To establish such a lien, the obligee must notify the obligor and the appropriate public office in accordance with existing statutory requirements. The most frequently used lien would be placed on vehicles by filing a notice of lien and an arrearage affidavit with the division of vehicles of the department of revenue.

V Section 29 would amend the existing Kansas Uniform Reciprocal Enforcement of Support Act (URESA) by making it clear that Kansas courts can enforce arrearages based on another state's support order. This section is needed to conform Kansas law with existing URESA legislation in other states so that Kansas may perform the same enforcement services for other states as are currently being provided to Kansas citizens. In addition, federal mandates require the enforcement of current support and arrearages based on another state's order. Without this amendment, we risk being found out of compliance by the federal government.

VI Sections 30 and 31 also amend the existing Kansas URESA by including federally mandated income withholding provisions as a method of enforcing Kansas support orders which have been established when the obligor lives in Kansas and the obligee resides in another state.

VII Section 32 extends a one year statute of limitations for bringing paternity actions in the name of the mother of a child to eighteen years. This amendment is required by federal mandate to comply with U.S. Supreme Court decisions. Since the advancement of sophisticated new blood testing techniques, parentage can be determined with great accuracy despite the passage of time.

VIII Sections 33 and 34 propose amendments to the child in need of care and the juvenile offender statutes to properly facilitate the federal requirement that the Kansas IV-D agency take an assignment to support rights and pursue support establishment and enforcement activity in foster care cases in the same manner as in ADC cases. The proposed amendments to both 38-1512 and 38-1616 would make it clear that SRS could act to establish, collect, or enforce assigned support rights to reimburse the state and federal governments for expenses in providing foster care.

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Both sections seek to delete portions of existing law which require SRS to make annual written demand for payment and which limit the period of time SRS has to file suit for recovery of foster care expenses. Federal law requires the assignment of support rights to SRS. Existing Kansas statutes and case law prescribe various statutes of limitations, dormancy periods and notice requirements concerning support rights. If SRS is given a true assignment of support rights, the guidelines for the enforcement of those rights should be the same as in any other support case. In addition, the Kansas IV-D agency can collect support in all types of cases (ADC, medical, non-ADC, and foster care) more efficiently and cost effectively if the rules for collection are all the same in the various types of cases.

- IX Section 35 satisfies federal mandates that SRS take an assignment of support rights in foster care and medical assistance cases so that the state and federal governments may be reimbursed for expenses in those areas. In addition, an assignment of the support obligee's rights is created when a parent with legal custody of a child surrenders physical custody of the child to a relative who then receives ADC. Such an assignment is necessary to insure that support payments follow the child. 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 the state provides ADC assistance for the child, the state would be assigned the legal custodians support rights concerning that child.

Subsection (g) establishes that if SRS provides medical assistance, an automatic assignment of any medical support rights and of the right to payment for medical care from a third party is conveyed to the agency in behalf of the state. This subsection was mandated by federal law to reduce the expense of providing medical assistance in cases where private insurance provides coverage.

- X Section 36 was drafted to further comply with the federal mandate that SRS take an assignment and pursue collection in foster care and medical assistance cases in the same manner as ADC cases. K.S.A. 39-718a is amended to establish a parental liability for repayment of expenses to SRS in cases where the agency provides ADC, medical, or foster care to a dependent child whose parent or parents are absent from the child's home.

A second change to the statute is suggested to make it clear that SRS may sue a parent for reimbursement unless the court has ruled on the issue of support and the obligor is in full compliance with the court's order.

- XI Section 37 is added to provide a mechanism for recording and providing public notice of the SRS assignment in foster care and medical assistance cases. This is accomplished by amending an existing statute which concerns the filing of notices of assignment in ADC cases.

A phrase is added to subsection (b) and (d) which makes it clear that a copy of the SRS notice of assignment need not be sent the obligor since

the notice is merely to the clerk of court and concerns where payments of support should be forwarded by the court once paid. Since the statute clearly states that the notice can be filed without an order or hearing and since the notice has absolutely no effect on the court order, the amount of support to be paid, when it should be paid and where it should be paid, the obligor need not be notified. This position has been upheld in the appellate courts in the case of Whisler v. Whisler.

Proposed subsection (g) would correct an existing problem the clerks of court have in accepting statements from SRS concerning amounts of support paid directly to SRS pursuant to state and federal debt setoff and from unemployment compensation. Without statutory authority the clerks feel they cannot adjust an obligor's payment record unless court receives the payment directly. Since various statutes require payments of collected support to SRS rather than the court, this amendment is necessary to protect the integrity of the court's payment ledger and to ensure that the obligor is given full credit for all payments and collections.

- XII Section 38 would amend an existing statute to give SRS the right to establish a medical support order based on the assignment of medical support rights and to establish a support order in foster care cases where SRS receives an assignment to support rights. This section makes complete the federal mandate that SRS take an assignment in foster care and medical assistance cases and to enforce those assigned rights.

In the last two sentences of subsection (a), this amendment satisfies the federal mandate that the statute of limitations in paternity cases brought by the IV-D agency in the name of the child be extended to 18 years.

- XIII Section 39 is proposed to satisfy the federal mandate that the IV-D agency enforce spousal support (alimony) as well as child support in cases where both types of support are found in the same order.

K.S.A. 44-718 should simply be amended by striking the word "child" before the word "support." The amended statute would then allow for the collection of "support" (which includes both child and spousal support) from unemployment compensation. In all other cases, SRS does enforce alimony as well as support obligations if both can be enforced and if both are a part of the same support order.

- XIV Section 40 proposes one minor amendment to K.S.A. 60-1610 to make it perfectly clear that the court may order support "regardless of the type of custodial arrangement ordered by the court." This amendment is suggested to encourage the courts to consider the support issue even in joint custody cases. If one parent's ability to pay is much greater than the other's, the courts should consider the establishment of a support order even though both parents share child custody. The prime considerations by the court in establishing a support order should be the ability of both parents to pay and the needs of the child.

Employees of the Kansas IV-D agency have observed numerous joint custody cases where one parent ultimately winds up with the child 100% of the time and they are forced to rely on ADC because there is no court order. In such cases, SRS is precluded from obtaining reimbursement of ADC expenses for the state because the court has not issued a support order.

- XV Section 41 seeks to amend K.S.A. 60-1613 which is the state's current income assignment law. Because the federal government has mandated the enactment of numerous very specific features within income withholding (assignment) legislation, this current statute will not suffice. The proposed amendment refers to the income withholding provisions of this bill concerning the establishment of future withholding orders. As its main purpose, the amendment states that assignments established under this statute remain effective and are not negated by the new income withholding provisions.
- XVI Section 42 is proposed to ensure that support assigned to other states can be enforced by garnishment if a Kansas URESA order is established and the obligor does not pay as ordered. The current K.S.A. 60-2310 (which concerns garnishment) does not allow garnishment if a debt is assigned. However, current law makes an exception in cases where Kansas SRS is the assignee. The amendment would expand the exception to allow garnishment to enforce support debts if support rights have been assigned to SRS or any other state IV-D agency.

Other states routinely garnish pursuant to their state law to enforce URESA orders established for the benefit of Kansas citizens. Consequently, Kansas should ensure our ability to reciprocate by clarifying existing law.

- XVII Section 43 was drafted to comply with the federal mandate that states enact income tax offset provisions which could be used to enforce ADC and non-ADC support debts as well as IV-D support debts owed other states. Since Kansas already has a statute for use in collecting ADC assigned support, the K.S.A. 75-6202 definitions of "debtor" and "debt" need only be changed to include non-ADC debts and title IV-D debts (ADC and non-ADC) owed other states.

As a result of this amendment, SRS will become responsible for verifying tens of thousands of referrals from other states and from Kansas citizens who apply for non-ADC support services. Court orders must be verified, arrearages tabulated, computer tapes made and collections must be properly distributed. In addition, SRS would be responsible for representing the claimant in any appeal hearing. Consequently, the enactment of this federally mandated law is expected to generate a huge new workload for SRS personnel.

To make the procedures in this bill more viable and to assure compliance with federal mandates, numerous amendments are suggested by SRS and the Kansas Commission on Child Support. However, the more significant (non-"house-keeping") amendments are:

Attach. II

- (1) after line 26 - the addition of a purpose statement.
- (2) line 63 - the addition of self-employed obligors to the definition of "payor."
- (3) line 129 - the addition of a requirement that an obligor receive actual notice of the withholding.
- (4) lines 131, 160, 246, and 260 - change from 10 days to 7 days and from 15 days to 14 days so the likelihood that various time periods will not end on a weekend is diminished.
- (5) line 155 - the addition of a new section (a) to require a payor to provide obligor employment information to the obligee so that a withholding order can be properly established.
- (6) line 171 - the addition of directions to the payor 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 this amendment, confusion could result in overwithholding.
- (7) line 222 - change is recommended from a criminal misdemeanor penalty for payor non-compliance to a civil penalty of up to \$5,000 and such other equitable relief as the court deems proper.
- (8) line 230 - rewording is suggested to make it clear that a priority is given to the collection of current support by withholding over claims for arrearages only.
- (9) line 285 - rather than returning undeliverable payments to the obligor, it is suggested that the courts hold such payments in trust until they can be delivered.
- (10) line 310 - provision is made for crediting improperly withheld amounts to the next required support payment if the obligee has received the improperly held amount.
- (11) line 317 - clarification is needed to require notification of SRS only when support rights remain assigned to the agency and when the assigned rights are not dormant or void.
- (12) line 360 - an amendment is needed to ensure that the proceeds of forfeited bonds or other security may be paid as child support.
- (13) line 379 - an extremely important amendment is suggested which would allow for the establishment of a system between SRS and the judicial administrator (clerks of court and court trustees) with the capability of tracking and monitoring support payments to detect when a 30 day arrearage develops. The amendment emphasizes that when court trustees are established, their services will be used by SRS unless good cause is shown.

- (14) line 381 - makes it clear that although SRS is the withholding agency, part or all of the withholding function may be contracted out to other entities capable of providing appropriate services.
- (15) line 423 - conforms the definition of "payor" in interstate income withholding actions to the definition used in intrastate actions. ("Payor" includes self-employed obligors.)
- (16) line 467 - adds additional information to be submitted to Kansas by another state so that a withholding order may be properly established.
- (17) line 681 - provides a reference to an existing Kansas statute (K.S.A. 50-710) as a method of informing an obligor of ways to contest the accuracy of arrearage information referred to a credit bureau. Since Kansas law already provides for such a process, there is no need to establish an administrative hearing process prior to referral of arrearage information. Therefore, subsection (e) should be deleted.
- (18) line 713 - as the section for establishing a lien on a support debtor's vehicle is currently drafted, good faith purchasers could often be the persons negatively effected by the lien. Therefore, an amendment is suggested which authorizes the division of vehicles to demand the surrender of a title certificate or for obtaining a court order requiring the surrender of the title certificate so the lien can be recorded.
- (19) line 746 - an amendment to the Uniform Reciprocal Enforcement of Support Act (URESA) is suggested by the Kansas Commission on Child Support which would remove many of the current duties to process such actions from county and district attorneys. If a Court Trustee is established in the jurisdiction, they would process all incoming and outgoing civil URESA petitions. County and district attorneys would remain responsible for handling all criminal URESA matters (which are very few) and for processing all non-IV-D cases. SRS attorneys or contract attorneys would be responsible for processing all civil IV-D URESA cases in jurisdictions where no court trustee has been established.
- (20) line 829 - a new section is proposed which would amend the K.S.A. 38-1101 paternity establishment statute in terms of the responsibility for establishing paternity. Where available, a court trustee would represent the petitioner in a paternity case. The county or district attorney would provide such representation in areas with no court trustee if the case is non-IV-D, SRS attorneys, or contractors would provide the service in IV-D cases if there is no court trustee.
- (21) line 1040 - an amendment is needed to make it clear that when an obligee's support rights are assigned to SRS because the obligee has surrendered physical custody of a child to a relative who recieves ADC, that the only rights assigned are those belonging to the child receiving ADC.

Attach II

- (22) lines 1232, 1242 and 1312 - an amendment is needed to make it clear that the only assigned support right SRS receives in a foster care case are those rights belonging to the child in foster care.
- (23) lines 1508 and 1648 - propose amendments which are absolutely necessary to establish a workable arrearage monitoring system. The amendments would require all support payments to be made through the clerk of court or court trustee.
- (24) line 1676 - amendment is suggested by the Kansas Commission on Child Support which would require in Kansas Supreme Court to establish an expedited judicial process for the establishment and enforcement of support orders.

Several new sections are suggested which would compliment the establishment of an expedited judicial process by the Supreme Court:

New sections 46 through 50 are suggested by SRS and the Kansas Commission on Child Support to enhance the powers of court trustees so that support matters can be more cost effectively processed in accordance with federal law.

New section 46 would delete the restriction that the only time a court trustee can collect maintenance is when it has been assigned to SRS. It also adds to the definition of "obligee" by including any entity to whom a duty of support is owed.

New section 47 would establish the administrative judge in each judicial district as the person with control over the court trustee.

New section 48 makes it clear that a court trustee may pursue all civil remedies available to an obligee in establishing and enforcing support including URESA and paternity actions. The section also allows the court trustee to file motions for an increase or decrease of support on behalf of the child and conveys additional powers which will assist the trustee in expeditiously enforcing support in more routine uncontested cases. The powers are geared towards resolving as many cases as possible without lengthy court involvement.

New sections 49 and 50 are proposed to make it clear that the administrative judge (rather than all district court judges) controls the office of the court trustee.

New section 51 ties in with the Supreme Court's ability to establish an expedited judicial process by Supreme Court Rule. This section would expand the powers of district magistrate judges so that they may establish, enforce or modify support obligations and thus relieve district court judges of this responsibility.

New section 52 is proposed to allow SRS to disclose information concerning the whereabouts of an ADC recipient in visitation or custody proceedings.

Attach. II

Please Note: If the committee has questions concerning S.B. 51 or the proposed amendments please contact:

Dr. Robert C. Harder	296-3271
Jim Robertson	296-3410
Professor Linda Elrod	295-6660
Larry Rute	233-2068
Honorable James Buchele	295-4323
Honorable Herbert Walton	913-782-5000 (Olathe)

Must Alimony/Maintenance be enforced pursuant to Title IV-D of the Social Security Act?

A new 45 CFR 302.70 contains the state plan requirement for use of mandatory practices to improve program effectiveness. The definition of "overdue support" from the new section 466(e) of the Social Security Act that is applicable to all mandatory practices is added to the general definitions section found in 45 CFR 301.1. "Overdue support means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under state law, for the support and maintenance of a minor child which is owed to or on behalf of the child or for the absent parent's spouse (or former spouse) with whom the child is living, if and to the extent that the spousal support obligation has been established and the child support obligation is being enforced under the State's IV-D plan."

Effective October 1, 1985, sections 454(4)(B) and 454(6) of the Social Security Act require states to collect spousal support if a support order has been established, the child and the spouse are living in the same household, and the support obligation established with respect to the child is being enforced under the state's IV-D plan. This amendment clarifies that spousal support must be collected only where child support is being collected along with spousal support. Prior to this amendment, collection of spousal support was optional for states.

In summary, federal law requires the use of the new mandatory support enforcement laws for the collection of spousal support in certain circumstances. Therefore, the definition of "support" must include spousal support and income withholding, and debt setoff laws among others must allow for the collection of past due spousal support.

2/26/85
Attch. III

Kansas Legislation Required for Full Compliance with the Child Support Enforcement Amendments of 1984

Amended S.B. 51 Sections Which Would Satisfy Federal Mandates

- | | |
|---|--|
| 1. Income withholding when a 30-day arrearage develops. | 1. New Sections 1-14 and Sections 40 and 41. |
| 2. Enforcement of interstate support orders by use of income withholding, setoff, and other laws. | 2. New Sections 14-26, Sections 29-31, 42, and 43. |
| 3. Offset of state income tax refunds to enforce all ADC and non-ADC support debts. | 3. Section 43. |
| 4. Referral of arrearage information to credit agencies. | 4. New Section 27. |
| 5. Liens against personal property | 5. New Section 28 |
| 6. 18-year paternity statute of limitations. | 6. Sections 32 and 38. |
| 7. Imposition of security or bond to ensure payment of support. | 7. New Section 10. |
| 8. Assignment of rights to support in foster care cases by October 1, 1984. | 8. Sections 33, 34, 35(h), 36, 37, and 38. |
| 9. Assignment of rights to medical support and right to medical support from third party. (mandated: Deficit Reduction Act of 1984 by Oct. 1, 1984) | 9. Sections 35(g), 36, 37, and 138. |
| 10. Enforcement of both, child and spousal support (when both are contained in a single order). | 10. Sections 1-14, 15-26, 39, and 43. |
| 11. Expedited Judicial or Administrative Process. | 11. Section 40(d), and new Sections 46-51. |

Attch. III

Attch. III
2/26/85

SENATE BILL No. 51

By Senators Ehrlich, Allen, Arasmith, Burke, Gordon,
Harder, Hoferer, D. Kerr, F. Kerr, Langworthy, Montgomery,
Morris, Salisbury, Talkington, Thiessen, Vidricksen,
Walker, Werts and Winter

1-23

0020 AN ACT concerning support of certain persons; relating to
0021 orders for child support or maintenance; providing for en-
0022 forcement thereof; amending K.S.A. 23-452, 23-473, 23-475,
0023 38-1104, 39-718a, 39-755, 60-1610, 60-1613, 60-2310 and 75-
0024 6202 and K.S.A. 1984 Supp. 38-1512, 38-1616, 39-709, 39-754
0025 and 44-718 and repealing the existing sections.

20-302b, 23-493, 23-496, 23-497, 23-499, 60-1612, 38-1103

0026 *Be it enacted by the Legislature of the State of Kansas:*

0027 New Section 1. As used in sections 1 through 13:

0028 (a) "Arrearage" means the total amount of unpaid support
0029 which is due and unpaid under an order of support, based upon
0030 the due date specified in the order for support or, if no specific
0031 date is stated in the order, the last day of the month in which the
0032 payment is to be made.

0033 (b) "Income" means any form of periodic payment to an
0034 individual, regardless of source, including but not limited to
0035 wages, salary, trust, royalty, commission, bonus, compensation as
0036 an independent contractor, workers' compensation, ~~disability,~~
0037 annuity and retirement benefits and any other payments made
0038 by any person, private entity or federal, state or local government
0039 or any agency or instrumentality thereof. "Income" does not
0040 include: (1) Any amounts required by law to be withheld, other
0041 than creditor claims, including but not limited to federal and
0042 state taxes, social security tax and other retirement and disability
0043 contributions; (2) any amounts exempted by federal law; (3)
0044 public assistance payments; and (4) unemployment insurance
0045 benefits except to the extent otherwise provided by law. Any
0046 other state or local laws which limit or exempt income or the

The purpose of sections 1 through 26 of this Act is to enhance the enforcement of all support obligations by providing a quick and effective procedure for the withholding of income. These sections shall be construed liberally to effect that purpose.

Delete

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0017 amount or percentage of income that can be withheld shall not
0018 apply.
0019 (c) "Obligee" means the individual to whom a duty of sup-
0050 port is owed.
0051 (d) "Obligor" means the individual who owes a duty to make
0052 payments under an order for support.
0053 (e) "Order for support" means any order of a court, or admin-
0054 istrative agency, authorized by law to issue such an order, which
0055 provides for payment of funds for the support of a child or
0056 maintenance of a spouse or ex-spouse and includes such an order
0057 which provides for modification or resumption of a previously
0058 existing order; payment of an arrearage accrued under a pre-
0059 viously existing order; a reimbursement order, including but not
0060 limited to an order established pursuant to K.S.A. 39-718a and
0061 amendments thereto; or an order established pursuant to K.S.A.
0062 ~~23-175~~ and amendments thereto.
0063 (f) "Payor" means any ~~payor of income to an obligor~~
0064 (g) "Public office" means any elected or appointed official of
0065 the state, or any political subdivision or agency thereof, who is or
0066 may become responsible by law for enforcement of, or who is or
0067 may become authorized to enforce, an order for support, includ-
0068 ing but not limited to the department of social and rehabilitation
0069 services, court trustees, ~~and~~ county or district attorneys.
0070 (h) "Title IV-D cases" means those cases required by part D
0071 of title IV of the federal social security act (42 U.S.C. § 651 *et*
0072 *seq.*), as amended, to be processed by the department of social
0073 and rehabilitation services under the state's plan for support
0074 enforcement.
0075 New Sec. 2. (a) Upon entry of any new or modified order for
0076 support on or after January 1, 1986, the court shall issue a
0077 separate order requiring the withholding of income to enforce
0078 the order of support. Unless the order provides that it shall take
0079 effect immediately, the order shall take effect only upon: (1)
0080 Development of an arrearage in an amount equal to or greater
0081 than the amount of support payable for one month; and (2)
0082 compliance with the requirements of this section.
0083 (b) In any proceeding in which the court has issued an order

person or entity

any person

of an

of another jurisdiction

23-451 et seq.

person or entity owing income to an obligor or any self-employed obligor,

or their sub-contractor,

Delete
and any other sub-contractors.

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0084 for support but has not issued a conditional order requiring
0085 income withholding as provided by subsection (a), the obligee or
0086 a public office may apply for such an order by filing with the
0087 court an affidavit stating: (1) That an arrearage exists in an
0088 amount equal to or greater than the amount of support payable
0089 for one month; (2) that a notice of delinquency has been served
0090 on the obligor in accordance with subsection (f) and the date and
0091 type of service; (3) that the obligor has not filed a motion to stay
0092 service of the income withholding order; and (4) a percentage of
0093 the income or support order which shall be withheld by the
0094 payor to be applied toward liquidation of arrearages. Upon the
0095 filing of the affidavit, the court shall issue an order requiring the
0096 withholding of income without the requirement of a hearing,
0097 amendment of the support order or further notice to the obligor.

0098 The court shall not be relieved of its duty under this subsec-
0099 tion to issue an income withholding order if the obligor pays the
0100 arrearage subsequent to receiving the notice of delinquency.

0101 For purposes of this subsection, an arrearage shall be com-
0102 puted on the basis of support payments due and unpaid on the
0103 date the notice of delinquency was served on the obligor.

0104 (c) An order issued under this section shall be directed to any
0105 payor of the obligor and shall require the payor to withhold from
0106 any income due, or to become due, to the ~~obligor~~ obligee a specified
0107 amount sufficient to satisfy the order of support and to defray any
0108 arrearage, subject to the limitations set forth in section 4. The
0109 order shall include notice of and direction to comply with the
0110 provisions of sections 3 and 4.

0111 (d) An order issued under this section shall be served on the
0112 payor and returned by the officer making service in the same
0113 manner as an order of attachment.

0114 (e) An income withholding order issued under this section
0115 shall be binding on any existing or future payor on whom a copy
0116 of the order is served and shall require the continued withhold-
0117 ing of income from each periodic payment of income until
0118 further order of the court. If the obligor changes employment or
0119 has a new source of income after an income withholding order is
0120 issued by the court, the new employer or income source, if

obligor

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0121 known, must be served a copy of the income withholding order
0122 without the requirement of prior notice to the obligor.

0123 (f) No sworn affidavit shall be filed with the court issuing the
0124 support order pursuant to subsection (b) unless it contains a
0125 declaration that the obligee or public office has served the
0126 obligor a written notice of delinquency because an arrearage
0127 exists in an amount equal to or greater than the amount of
0128 support payable for one month and that the notice was served on

0129 the obligor by certified mail, return receipt requested, or in the
0130 manner for service of a summons pursuant to article 3 of chapter

0131 60 of the Kansas Statutes Annotated at least 10 days before the
0132 date the affidavit is filed. If service is by certified mail, a copy of

0133 the return receipt shall be attached to the affidavit. The notice of
0134 delinquency served on the obligor must state: (1) The terms of

0135 the support order and the total arrearage as of the date the notice
0136 of delinquency was prepared; (2) the amount of income that will

0137 be withheld; (3) that the provision for withholding applies to any
0138 current or subsequent payors; (4) the procedures available for

0139 contesting the withholding and that the only basis for contesting
0140 the withholding is a mistake of fact concerning the amount of the

0141 support order, the amount of the arrearage, the amount of income
0142 to be withheld or the proper identity of the obligor; (5) the period

0143 within which the obligor must file a motion to stay service of the
0144 income withholding order and that failure to file such motion

0145 within the specified time will result in payors' being ordered to
0146 begin withholding; and (6) the action which will be taken if the

0147 obligor contests the withholding.

0148 In addition to any other penalty provided by law, the filing of
0149 an affidavit with knowledge of falsity of the declaration of notice

0150 is punishable as a contempt. The obligor may, at any time, waive
0151 in writing the notice required by this subsection.

0152 (g) On request, an obligor may establish a withholding order
0153 which shall be honored by a payor regardless of whether there is
0154 an arrearage.

0155 New Sec. 3. (d) It shall be the duty of any payor who has
0156 been served an order for withholding under this act to deduct

0157 and pay over income as provided in this section. The payor shall

signed by the obligor

7

take such action

(a) It shall be the affirmative duty of any payor to respond within seven (7) days to written requests for information presented by the obligee or public office concerning: (1) the full name of the obligor, (2) the current address of the obligor, (3) the obligor's social security number, (4) the obligor's work location, (5) the number of the obligor's claimed dependents, (6) the obligor's gross income, (7) the obligor's net income, (8) an itemized statement of deductions, (9) the obligor's pay schedule, and (10) health insurance coverage. This list is exemplary and not exclusive of the type of information the payor must provide.

(b)

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0158 deduct the amount designated in the order for withholding due
 0159 beginning with the next payment of income ~~which is payable to~~ 7
 0160 the obligor after 14 days following service of the order on the
 0161 payor. At the time the obligor is normally paid, the payor shall delete
 0162 pay the amount withheld to the ~~obligee, public office or clerk of~~ or court trustee
 0163 court as directed by the order for withholding and in accordance
 0164 with any subsequent notification received from the public office
 0165 redirecting payments. (c)

0166 (U) If the withholding is to collect current support and an
 0167 arrearage, the payor shall be required to withhold an amount of
 0168 income equal to the order for support plus an additional sum, set
 0169 out in the affidavit provided for in subsection (b) of section 2 as a
 0170 percentage of the amount of the support order, to be applied
 0171 towards liquidation of arrearages. If the withholding is to collect
 0172 an arrearage only, the payor shall be required to withhold an
 0173 amount of income equal to a percentage of income set out in the
 0174 affidavit provided for in subsection (b) of section 2. (d)

The payor shall withhold and pay over an equal amount at each pay period which is
 cumulatively sufficient to pay the current periodic support obligation. The additional
 amount to be applied toward liquidation of arrearages shall be withheld from each pay
 period.

0175 (V) The payor shall continue to withhold income to be ap-
 0176 plied toward liquidation of arrearages until the amount of the
 0177 arrearage stated in the income withholding order has been paid
 0178 in full or until notice to discontinue that portion of the with-
 0179 holding attributable to arrearages is received from the ~~obligee,~~ Delete
 0180 ~~public office or the court.~~ After arrearages are paid in full, a
 0181 withholding order requiring withholding for current support
 0182 shall continue in the amount of the support order until further
 0183 order of the court. (e)

0184 (W) From income due the obligor, the payor may withhold
 0185 and retain to defray the payor's costs a cost recovery fee of \$2 for
 0186 each withholding of income which shall be in addition to the
 0187 amount withheld as support. (f)

0188 (X) Any payor subject to withholding orders for more than
 0189 one obligor may combine the withheld amounts in a single court trustee
 0190 payment to each clerk of court or public office requesting the
 0191 withholdings if the payor separately identifies the portion of the
 0192 single payment which is attributable to each individual obligor. (g)

0193 (Y) If more than one order for withholding requires with-
 0194 holding from the same source of income of a single obligor, the

A. III

0195 payor must comply on a first-come-first-served basis and must
0196 honor all withholding orders, subject to subsection (g). (h)

0197 (g) The entire sum withheld by the payor, including the cost
0198 recovery fee, shall not exceed the limits provided for under
0199 section 303(b) of the consumer credit protection act (15 U.S.C.
0200 1673(b)). (i)

0201 (K) The payor shall promptly notify the obligee, or public
0202 office initiating the withholding order of the termination of the
0203 obligor's employment or other source of income and provide the
0204 obligor's last known address and the name and address of the
0205 individual's current employer, if known.

0206 ~~(i) Any payor of income to an obligor shall cooperate with and~~
0207 ~~provide relevant employment information to an obligee or public~~
0208 ~~office seeking to use the provisions of this act to establish,~~
0209 ~~maintain or reestablish an incoming withholding order.~~ Delete

0210 (j) Payment as required by an order for withholding issued
0211 under this act shall be a complete defense by the payor against
0212 any claims of the obligor or the obligor's creditors as to the sums
0213 paid. any payor violates the provisions of

0214 ~~(k) If a payor fails to withhold and pay over income as~~
0215 ~~required by a withholding order issued under this act, the court~~
0216 shall enter a judgment against the payor for the total amount
0217 which should have been withheld and paid over and may enter
0218 judgment against the payor to the extent of the total arrearage
0219 owed.

0220 (l) Any payor who discharges, refuses to employ or takes
0221 disciplinary action against an obligor because of a withholding
0222 order issued under this act shall be ~~guilty of a class A misdemeanor~~ subject to a civil penalty not to exceed \$5,000 and such other equitable relief as the
0223 ~~misdemeanor~~ court deems proper.

0224 New Sec. 4. (a) An income withholding order issued under
0225 this act shall have priority over any other legal process under
0226 state law against the same income. Withholding of income under
0227 this section shall be made without regard to any prior or sub-
0228 sequent garnishments, attachments, wage assignments or other
0229 claims of creditors.

0230 (b) Withholding of income under this section for an obligee
0231 ~~or for the Department of Social and Rehabilitation Services acting~~ or a public office for the enforcement of current support shall have priority over the
withholding of income for an obligee or a public office seeking to collect arrearages
only.

0232 on behalf of an obligee pursuant to K.S.A. 39-756 and amount
0233 ments therefor or enforcing an assignment of current support
0234 rights pursuant to K.S.A. 39-709 and amendments thereto shall
0235 have priority over the withholding of income for a public office
0236 seeking to collect assigned arrearages only.

Delete

0237 (c) Except as provided by this act, any state law which limits
0238 or exempts income from legal process or the amount or percent-
0239 age of income that can be withheld shall not apply to withhold-
0240 ing income under this act.

0241 New Sec. 5. (a) An obligor may prevent an income with-
0242 holding order issued under this section from being served on the
0243 payor by filing with the court a motion to stay service of the
0244 withholding order and serving a copy of the motion on the
0245 obligee or public office filing the notice of delinquency within

7

0246 10 days after being served with the notice of delinquency. The
0247 grounds for obtaining the stay shall be limited to a showing of a
0248 mistake of fact in the notice of delinquency concerning the
0249 amount of the order for support, the amount of the arrearage, the
0250 amount of income to be withheld or the proper identity of the
0251 obligor. If the obligor files a motion to stay service of the income
0252 withholding order, the obligor shall specify the mistake of fact
0253 alleged to be the basis for the motion. If the amount of the order
0254 for support or the amount of the arrearage is challenged, the
0255 obligor shall specify the amount of the order for support or the
0256 arrearage which is uncontested.

0257 (b) If the obligor files a motion to stay service of the with-
0258 holding order, the court, upon notice of the date, time and place
0259 of hearing to the obligor and the obligee or public office that

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0260 filed the affidavit, shall hear the matter within 15 days after the
0261 obligor's motion is filed with the court. The court shall enter an
0262 order granting or denying relief, amending the notice of delin-
0263 quency or otherwise resolving the matter. If the court finds that
0264 an arrearage existed when the notice of delinquency was served
0265 in an amount at least equal to one month's support obligation, the
0266 court shall order immediate service of the order for withholding.
0267 If the court cannot promptly resolve any dispute over the total
0268 amount of the arrearage, the court shall order immediate service

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0269 of the order for withholding if the undisputed arrearage is at least
0270 equal to the amount of one month's support obligation and may _____ the disputed arrearage.

0271 continue the hearing on ~~other disputed amounts~~. In any case, the
0272 court, ~~within 45 days~~, must notify the obligor and the obligee or _____ Delete

0273 public office of whether or not the withholding is to occur within
0274 45 days of the date the obligor was served the notice of delin-
0275 quency. If the court upholds the issuance of a withholding order
0276 in a contested case, the court must include in its order notice of
0277 the time within which the withholding will begin and the infor-
0278 mation given to the payor as required in sections 3 and 4.

0279 New Sec. 6. (a) At any time, an obligor, obligee or public
0280 office may petition the court to: (1) Modify, suspend or terminate _____ -Delete

0281 the order for withholding because of a modification, suspension
0282 or termination of the underlying order for support; (2) modify the _____ or

0283 amount of income withheld to reflect payment in full of the _____ If for some reason support payments are undeliverable to the obligee, all such
0284 arrearage by income withholding or otherwise; ~~or (3) suspend~~ payments shall be held in trust by the court until the payments can be delivered.

0285 ~~the order for withholding because of the inability to deliver~~
0286 ~~income withheld to the obligee or children for a period of three~~
0287 ~~months due to the obligee's failure to provide a mailing address~~
0288 ~~or other means of delivery. If the withholding is suspended~~
0289 ~~because payment is undeliverable, all undeliverable payments~~
0290 ~~shall be returned to the obligor.~~

0291 (b) The obligor may petition the court to terminate the with-
0292 holding of income because payments pursuant to the order for
0293 withholding have been made for at least three years and all
0294 arrearages have been paid. Upon receipt of a petition under this
0295 subsection, the court may suspend the order for withholding
0296 unless it finds good cause for denying the petition because of the
0297 obligor's payment history or otherwise. If a withholding order is
0298 terminated for any reason and the obligor subsequently becomes
0299 delinquent in the payment of the order for support, the obligee
0300 or public office may obtain another order for withholding by
0301 complying with all requirements for notice and service pursuant
0302 to this act.

0303 (c) The clerk of court shall _____ cause to be served
0304 order entered pursuant to this section that affects the duties of
0305 the payor.

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0306 New Sec. 7. If the court determines that income has been
0307 improperly withheld, the court may order the ~~payor, the obligee,~~
0308 ~~the clerk of court or the public office,~~ depending on who has
0309 possession of the income or who ultimately received it, to
0310 promptly refund the improperly withheld amount to the obligor/

person or public office

or in the case of the obligee, to credit the amount against the next regular support payment.

0311 New Sec. 8. (a) If an obligee is receiving income withhold-
0312 ing payments under this act, the obligee shall give written notice
0313 of any change of address, within seven days after the change to
0314 the payor, if the obligee receives the payments directly from the
0315 payor or the public office or clerk of the district court through
0316 which the obligee receives the payments.

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

0317 ~~(b) The obligee who is or has been a recipient of aid to~~
0318 ~~dependent children assistance or whose child is or has been in~~
0319 ~~the custody of the secretary of social and rehabilitation services~~
0320 ~~pursuant to K.S.A. 49-84 Supp. 88-1501 et seq. or 88-1601 et seq.,~~
0321 ~~and amendments thereto,~~ shall serve a copy of any notice of
0322 delinquency filed pursuant to this act on the secretary of social
0323 and rehabilitation services. If current support or all or a part of
0324 the allowance remains assigned to the secretary of social and
0325 rehabilitation services pursuant to K.S.A. 39-709 and amend-
0326 ments thereto and the secretary has on file with the court a notice
0327 of assignment as provided for in K.S.A. 39-754 and amendments
0328 thereto, payments from the payor shall be disbursed as the notice
0329 of assignment directs. When the secretary of social and rehabili-
0330 tation services is no longer authorized to receive payments for
0331 the obligee, the secretary shall provide written notice to the
0332 payor, or the clerk of the court disbursing the payments, to
0333 redirect all or part of the payments to the obligee.

and subject to K.S.A. 60-2403 and amendments thereto

0334 (c) The obligee or public office shall provide written notice
0335 to the payor and clerk of the court of any other support payments
0336 made, including but not limited to a setoff under federal or state
0337 law, a collection of unemployment compensation pursuant to
0338 K.S.A. 44-718 or a direct payment from the obligor. The clerk of
0339 the court issuing the support order or other designated person
0340 shall record the amounts reported in such notices. ~~as if the~~
0341 ~~payment had been made through the court.~~

Delete

0342 (d) Any public office and clerk of court which collects, dis-

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0343 burses or receives payments pursuant to orders for withholding
0344 shall maintain complete, accurate and clear records of all pay-
0345 ments and their disbursement. Certified copies of payment rec-
0346 ords maintained by a public office or clerk of court shall, without
0347 further proof, be admitted into evidence in any legal proceedings
0348 ~~under this act.~~

_____ which concern the issue of support.

Delete

0349 New Sec. 9. An obligor whose income is being withheld or
0350 who has been served with a notice of delinquency under this act
0351 shall provide written notice to the obligee, the public office, or
0352 the clerk of court of any new payor or change of address, within
0353 seven days of the change.

0354 New Sec. 10. If an obligor derives income from self-
0355 employment, receives income from some source not subject to
0356 the jurisdiction of the court or receives income by any other
0357 method which makes the application of this act impracticable,
0358 the court may require the obligor to post security or bond or give
0359 some other guarantee to secure the payment of current and
0360 overdue support.

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.

0361 New Sec. 11. (a) Nothing in this act shall limit the authority
0362 of an obligee or public office to use any and all civil and criminal
0363 remedies in addition to withholding to enforce an order for
0364 support including but not limited to the setoff provisions of
0365 K.S.A. 75-6201 *et seq.*, and amendments thereto, and section 464
0366 of part D of title IV of the federal social security act.

0367 (b) Nothing in this act shall limit the filing of any action to
0368 modify the support order by the obligor.

0369 (c) The rights, remedies, duties and penalties created by this
0370 act are in addition to and not in substitution for any other rights,
0371 remedies, duties and penalties created by any other law.

0372 (d) Nothing in this act shall be construed as invalidating any
0373 assignment of income executed prior to January 1, 1986, despite
0374 the priority status given to withholding orders under this act.

0375 New Sec. 12. The judicial administrator and the secretary of
0376 social and rehabilitation services shall cooperate to design sug-
0377 gested legal forms and informational materials which describe
0378 procedures and remedies under this act for distribution to all
0379 parties in support actions.

The judicial administrator and the secretary of social and rehabilitation services shall enter into a contract to develop and maintain an automated management information system which will monitor support payments, maintain accurate records of support payments, and permit prompt notice of arrearages in support payments. District courts, including court trustees shall be subcontractors in the management information system and payments for their services shall be disbursed as directed by the judicial administrator. Unless good cause is shown, the secretary of social and rehabilitation services shall contract with district court trustees for enforcement services. Subcontractor employees determined necessary to the performance of the contract by the judicial administrator shall be state employees paid by county general funds. The provisions of K.S.A. 20-358 and K.S.A. 20-359 shall apply. County expenditures for compensation of subcontractor employees may be paid during any budget year even though the expenditures were not included in the budget for that year. County general funds shall be promptly reimbursed for subcontractor employee compensation cost from the subcontractor's payment plus a reasonable administrative fee for the county for acting as fiscal and reporting agent as determined necessary by the judicial administrator. The provisions of the Kansas court personnel rules, except for pay and classification plans, shall apply to subcontractor employees.

17

0380 New Sec. 13. The department of social and rehabilitation
0381 services is designated as the state income withholding agency ~~for~~
0382 ~~the purpose of keeping adequate records to document, track and~~
0383 ~~monitor support payments in title IV-D cases and to initiate the~~
0384 ~~income withholding process in such cases.~~

0385 New Sec. 14. The purpose of sections 14 through 26 is to
0386 enhance the enforcement of support obligations in cases being
0387 processed pursuant to title IV, part D, of the federal social
0388 security act (42 U.S.C. § 651 *et seq.*, as amended, by providing a
0389 quick and effective procedure for the withholding of income
0390 derived in this jurisdiction to enforce support orders of other
0391 jurisdictions and by requiring that income withholding to en-
0392 force the support orders of this jurisdiction be sought in other
0393 jurisdictions. Sections 14 through 26 shall be construed liberally
0394 to effect that purpose.

0395 New Sec. 15. As used in sections 14 through 26:

0396 (a) "Agency" means the state department of social and reha-
0397 bilitation services ~~and, when the context requires, either the~~
0398 ~~court or agency of any other jurisdiction with functions similar to~~
0399 ~~those defined in sections 14 through 26, including the issuance~~
0400 ~~and enforcement of support orders.~~

0401 (b) "Child" means any child, whether older or younger than
0402 the age of majority, with respect to whom a support order exists.

0403 (c) "Court" means the district court of this state and, when
0404 the context requires, either the court or agency of any other
0405 jurisdiction with functions similar to those defined in sections 14
0406 through 26, including the issuance and enforcement of support
0407 orders.

0408 (d) "Income" means income as defined in section 1.

0409 (e) "Income derived in this jurisdiction" means any income,
0410 the payor of which is subject to the jurisdiction of this state for
0411 the purpose of imposing and enforcing income withholding
0412 under sections 1 through 13.

0413 (f) "Jurisdiction" means any state, political subdivision, ter-
0414 ritory or possession of the United States; the District of Colum-
0415 bia; and the Commonwealth of Puerto Rico.

0416 (g) "Obligee" means any person or entity which is entitled to

in title IV-D cases. However, for the purpose of keeping adequate records to document,
track and monitor support payments in IV-D cases and for the purpose of initiating the
income withholding process in such cases, the department may contract for the performance
of all or a portion of the withholding agency function with existing title IV-D
contractors or any newly created entity capable of providing such services.

or its contractors

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0117 receive support under an order of support and shall include an
0118 agency of another jurisdiction to which a person has assigned the
0119 person's right to support.

0120 (h) "Obligor" means any person required to make payments
0121 under the terms of a support order for a child, spouse or former
0122 spouse.

0123 (i) "Payor" means ~~payor of income-~~

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

0124 (j) "Support order" means any order, decree or judgment for
0125 the support or maintenance, or for the payment of arrearages on
0126 such support or maintenance, of a child, spouse or former spouse,
0127 issued by a court or agency of another jurisdiction, whether
0128 interlocutory or final, whether prospectively or retroactively
0129 modifiable and whether incidental to a proceeding for divorce,
0130 annulment, separate maintenance, paternity, guardianship, pro-
0131 tection from abuse or otherwise.

0132 New Sec. 16. The remedy provided by sections 14 through
0133 26 is in addition to, and not in substitution for, any other remedy
0134 otherwise available to enforce a support order of another juris-
0135 diction. Relief under this act shall not be denied, delayed or
0136 otherwise affected because of the availability of other remedies,
0137 nor shall relief under any other statute be delayed or denied
0138 because of the availability of this remedy.

0139 New Sec. 17. On behalf of any obligee or other person for
0140 whom the agency is already providing services pursuant to the
0141 provisions of title IV, part D, of the federal social security act (42
0142 U.S.C. § 651 *et seq.*), as amended, the agency shall promptly
0143 request the agency of another jurisdiction in which the obligor of
0144 a support order derives income to enter the order for the purpose
0145 of obtaining income withholding. The agency shall compile and
0146 transmit promptly to the agency of the other jurisdiction all
0147 documentation required to enter a support order for this purpose.
0148 The agency also shall transmit immediately to the agency of the
0149 other jurisdiction a certified copy of any subsequent modifica-
0150 tions of the support order. If the agency receives notice that the
0151 obligor is contesting income withholding in another jurisdiction,
0152 it shall immediately notify the obligee of the date, time and place
0153 of the hearings and of the obligee's right to attend.

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0151 New Sec. 18. (a) Upon receiving a support order of another
0155 jurisdiction with the documentation specified in subsection (b)
0156 from an agency of another jurisdiction established pursuant to
0157 title IV, part D, of the federal social security act (42 U.S.C. § 651
0158 *et seq.*), as amended, the agency shall file the documents with
0159 the clerk of the court in which withholding is being sought.
0160 Upon receipt of the documents the clerk of court, without pay-
0161 ment of a filing fee or other costs, shall file them in a registry of
0162 foreign support orders. Such filing shall constitute entry of the
0163 support order under sections 14 through 26.

0164 (b) The following documentation is required for the entry of
0165 a support order of another jurisdiction:

0166 (1) A certified copy of the support order with all modifica-
0167 tions;

(2) a certified copy of child support owed and paid including dates of payment and to whom paid.

0168 ~~(2)~~ a certified copy of an income withholding notice or order,
0169 if any, still in effect;

(3)

0170 ~~(3)~~ a copy of the portion of the income withholding statute of
0171 the jurisdiction which issued the support order which states the
0172 requirements for obtaining income withholding under the law of
0173 that jurisdiction;

(4)

0174 ~~(4)~~ a sworn statement of the obligee or agency of the ar-
0175 raignees and the assignment of support rights, if any; and

(5)

0176 ~~(5)~~ a statement of:

(6)

0177 ~~(A)~~ The name, address and social security number of the
0178 obligor, if known;

0179 (B) the name and address of the obligor's employer or of any
0180 other source of income of the obligor derived in this state against
0181 which income withholding is sought; and

0182 (C) the name and address of the agency or person to whom
0183 support payments collected by income withholding shall be
0184 transmitted.

0185 (c) If the documentation received under subsection (a) does
0186 not conform to the requirements of subsection (b), the agency
0187 shall remedy any defect which it can without the assistance of
0188 the requesting agency. If the agency is unable to make such
0189 corrections, the requesting agency shall immediately be notified
0190 of the necessary additions or corrections. In neither case shall

0491 the documentation be returned. The agency and court shall
0492 accept the documentation required by subsections (a) and (b)
0493 even if it is not in the usual form required by state or local rules,
0494 so long as the substantive requirements of these subsections are
0495 met.

0496 (d) A support order entered under subsection (a) shall be
0497 enforceable by income withholding against income derived in
0498 this state in the manner and with the effect as set forth in sections
0499 1 through 13 and 19 through 26. Entry of the order shall not
0500 confer jurisdiction on the courts of this state for any purpose
0501 other than income withholding.

0502 New Sec. 19. (a) On the date a support order is entered
0503 pursuant to section 18, the agency shall serve upon the obligor, a
0504 notice of delinquency as provided for in subsection (f) of section
0505 2. The notice shall also advise the obligor that income with-
0506 holding was requested on the basis of a support order of another
0507 jurisdiction. As appropriate, the agency shall then file the af-
0508 fidavit provided for in subsection (b) of section 2 to establish an
0509 income withholding order. If, in accordance with subsection (b)
0510 of section 5, the obligor contests the establishment of an income
0511 withholding order, the court must hold a hearing and render a
0512 decision with 45 days of the date of service of the notice of
0513 delinquency on the obligor.

0514 (b) If the obligor seeks a hearing to contest the proposed
0515 income withholding, the agency shall immediately notify the
0516 requesting agency of the date, time and place of the hearing.

0517 New Sec. 20. (a) At any hearing contesting proposed income
0518 withholding based on a support order entered under section 18,
0519 the entered order, accompanying sworn or certified statement,
0520 and a certified copy of the income withholding order or notice, if
0521 any, still in effect shall constitute prima facie proof, without
0522 further proof or foundation, that the order is valid, that the
0523 amount of current support payments and arrearages is as stated,
0524 and that the obligee would be entitled to income withholding
0525 under the law of the jurisdiction which issued the support order.

0526 (b) Once a prima facie case has been established, the obligor
0527 may raise only the following:

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0528 (1) A mistake of fact that is not res judicata concerning the
0529 amount of current support owed or arrearage that had accrued,
0530 mistaken identity of the obligor or the amount of income to be
0531 withheld;

0532 (2) that the court or agency which issued the support order
0533 entered under section 18 lacked personal jurisdiction over the
0534 obligor;

0535 (3) that the statute of limitations under section 26 precludes
0536 enforcement of all or part of the arrearages.

0537 The burden shall be on the obligor to establish these defenses.

0538 (c) If the obligor presents evidence which constitutes a full or
0539 partial defense, the court, on the request of the obligee or
0540 agency, shall continue the case to permit further evidence rela-
0541 tive to the defense to be adduced by either party, except that, if
0542 the obligor acknowledges liability sufficient to entitle the obli-
0543 gee to income withholding, the court shall require income with-
0544 holding for the payment of current support payments under the
0545 support order and of so much of any arrearage as is not in dispute,
0546 while continuing the case with respect to those matters still in
0547 dispute. The court shall determine those matters still in dispute
0548 as soon as possible and, if appropriate, shall modify the with-
0549 holding order to conform to its resolution of those matters.

0550 (d) In addition to other procedural devices available to a
0551 party, any party to the proceeding or a guardian ad litem or other
0552 representative of the child may adduce testimony of witnesses in
0553 another state, including the parties and any of the children, by
0554 deposition, by written discovery, by photographic discovery
0555 such as videotaped depositions or by personal appearance before
0556 the court by telephone or photographic means. The court on its
0557 own motion may direct that the testimony of a person be taken in
0558 another state and may prescribe the manner in which, and the
0559 terms upon which, the testimony shall be taken.

0560 (e) A court of this state may request the appropriate court or
0561 agency of another state to hold a hearing to adduce evidence, to
0562 permit a deposition to be taken before the court or agency, to
0563 order a party to produce or give evidence under other procedures
0564 of that state and to forward to the court of this state certified

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0565 copies of the evidence adduced in compliance with the request.
0566 (f) Upon request of a court or agency of another state the
0567 courts of this state which are competent to hear support matters
0568 may order a person in this state to appear at a hearing or
0569 deposition before the court to adduce evidence or to produce or
0570 give evidence under other procedures available in this state. A
0571 certified copy of the evidence adduced, such as a transcript or
0572 videotape, shall be forwarded by the clerk of the court to the
0573 requesting court or agency.

0574 (g) A person within this state may voluntarily testify by
0575 statement of affidavit in this state for use in a proceeding to
0576 obtain income withholding outside this state.

0577 New Sec. 21. If the obligor does not request a hearing in the
0578 time provided in subsection (a) of section 5 or if a hearing is held
0579 and it is determined that the obligee has or is entitled to income
0580 withholding under the local law of the jurisdiction which issued
0581 the support order, the court shall issue an income withholding
0582 order under subsection (b) of section 5. The agency shall notify
0583 the requesting agency of the date upon which withholding will
0584 begin.

0585 New Sec. 22. The provisions of sections 2 and 3, including
0586 the notice to the payor, penalties and sanctions against noncom-
0587 plying payors, payor fees, protection against payor retaliation,
0588 payment directions and ability to issue a single check apply to
0589 income withholding based on a support order of another juris-
0590 diction entered under section 18.

0591 New Sec. 23. (a) The income withholding order shall direct
0592 payment to be made to the agency/~~The agency shall promptly~~
0593 transmit payments received pursuant to an income withholding
0594 order based on a support order of another jurisdiction entered
0595 under section 18 to the agency or person designated pursuant to
0596 subsection (b)(~~5~~)(C) of section 18.

or obligee.

(6)

0597 (b) A support order entered pursuant to section 18 does not
0598 nullify and is not nullified by a support order made by a court of
0599 this state pursuant to any other law or by a support order made by
0600 a court of any other state. Any amount collected by any with-
0601 holding of income shall be credited against the amounts accruing

0602 or accrued for any period under any support orders issued either
0603 by this state or by a sister state.

0604 New Sec. 24. (a) The agency, upon receiving a certified copy
0605 of any amendment or modification to a support order entered
0606 pursuant to section 18, shall initiate, as though it was a support
0607 order of this state, necessary procedures to amend or modify the
0608 income withholding order of this state which was based upon the
0609 entered support order. The court shall amend or modify the
0610 income withholding order to conform to the modified support
0611 order.

0612 (b) If the agency determines that the obligor has obtained
0613 employment in another state or has a new or additional source of
0614 income in another state, it shall notify the agency which re-
0615 quested the income withholding of the changes within five
0616 working days of receiving that information and shall forward to
0617 that agency all information it has or can obtain with respect to the
0618 obligor's new address and the name and address of the obligor's
0619 new employer or other source of income. The agency shall
0620 include with the notice a certified copy of the income withhold-
0621 ing order in effect in this state.

0622 New Sec. 25. Any person who is the obligor under a support
0623 order of another jurisdiction may obtain voluntary income with-
0624 holding by filing with the court a request for such withholding
0625 and a certified copy of the support order of the other jurisdiction.
0626 The court shall issue an income withholding order, as in sub-
0627 section (g) of section 2, which shall be honored by any payor
0628 regardless of whether there is an arrearage. In such a case,
0629 payments shall be made from the payor to the agency for dis-
0630 tribution to the obligee.

0631 New Sec. 26. (a) The law of this state shall apply in all
0632 actions and proceedings concerning the issuance, enforcement
0633 and duration of income withholding orders issued by a court of
0634 this state, which is based upon a support order of another
0635 jurisdiction entered pursuant to section 18, except as provided in
0636 subsections (b) and (c).

0637 (b) The law of the jurisdiction which issued the support order
0638 shall govern the following:

0639 (1) The interpretation of the support order entered under
0640 section 18, including the amount, form of payment and duration
0641 of support.

0642 (2) the amount of support arrearages necessary to require the
0643 issuance of an income withholding order; and

0644 (3) the definition of what costs, in addition to the periodic
0645 support obligation, are included as arrearages which are en-
0646 forceable by income withholding, including but not limited to
0647 interest, attorney fees, court costs and costs of paternity testing.

0648 (c) The court shall apply the statute of limitations for main-
0649 taining an action on arrearages of support payments of either the
0650 law of this state or of the state which issued the support order
0651 entered under section 18, whichever is longer.

0652 New Sec. 27. (a) As used in this section, "consumer report-
0653 ing agency" means any person which, for monetary fees or dues
0654 or on a cooperative nonprofit basis, regularly engages in whole or
0655 in part in the practice of assembling or evaluating consumer
0656 credit information or other information on consumers for the
0657 purpose of furnishing consumer reports to third parties and
0658 which uses any means or facility of interstate commerce for the
0659 purpose of preparing or furnishing consumer reports.

0660 (b) The secretary of social and rehabilitation services shall
0661 develop procedures for making information concerning support
0662 arrearages owed or assigned to the secretary or owed to any
0663 person who has applied for services pursuant to K.S.A. 39-756
0664 and amendments thereto available to consumer reporting agen-
0665 cies upon their request. The procedures shall provide for the
0666 information to be made available to such agencies in any case in
0667 which the support arrearage is \$1,000 or more unless the secre-
0668 tary determines that providing the information is not appropriate
0669 in a particular case. The procedures may additionally provide for
0670 the information to be available to such agencies if the amount of
0671 the support arrearage is less than \$1,000.

0672 (c) The secretary may charge a consumer reporting agency
0673 requesting support arrearage information a fee not to exceed the
0674 actual cost to the secretary in providing such information.

0675 (d) Prior to providing any information concerning an obli-

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0676 gor's arrearage to a consumer reporting agency, the secretary
0677 shall provide advance notice to the obligor who owes support by _____ mail to the obligor's last known address, return receipt requested,
0678 ~~registered or certified mail, return receipt requested,~~ concerning
0679 the proposed release of information to a consumer reporting
0680 agency and of the methods available for contesting the accuracy
0681 of the information/ _____ as provided for in K.S.A. 50-710

0682 ~~(c) Any obligor who receives an advance notice under sub-~~
0683 ~~section (d) may request a hearing to determine if an arrearage is~~
0684 ~~owed by filing a written request for a hearing with the secretary~~
0685 ~~within 15 days after receipt of the notice. Procedures for the~~
0686 ~~hearing shall be governed in the manner provided by rules and~~
0687 ~~regulations of the secretary governing the agency's fair hearing~~
0688 ~~program. If the secretary does not receive a request for a hearing~~
0689 ~~within the time limit provided for, or if the hearing officer~~
0690 ~~determines that a support arrearage is owed and the matter is not~~
0691 ~~thereafter appealed, the secretary may refer the information~~
0692 ~~referred to in subsection (b) to the consumer reporting agency.~~
Delete

0693 New Sec. 28. (a) Whenever there is an arrearage in payment
0694 of an order of support in an amount equal to or greater than the
0695 amount of support payable for one month, the obligee or the
0696 secretary of social and rehabilitation services, if the right to
0697 support has been assigned to the secretary, may establish a lien
0698 upon certain personal property of the obligor as follows:

0699 (1) In the case of a vehicle, the obligee or secretary may
0700 establish a lien on the vehicle by filing a notice of lien with the
0701 division of vehicles of the department of revenue. The notice
0702 shall be in a form prescribed by the division and shall contain a
0703 description of the vehicle, the name and address of the obligee or
0704 secretary, the name and last known address of the obligor and
0705 any other information required by the division. An affidavit of
0706 the obligee or person designated by the secretary shall be filed
0707 with the notice and shall state that there is an arrearage in an
0708 amount equal to or greater than the amount of support payable
0709 for one month and that a copy of the notice of lien has been sent
0710 by first-class mail to the obligor at the obligor's last known
0711 address.

0712 Upon the filing of the notice of lien in accordance with this

0713 subsection (a)(1) and payment to the division of a fee of \$5, the
 0714 division shall ~~retain the notice of lien and shall not issue a~~
 0715 ~~certificate of title, other than a duplicate title, for the vehicle~~
 0716 unless the lien has been released in the manner provided by
 0717 K.S.A. 8-135 and amendments thereto or the transfer has been
 0718 consented to in writing by the lienholder.

0719 (2) In the case of a vessel or aircraft, the obligee or secretary
 0720 may establish a lien on the vessel or aircraft by filing a notice of
 0721 lien with the office where filing is required by K.S.A. 84-9-401
 0722 and amendments thereto to perfect a security interest in the
 0723 vessel or aircraft. The notice shall contain a description of the
 0724 vessel or aircraft, including its identification number, if any; the
 0725 name and address of the obligee or secretary; and the name and
 0726 last known address of the obligor. An affidavit of the obligee or
 0727 person designated by the secretary shall be filed with the notice
 0728 and shall state that there is an arrearage in an amount equal to or
 0729 greater than the amount of support payable for one month and
 0730 that a copy of the notice of lien has been sent by first-class mail to
 0731 the obligor at the obligor's last known address.

0732 Upon the filing of the notice of lien in accordance with this
 0733 subsection (a)(2) and payment of a fee of \$5, the notice of lien
 0734 shall be retained by the office where filed and may be enforced
 0735 and foreclosed in the same manner as a security agreement
 0736 under the provisions of the uniform commercial code.

0737 (b) As used in this section:

0738 (1) "Aircraft" has the meaning provided by K.S.A. 3-201 and
 0739 amendments thereto.

0740 (2) "Vehicle" has the meaning provided by K.S.A. 8-126 and
 0741 amendments thereto.

0742 (3) "Vessel" has the meaning provided by K.S.A. 82a-801 and
 0743 amendments thereto.

0744 (4) "Arrearage," "obligee," "obligor" and "order for support"
 0745 have the meanings provided by section 1.

0746 Sec. 29. K.S.A. 23-452 is hereby amended to read as follows:
 0747 23-452. (a) "Court" means the district court of this state and
 0748 when the context requires means the court of any other state as
 0749 defined in a substantially similar reciprocal law.

be authorized to demand in writing the surrender of the title certificate from the
 owner of the vehicle for the purpose of recording the lien on the title certificate.
 Once the lien is properly recorded, a transfer of title is not valid

If the obligor fails to surrender the title certificate within 15 days after the
 written demand of the division of vehicles, the division shall notify the person or
 entity seeking the lien. Such person or entity may obtain an order of the court
 which issued the support order requiring the obligor to surrender the title certificate
 to the court so that a lien may be properly recorded.

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0750 (b) "Duty of support" means a duty of support whether
0751 imposed or imposable by law or by order, decree, or judgment of
0752 any court, whether interlocutory or final or whether incidental to
0753 an action for divorce, separation, separate maintenance, annul-
0754 ment, adoption or custody and includes the duty to pay ar-
0755 rearages of support past due and unpaid from the date of the
0756 order of support entered in the responding state *as well as*
0757 *arreages which have accrued on the basis of another state's*
0758 *support order.*

0759 (c) "Governor" includes any person performing the functions
0760 of governor or the executive authority of any state covered by this
0761 act.

0762 (d) "Initiating state" means a state in which a proceeding
0763 pursuant to this or a substantially similar reciprocal law is com-
0764 menced. "Initiating court" means the court in which a proceed-
0765 ing is commenced.

0766 (e) "Law" includes both common and statutory law.

0767 (f) "Obligee" means a person including a state or political
0768 subdivision to whom a duty of support is owed or a person
0769 including a state or political subdivision that has commenced a
0770 proceeding for enforcement of an alleged duty of support or for
0771 registration of a support order. It is immaterial if the person to
0772 whom a duty of support is owed is a recipient of public assist-
0773 ance.

0774 (g) "Obligor" means any person owing a duty of support or
0775 against whom a proceeding for the enforcement of a duty of
0776 support or registration of a support order is commenced.

0777 (h) "Prosecuting attorney" means ~~the public official in the~~
0778 ~~appropriate place who has the duty to enforce criminal laws~~
0779 ~~relating to the failure to provide for the support of any person~~

0780 (i) "Register" means to file in the registry of foreign support
0781 orders.

0782 (j) "Registering court" means any court of this state in which
0783 a support order of a rendering state is registered.

0784 (k) "Rendering state" means a state in which the court has
0785 issued a support order for which registration is sought or granted
0786 in the court of another state.

- (1) The county or district attorney of the county in which the action is brought if the action concerns criminal enforcement under part II of this act or if the action is not brought pursuant to part D of title IV of the federal social security act (42 USC §651 et seq.), as amended and there is no court trustee in such county; or
- (2) The court trustee of the county in which the action is brought, if such an office has been established, and if the action concerns civil enforcement under parts III and IV of this act, or
- (3) An attorney or contractor for the department of social and rehabilitation services in counties where no court trustee has been established, if the action concerns civil enforcement under parts III and IV of this act and the action is brought pursuant to part D of title IV of the federal social security act (42 USC §651 et seq.), as amended.

0787 (l) "Responding state" means a state in which any responsive
0788 proceeding pursuant to the proceeding in the initiating state is
0789 commenced. "Responding court" means the court in which the
0790 responsive proceeding is commenced.

0791 (m) "State" includes a state, territory, or possession of the
0792 United States, the District of Columbia, the Commonwealth of
0793 Puerto Rico, and any foreign jurisdiction in which this or a
0794 substantially similar reciprocal law is in effect.

0795 (n) "Support order" means any judgment, decree, or order of
0796 support in favor of an obligee whether temporary or final, or
0797 subject to modification, revocation, or remission, regardless of
0798 the kind of action or proceeding in which it is entered.

0799 Sec. 30. K.S.A. 23-473 is hereby amended to read as follows:
0800 23-473. If the responding court finds a duty of support it may
0801 order the obligor to furnish support or reimbursement therefor
0802 and subject the property of the obligor to the order. *Any such*
0803 *support order shall be accompanied by the conditional order for*
0804 *withholding of income required by section 2.* Support orders
0805 made pursuant to this act shall require that payments be made to
0806 the clerk of the court of the responding state. The court and
0807 prosecuting attorney of any county in which the obligor is pres-
0808 ent or has property have the same powers and duties to enforce
0809 the order as have those of the county in which it was first issued.
0810 If enforcement is impossible or cannot be completed in the
0811 county in which the order was issued, the prosecuting attorney
0812 shall send a certified copy of the order to the prosecuting attor-
0813 ney of any county in which it appears that proceedings to enforce
0814 the order would be effective. The prosecuting attorney to whom
0815 the certified copy of the order is forwarded shall proceed with
0816 enforcement and report the results of the proceedings to the
0817 court first issuing the order.

0818 Sec. 31. K.S.A. 23-475 is hereby amended to read as follows:
0819 23-475. (a) In addition to the foregoing powers, a responding
0820 court may subject the obligor to any terms and conditions proper
0821 to assure compliance with its orders and in particular to:

0822 (1) Require the obligor to furnish a cash deposit or a bond of a
0823 character and amount to assure payment of any amount due;

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0824 (2) require the obligor to report personally and to make
0825 payments at specified intervals to the clerk of the court; and
0826 (3) punish under the power of contempt the obligor who
0827 violates any order of the court.

0828 (b) *A responding court shall issue orders for withholding of*
0829 *income to enforce its orders of support, as provided by section 2.*

0830 Sec. 32. K.S.A. 38-1104 is hereby amended to read as fol-
0831 lows: 38-1104. No action to determine paternity shall be insti-
0832 tuted more than one year under K.S.A. 38-1101 and amendments
0833 thereto 18 or more years after the birth of the child whose
0834 paternity is in issue.

0835 Sec. 33. K.S.A. 1984 Supp. 38-1512 is hereby amended to
0836 read as follows: 38-1512. (a) *How paid.* (1) If a child alleged or
0837 adjudged to be a child in need of care is not eligible for assist-
0838 ance under K.S.A. 39-709 and amendments thereto, expenses for
0839 the care and custody of the child shall be paid out of the general
0840 fund of the county in which the proceedings are brought. For the
0841 purpose of this section, a child who is a nonresident of the state
0842 of Kansas or whose residence is unknown shall have residence in
0843 the county where the proceedings are instituted.

0844 (2) When a law enforcement officer has taken a child into
0845 custody as authorized by subsection (b) of K.S.A. 1983 1984
0846 Supp. 38-1527 and amendments thereto and delivered the child
0847 to a person or facility designated by the secretary or when
0848 custody of a child is awarded to the secretary, the expenses of the
0849 care and custody of the child may be paid by the secretary out of
0850 the state social welfare fund, subject to payment or reimburse-
0851 ment as required in subsection (b), even though the child does
0852 not meet the eligibility standards of K.S.A. 39-709 and amend-
0853 ments thereto.

0854 (3) When the custody of a child is awarded to the secretary,
0855 the expenses of the care and custody of the child shall not be
0856 paid out of the county general fund.

0857 (4) Nothing in this section shall be construed to mean that
0858 any person shall be relieved of legal responsibility to support a
0859 child.

0860 (b) *Reimbursement to county general fund.* (1) When ex-

Sec. ____ K.S.A. 38-1103 is hereby amended to read as follows: 38-1103. If the
complaining witness is not represented by counsel, ~~the county attorney of the county in~~
~~which the action is brought shall represent the plaintiff in an action to determine~~
~~paternity.~~ representation shall be provided as follows: (1) The court trustee of the
county in which the action is brought, if such an office has been established; or (2)
The department of social and rehabilitation services or its contractor if the action is
brought pursuant to part D of title IV of the federal social security act (42 USC §651
et seq.), as amended; or (3) The county or district attorney of the county in which the
action is brought if the action is not brought pursuant to part D of title IV of the
federal social security act (42 USC §651 et seq.), as amended, and there is no court
trustee in such county. In cases where the complaining witness is represented by counsel,
such counsel may appear on behalf of the plaintiff. The court may, in its discretion,
allow a reasonable sum to the attorney for plaintiff as compensation for his services,
which sum shall be part of the judgment against the defendant. ~~No such fee shall be~~
~~allowed if the plaintiff is represented by a county attorney in the action.~~

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0861 penses for the care and custody of a child alleged or adjudged to
0862 be a child in need of care have been paid out of the county
0863 general fund, the court may fix a time and place for hearing on
0864 the question of requiring payment or reimbursement of all or
0865 part of the expenses by a person who by law is liable to maintain,
0866 care for or support the child.

0867 (2) The court, after notice to the person who by law is liable
0868 to maintain, care for or support the child, may hear and dispose of
0869 the matter and may enter an order relating to payment of ex-
0870 penses for care and custody of the child. If the person willfully
0871 fails or refuses to pay the sum, the person may be adjudged in
0872 contempt of court and punished accordingly.

0873 (3) The county may bring a separate action against a person
0874 who by law is liable to maintain, care for or support a child
0875 alleged or adjudged to be a child in need of care for the reim-
0876 bursement of expenses paid out of the county general fund for
0877 the care and custody of the child.

0878 (c) *Reimbursement to state social welfare fund.* When ex-
0879 penses for the care and custody of a child alleged or adjudged to
0880 be a child in need of care have been paid out of the state social
0881 welfare fund, the secretary may recover the expenses pursuant
0882 to K.S.A. 39-709, 39-718a or 39-755, and amendments thereto, or
0883 as otherwise provided by law, from any person who by law is
0884 liable to maintain, care for or support the child.

0885 The secretary shall annually make written demand upon any
0886 person who by law is liable to maintain, care for or support the
0887 child for the amount claimed by the secretary to be due for the
0888 preceding year. The secretary may commence an action against
0889 the parent for the recovery of the amount claimed if the action is
0890 commenced within three years after (1) the date of the written
0891 demand or (2) the date that the obligor last paid any part of the
0892 amount claimed, acknowledged the existence of a debt or claim
0893 or promised to pay the debt or claim. The secretary shall have the
0894 power to compromise and settle any claim due or any amount
0895 claimed to be due from any person who by law is liable to
0896 maintain, care for or support the child. Whenever the secretary
0897 negotiates a written compromise settlement of any amounts past

to the secretary

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0808 due; no action shall thereafter be brought or claim made for any
0809 amounts other than the amounts provided for in the agreement.
0900 If the provisions of the compromise agreement are not complied
0901 with, the failure to comply shall serve to revive and reinstate the
0902 original amount of the claim due before negotiation of the com-
0903 promise agreement less amounts paid on the claim.

0904 Sec. 34. K.S.A. 1984 Supp. 38-1616 is hereby amended to
0905 read as follows: 38-1616. (a) *How paid.* (1) If a juvenile alleged or
0906 adjudged to be a juvenile offender is not eligible for assistance
0907 under K.S.A. 39-709 and amendments thereto, expenses for the
0908 care and custody of the juvenile shall be paid out of the general
0909 fund of the county in which the proceedings are brought. For the
0910 purpose of this section, a juvenile who is a nonresident of the
0911 state of Kansas or whose residence is unknown shall have resi-
0912 dence in the county where the proceedings are instituted.

0913 (2) When a law enforcement officer has taken a juvenile into
0914 custody as authorized by subsection (a) of K.S.A. 4983 1984
0915 Supp. 38-1624 and amendments thereto and delivered the juve-
0916 nile to a person or facility, other than a juvenile detention
0917 facility, designated by the secretary or when custody of a juve-
0918 nile is awarded to the secretary, the expenses of the care and
0919 custody of the juvenile may be paid by the secretary out of the
0920 state social welfare fund, subject to payment or reimbursement
0921 as required in subsection (b), even though the juvenile does not
0922 meet the eligibility standards of K.S.A. 39-709 and amendments
0923 thereto.

0924 (3) When the custody of a juvenile is awarded to the secretary
0925 of social and rehabilitation services, the expenses for the care
0926 and custody of the juvenile shall not be paid out of the county
0927 general fund.

0928 (4) Nothing in this section shall be construed to mean that
0929 any person shall be relieved of legal responsibility to support a
0930 juvenile.

0931 (b) *Reimbursement to county general fund.* (1) When ex-
0932 penses for the care and custody of a juvenile alleged or adjudged
0933 to be a juvenile offender have been paid out of the county
0934 general fund, the court may fix a time and place for hearing on

0935 the question of requiring payment or reimbursement of all or
0936 part of the expenses by a person who by law is liable to maintain,
0937 care for or support the juvenile.

0938 (2) The court, after notice to the person who by law is liable
0939 to maintain, care for or support the juvenile, may hear and
0940 dispose of the matter and may enter an order relating to payment
0941 of expenses for care and custody of the juvenile. If the person
0942 willfully fails or refuses to pay the sum, the person may be
0943 adjudged in contempt of court and punished accordingly.

0944 (3) The county may bring a separate action against a person
0945 who by law is liable to maintain, care for or support a juvenile
0946 alleged or adjudged to be a juvenile offender for the reimburse-
0947 ment of expenses paid out of the county general fund for the care
0948 and custody of the juvenile.

0949 (c) *Reimbursement to state social welfare fund.* When ex-
0950 penses for the care and custody of a juvenile alleged or adjudged
0951 to be a juvenile offender have been paid out of the state social
0952 welfare fund, the secretary may recover the expenses pursuant
0953 to K.S.A. 39-709, 39-718a or 39-755, and amendments thereto, or
0954 as otherwise provided by law, from any person who by law is
0955 liable to maintain, care for or support the juvenile.

0956 The secretary shall annually make written demand upon any
0957 person who by law is liable to maintain, care for or support the
0958 juvenile for the amount claimed by the secretary to be due for the
0959 preceding year. The secretary may commence an action against
0960 the parent for the recovery of the amount claimed if the action is
0961 commenced within three years after (1) the date of the written
0962 demand or (2) the date that the obligor last paid any part of the
0963 amount claimed, acknowledged the existence of a debt or claim
0964 or promised to pay the debt or claim. The secretary shall have the
0965 power to compromise and settle any claim due or any amount _____ to the secretary
0966 claimed to be due from any person who by law is liable to
0967 maintain, care for or support the juvenile. Whenever the secre-
0968 tary negotiates a written compromise settlement of any amounts
0969 past due, no action shall thereafter be brought or claim made for
0970 any amounts other than the amounts provided for in the agree-
0971 ment. If the provisions of the compromise agreement are not

0072 complied with; the failure to comply shall serve to revive and
0073 reinstate the original amount of the claim due before negotiation
0074 of the compromise agreement less amounts paid on the claim.
0075 Sec. 35. K.S.A. 1984 Supp. 39-709 is hereby amended to read
0076 as follows: 39-709. (a) *General eligibility requirements for as-*
0077 *sistance for which federal moneys are expended.* Subject to the
0078 additional requirements below, assistance in accordance with
0079 plans under which federal moneys are expended may be granted
0080 to any needy person who:

0081 (1) Has insufficient income or resources to provide a reason-
0082 able subsistence compatible with decency and health. Where a
0083 husband and wife are living together the combined income or
0084 resources of both shall be considered in determining the eligi-
0085 bility of either or both for such assistance unless otherwise
0086 prohibited by law. The secretary, in determining need of any
0087 applicant for or recipient of assistance shall not take into account
0088 the financial responsibility of any individual for any applicant or
0089 recipient of assistance unless such applicant or recipient is such
0090 individual's spouse or such individual's minor child or minor
0091 stepchild if the stepchild is living with such individual. The
0092 secretary in determining need of an individual may provide such
0093 income and resource exemptions as may be permitted by federal
0094 legislation.

0095 (2) Is a citizen of the United States or is an alien lawfully
0096 admitted to the United States and who is residing in the state of
0097 Kansas. If any person transfers or assigns property without ade-
0098 quate consideration or for the purpose of becoming eligible for
0099 assistance (A) within the two-year period immediately preceding
1000 the application if the value of the property so transferred or
1001 assigned is \$12,000 or less or (B) within a period of time in excess
1002 of two years, as established by rules and regulations of the
1003 secretary, if the value of the property so transferred or assigned is
1004 in excess of \$12,000, such person shall thereby become ineligi-
1005 ble to receive assistance for such period of time as the value of
1006 the property assigned or transferred would have reasonably
1007 maintained such person at a standard compatible with decency
1008 and health. If any person without the consent of the secretary

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1009 assigns or transfers property without adequate consideration
1010 while on the assistance rolls, after making application for assist-
1011 ance or while receiving assistance, such person shall thereby
1012 become ineligible to receive assistance for such period of time as
1013 the value of the property assigned or transferred would have
1014 reasonably maintained such person at a standard compatible
1015 with decency and health.

1016 (b) *Assistance to families with dependent children.* Assist-
1017 ance may be granted under this act to any dependent child, or
1018 relative, subject to the general eligibility requirements as set out
1019 in subsection (a), who resides in the state of Kansas or whose
1020 parent or other relative with whom the child is living resides in
1021 the state of Kansas. Such assistance shall be known as aid to
1022 families with dependent children.

1023 (c) *Applying for or receiving Aid to families with dependent*
1024 *children constitutes an automatic assignment of support rights*
1025 *and limited power of attorney.* By applying for or receiving aid
1026 to families with dependent children such applicant or recipient
1027 shall be deemed to have assigned to the secretary on behalf of
1028 the state any accrued, present or future rights to support from any
1029 other person such applicant may have in such person's own
1030 behalf or in behalf of any other family member for whom the
1031 applicant is applying for or receiving aid. *In any case in which an*
1032 *order for child support has been established and the legal*
1033 *custodian and obligee under the order surrenders physical cus-*
1034 *tody of the child to a caretaker relative without obtaining a*
1035 *modification of legal custody and the caretaker relative's sup-*
1036 *port rights are assigned pursuant to this section, the surrender*
1037 *of physical custody and the assignment shall transfer, by*
1038 *operation of law, the child support obligation under the order to*
1039 *the secretary on behalf of the state. Such assignment shall be of*

1040 *all accrued, present or future rights to support.* The assignment
1041 of support rights shall automatically become effective upon the
1042 date of approval for or receipt of such aid without the require-
1043 ment that any document be signed by the applicant or recipient
1044 or obligee. The assignment shall remain in full force and effect so
1045 long as such person is an applicant for or recipient of such aid or

of the child(ren) surrendered to caretaker relative,

1016 until such other time as the secretary and the applicant or the
1017 recipient of such aid may agree a caretaker relative no longer
1018 has physical custody of the child and aid to dependent children
1019 is discontinued. Upon the discontinuance of such aid, the as-
1050 signment shall remain in effect as to unpaid support obligations
1051 due and owing at the time of the discontinuance of such aid until
1052 the claim of the secretary of social and rehabilitation services for
1053 repayment of the unreimbursed portion of such aid is satisfied.
1054 By applying for or receiving aid to dependent children assist-
1055 ance, or by surrendering physical custody of a child to a care-
1056 taker relative whose support rights are assigned, the applicant
1057 or, recipient or obligee is also deemed to have appointed the
1058 secretary, or the secretary's designee, as an attorney in fact to
1059 perform the specific act of negotiating and endorsing all drafts,
1060 checks, money orders or other negotiable instruments repre-
1061 senting support payments received by the secretary in behalf of
1062 any person applying for, receiving or having received such
1063 assistance or in behalf of an obligee whose child receives or has
1064 received aid to dependent children because of the child's place-
1065 ment with a caretaker relative. This limited power of attorney
1066 shall be effective from the date the secretary approves the
1067 application for aid and shall remain in full force and effect as to
1068 the respective support rights assigned to the secretary under this
1069 subsection (c). The secretary retains the power to endorse all
1070 drafts, checks, money orders or other negotiable instruments
1071 representing support to which the secretary retains a partial
1072 claim pursuant to subsection (c) of K.S.A. 39-754 and amend-
1073 ments thereto.

1074 (d) *Eligibility requirements for general assistance, the cost*
1075 *of which is not participated in shared by the federal govern-*
1076 *ment.* (1) General assistance may be granted to eligible persons
1077 who do not qualify for financial assistance in a program in which
1078 the federal government participates and who satisfy the addi-
1079 tional requirements prescribed by or under this subsection (d).
1080 (A) To qualify for general assistance in any form a needy
1081 person must have insufficient income or resources to provide a
1082 reasonable subsistence compatible with decency and health and,

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1083 except as provided for transitional assistance, be unable to en-
1084 gage in employment. The secretary shall adopt rules and regu-
1085 lations prescribing criteria for establishing whether a person is
1086 able to engage in employment, including such factors as age or
1087 physical or mental condition. Eligibility for general assistance,
1088 other than transitional assistance, is limited to an adult or family
1089 in which all legally responsible family members meet the cri-
1090 teria established by such rules and regulations of the secretary.
1091 Where a husband and wife are living together the combined
1092 income or resources of both shall be considered in determining
1093 the eligibility of either or both for such assistance unless other-
1094 wise prohibited by law. The secretary in determining need of
1095 any applicant for or recipient of general assistance shall not take
1096 into account the financial responsibility of any individual for any
1097 applicant or recipient of general assistance unless such applicant
1098 or recipient is such individual's spouse or such individual's
1099 minor child or a minor stepchild if the stepchild is living with
1100 such individual. In determining the need of an individual, the
1101 secretary may provide for income and resource exemptions.

1102 (B) To qualify for general assistance in any form a needy
1103 person must be a citizen of the United States or an alien lawfully
1104 admitted to the United States and must be residing in the state of
1105 Kansas.

1106 (2) General assistance in the form of transitional assistance
1107 may be granted to eligible persons who do not qualify for
1108 financial assistance in a program in which the federal govern-
1109 ment participates and who satisfy the additional requirements
1110 prescribed by or under this subsection (d), but who do not meet
1111 the criteria prescribed by rules and regulations of the secretary
1112 relating to inability to engage in employment.

1113 (3) In addition to the other requirements prescribed under
1114 this subsection (d), the secretary shall adopt rules and regula-
1115 tions which establish community work experience program re-
1116 quirements for eligibility for the receipt of general assistance in
1117 any form and which establish penalties to be imposed when a
1118 work assignment under a community work experience program
1119 requirement is not completed without good cause. The secretary

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1120 may adopt rules and regulations establishing exemptions from
1121 any such community work experience program requirements. A
1122 first-time failure to complete such a work assignment require-
1123 ment shall result in ineligibility to receive general assistance for
1124 a period fixed by such rules and regulations of not more than
1125 three calendar months. A subsequent failure to complete such a
1126 work assignment requirement shall result in a period fixed by
1127 such rules and regulations of ineligibility of not more than six
1128 calendar months.

1129 (4) If any person transfers or assigns property without ade-
1130 quate consideration or for the purpose of becoming eligible for
1131 any form of general assistance (A) within the two-year period
1132 immediately preceding the application if the value of the prop-
1133 erty so transferred or assigned is \$12,000 or less or (B) within a
1134 period of time in excess of two years, as established by rules and
1135 regulations of the secretary, if the value of the property so
1136 transferred or assigned is in excess of \$12,000, such person shall
1137 thereby become ineligible to receive any form of general assist-
1138 ance for such period of time as the value of the property assigned
1139 or transferred would have reasonably maintained such person at
1140 a standard compatible with decency and health. If any person
1141 without the consent of the secretary assigns or transfers property
1142 without adequate consideration while on the assistance rolls
1143 after making application for assistance or while receiving assist-
1144 ance, such person shall thereby become ineligible to receive
1145 assistance for such period of time as the value of the property
1146 assigned or transferred would have reasonably maintained such
1147 person at a standard compatible with decency and health. If any
1148 person is found guilty of the crime of theft under the provisions
1149 of K.S.A. 39-720 and amendments thereto, such person shall
1150 thereby become ineligible to receive any form of general assist-
1151 ance under the provisions of this subsection (d). If any person is
1152 found guilty by a court of competent jurisdiction of any state
1153 other than the state of Kansas of a crime involving welfare fraud,
1154 such person shall thereby become ineligible to receive any form
1155 of general assistance under the provisions of this subsection (d).
1156 (e) *Requirements for medical assistance for which federal*

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1157 moneys or state moneys or both are expended. When the secre-
1158 tary has adopted a medical care plan under which federal
1159 moneys or state moneys or both are expended, medical assist-
1160 ance in accordance with such plan shall be granted to any person
1161 who is a citizen of the United States or who is an alien lawfully
1162 admitted to the United States and who is residing in the state of
1163 Kansas, whose resources and income do not exceed the levels
1164 prescribed by the secretary. In determining the need of an
1165 individual, the secretary may provide for income and resource
1166 exemptions and protected income and resource levels. The sec-
1167 retary shall exempt principal and interest held in irrevocable
1168 trust pursuant to subsection (c) of K.S.A. 16-303 and amendments
1169 thereto from the eligibility requirements of applicants for and
1170 recipients of medical assistance. Such assistance shall be known
1171 as medical assistance.

1172 (f) *Eligibility for medical assistance of resident receiving*
1173 *medical care outside state.* A person who is receiving medical
1174 care, including long-term care, outside of Kansas and whose
1175 health would be endangered by the postponement of medical
1176 care until return to the state or whose health would be endan-
1177 gered by travel to return to Kansas, may be determined eligible
1178 for medical assistance if such individual is a resident of Kansas
1179 and all other eligibility factors are met. Persons who are receiv-
1180 ing medical care on an ongoing basis in a long-term medical care
1181 facility in a state other than Kansas and who do not return to a
1182 care facility in Kansas when they are able to do so, shall no
1183 longer be eligible to receive assistance in Kansas unless such
1184 medical care is not available in a comparable facility or program
1185 providing such medical care in Kansas. For persons who are
1186 minors or who are under guardianship, the actions of the parent
1187 or guardian shall be deemed to be the actions of the child or ward
1188 in determining whether or not the person is remaining outside
1189 the state voluntarily.

1190 (g) *Medical assistance; assignment of rights to medical sup-*
1191 *port and limited power of attorney.* By applying for or receiving
1192 medical assistance under a medical care plan in which federal
1193 funds are expended, any accrued, present or future rights to

1194 medical support and any rights to payment for medical care from
1195 a third party of an applicant or recipient and any other family
1196 member for whom the applicant is applying shall be deemed to
1197 have been assigned to the secretary on behalf of the state. The
1198 assignment shall automatically become effective upon the date
1199 of approval for such assistance without the requirement that
1200 any document be signed by the applicant or recipient. Upon the
1201 discontinuance of such assistance, the assignment shall remain
1202 in effect as to unpaid obligations due and owing at the time of
1203 the discontinuance of such assistance until the claim of the
1204 secretary for repayment of the unreimbursed portion of such
1205 assistance is satisfied. By applying for or receiving medical
1206 assistance the applicant or recipient is also deemed to have
1207 appointed the secretary, or the secretary's designee, as an at-
1208 torney in fact to perform the specific act of negotiating and
1209 endorsing all drafts, checks, money orders or other negotiable
1210 instruments, representing payments received by the secretary in
1211 behalf of any person applying for, receiving or having received
1212 such assistance. This limited power of attorney shall be effec-
1213 tive from the date the secretary approves the application for
1214 assistance and shall remain in full force and effect as to the
1215 respective rights assigned to the secretary under this subsection.
1216 The secretary retains the power to endorse all drafts, checks,
1217 money orders or other negotiable instruments representing
1218 support to which the secretary retains a partial claim pursuant
1219 to subsection (c) of K.S.A. 39-754 and amendments thereto. The
1220 assignment of any rights to payment for medical care from a
1221 third party under this subsection shall not prohibit a health care
1222 provider from directly billing an insurance carrier for services
1223 rendered if the provider has not submitted a claim covering
1224 such services to the secretary for payment.

1225 (h) Placement under code for care of children or juvenile
1226 offender code; assignment of support rights and limited power
1227 of attorney. In any case in which the secretary of social and
1228 rehabilitation services pays for the expenses of care and custody
1229 of a child pursuant to K.S.A. 1984 Supp. 38-1501 et seq. or
1230 38-1601 et seq., and amendments thereto, including the expenses

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1231 of any foster care placement, an assignment of all past, present
1232 and future support rights possessed by either parent and the _____ of the child in custody
1233 child is by operation of law, conveyed to the secretary. Such _____ or other person entitled to receive support payments
1234 assignment shall become effective upon placement of a child in
1235 the custody of the secretary or upon payment of the expenses of
1236 care and custody of a child by the secretary without the re- _____ or other person entitled to receive support payments
1237 quirement that any document be signed by the parent and shall

1238 remain in full force and effect so long as such expenses are paid
1239 or the child remains in the custody of the secretary. When the
1240 payment of expenses by the secretary ceases or the secretary is
1241 relieved of custody of the child, the assignment shall remain in _____ for the child who was in custody

1242 effect as to unpaid support obligations due and owing at the
1243 time payments for expense of care and custody or custody of the
1244 child is discontinued until the claim of the secretary of social _____ Such claim under this paragraph is limited to an amount not to exceed the amount of
1245 and rehabilitation services has been satisfied. When the secre- _____ assistance provided the child.

1246 tary pays for the expenses of care and custody of a child or a _____ or other person
1247 child is placed in the custody of the secretary, the parent to

1248 whom support is ordered paid in a previously existing order for
1249 support is also deemed to have appointed the secretary, or the
1250 secretary's designee, as attorney in fact to perform the specific
1251 act of negotiating and endorsing all drafts, checks, money
1252 orders or other negotiable instruments representing support
1253 payments received by the secretary on behalf of any parent _____ or other person otherwise entitled to receive support payments
1254 pursuant to the assignment of support rights. This limited

1255 power of attorney shall be effective from the date the assign-
1256 ment to support rights becomes effective and shall remain in
1257 full force and effect as to the respective support rights assigned
1258 to the secretary under this subsection. The secretary retains the
1259 power to endorse all drafts, checks, money orders or other
1260 negotiable instruments representing support to which the sec-
1261 retary retains a partial claim pursuant to K.S.A. 39-754 and
1262 amendments thereto.

1263 Sec. 36. K.S.A. 39-718a is hereby amended to read as fol-
1264 lows: 39-718a. In any case where assistance is given to depen-
1265 dent children by reason of the continued absence from the home
1266 of a parent, any such provided to or for the benefit of a depen-
1267 dent child because a parent is absent from the home where the

1268 child resides, including aid to dependent children, medical
1269 assistance and payment of the expenses of foster care or of care
1270 and custody under the Kansas code for care of children or the
1271 Kansas juvenile offenders code, the absent parent shall be liable
1272 to repay to the secretary of social and rehabilitation services the
1273 ~~amount of such assistance.~~ The secretary shall have the power and
1274 authority to collect such sums by civil action brought in the name
1275 of the secretary if the issue has not been ruled upon by a court of
1276 competent jurisdiction or if an order of child support or medical
1277 support has been established and the obligor has not fully
1278 complied with its terms. This act shall not apply where such if a
1279 court of competent jurisdiction has considered the issue of
1280 support and the absent parent has complied fully with the terms
1281 of a child support order entered by a court of competent juris-
1282 diction the court's order.

1283 Sec. 37. K.S.A. 1984 Supp. 39-754 is hereby amended to read
1284 as follows: 39-754. (a) If an assignment of support rights is
1285 deemed to have been made pursuant to K.S.A. 39-709 or 39-756,
1286 and amendments thereto, support payments shall be made to the
1287 department of social and rehabilitation services.

1288 (b) If a court has ordered support payments to be made to an
1289 applicant for or recipient of financial assistance or other person
1290 whose support rights are assigned, the secretary of social and
1291 rehabilitation services shall file a notice of the assignment with
1292 the court ordering the payments without the requirement that a
1293 copy of the notice be provided to the obligee or obligor. The
1294 notice shall not require the signature of the applicant or recipi-
1295 ent or obligee on any accompanying assignment document. The
1296 notice shall include:

- 1297 (1) A statement that the assignment is in effect;
1298 (2) the name of the any child and the caretaker or other adult
1299 for whom support has been ordered by the court;
1300 (3) the number of the case in which support was ordered; and
1301 (4) a request that the payments ordered be made to the
1302 secretary of social and rehabilitation services.

1303 (c) Upon receipt of the notice and without the requirement of
1304 a hearing or order, the court shall forward all support payments,

child(ren)'s portion of assistance so expended.

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1305 including those made as a result of any garnishment, contempt,
1306 attachment, *income withholding, income assignment* or release
1307 of lien process, to the secretary of social and rehabilitation
1308 services until the court receives notification of the termination of
1309 the assignment.

1310 ~~(e)~~ (d) If the claim of the secretary for repayment of the
1311 unreimbursed portion of aid to families with dependent chil-
1312 dren, *medical assistance or the costs of care and custody of a*
1313 *child under K.S.A. 1984 Supp. 38-1501 et seq. or 38-1601 et seq.,*
1314 *and amendments thereto*, is not satisfied when such aid is
1315 discontinued, the secretary shall file a notice of partial termina-
1316 tion of assignment of support rights with the court which will
1317 preserve the assignment in regard to unpaid support rights
1318 which were due and owing at the time of the discontinuance of
1319 such aid. *A copy of the notice of the partial termination of the*
1320 *assignment need not be provided to the obligee or obligor.* The
1321 notice shall include:

1322 (1) A statement that the assignment has been partially termi-
1323 nated;

1324 (2) the name of ~~the~~ *any* child and the caretaker *or other adult*
1325 for whom support has been ordered by the court;

1326 (3) the number of the case in which support was ordered; and

1327 (4) the date the assignment was partially terminated.

1328 (e) Upon receipt of ~~said~~ *the* notice and without the require-
1329 ment of a hearing or order, the court shall forward all payments
1330 made to satisfy support arrearages due and owing as of the date
1331 the assignment of support rights was partially terminated to the
1332 secretary of social and rehabilitation services until the court
1333 receives notification of the termination of the assignment.

1334 (d) (f) If the secretary of social and rehabilitation services or
1335 the secretary's designee has on file with the court ordering
1336 support payments, a notice of assignment of support rights pur-
1337 suant to subsection (b) or a notice of partial termination of
1338 assignment of support rights pursuant to subsection ~~(e)~~ (d), the
1339 secretary shall be considered a necessary party in interest con-
1340 cerning any legal action to enforce, modify, settle, satisfy or
1341 discharge an assigned support obligation and, as such, shall be

child(ren)'s share of the

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1312 given notice by the party filing such action. Notice shall be
1313 provided according to in accordance with the rules of civil
1314 procedure.

1315 (g) Upon written notification by the secretary's designee
1316 that assigned support has been collected pursuant to K.S.A.
1317 41-718 or 75-6201 et seq., and amendments thereto, or section
1318 461 of title IV, part D, of the federal social security act, or any
1319 other method of direct payment to the secretary, the clerk of the
1320 court or other record keeper where the support order was
1321 established, shall enter the amounts collected by the secretary
1322 of social and rehabilitation services in the court's payment
1323 ledger or other record to insure that the obligor is credited for
1324 the amounts collected.

1325 Sec. 38. K.S.A. 39-755 is hereby amended to read as follows:
1326 39-755. (a) In cases where the secretary of social and rehabilita-
1327 tion services is deemed to have an assignment of support rights
1328 from a person applying for or receiving aid to families with
1329 dependent children in accordance with the provisions of K.S.A.
1330 39-709 and amendments thereto, the secretary is authorized to
1331 bring a civil action in the name of the state of Kansas or of the
1332 obligee whose support rights are assigned to enforce such sup-
1333 port rights, establish an order for medical support and, when
1334 appropriate or necessary, to establish the paternity of a child.
1335 Civil actions brought by the secretary to establish paternity
1336 shall not be limited or barred until the child reaches 18 years of
1337 age. The secretary may also enforce any assigned support order
1338 or file a motion to modify any such order.

1339 (b) The secretary of social and rehabilitation services and the
1340 attorney representing the secretary or an attorney with whom the
1341 secretary has entered into a contract or agreement for such
1342 services under this act shall be deemed to represent the interests
1343 of all persons, officials and agencies having an interest in the
1344 assignment. The court shall determine, in accordance with ap-
1345 plicable provisions of law, the parties necessary to the proceed-
1346 ing and whether independent counsel should be appointed to
1347 represent any party to the assignment or any other person having
1348 an interest in the support right.

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1379 (c) Any support order made by the court in such a proceeding
1380 shall direct that payments be made to the secretary of social and
1381 rehabilitation services so long as there is in effect an assignment
1382 of support rights to the secretary and, upon notification by the
1383 secretary to the court that the assignment is terminated, that
1384 payments be made to the person or family.

1385 (d) The provisions of this section shall also apply to cases
1386 brought in accordance with the provisions of this act involving
1387 persons who are not applicants for or recipients of aid to families
1388 with dependent children by the secretary on behalf of persons
1389 who have applied for services pursuant to K.S.A. 39-756 and
1390 amendments thereto.

1391 Sec. 39. K.S.A. 1984 Supp. 44-718 is hereby amended to read
1392 as follows: 44-718. (a) *Waiver of rights void.* No agreement by an
1393 individual to waive, release or commute such individual's rights
1394 to benefits or any other rights under this act shall be valid. No
1395 agreement by any individual in the employ of any person or
1396 concern to pay all or any portion of an employer's contribution or
1397 payments in lieu of contributions required under this act from
1398 such employer, shall be valid. No employer shall directly or
1399 indirectly make or require or accept any deduction from remun-
1400 eration to finance the employer's contributions required from
1401 such employer, or require or accept any waiver of any right
1402 hereunder by any individual in such employer's employ. Any
1403 employer or officer or agent of an employer who violates any
1404 provision of this subsection shall, for each offense, be fined not
1405 less than \$100 nor more than \$1,000 or be imprisoned for not
1406 more than six months, or both.

1407 (b) *Limitation of fees.* No individual claiming benefits shall
1408 be charged fees of any kind in any proceeding under this act by
1409 the secretary of human resources or representatives of the sec-
1410 retary or by any court or any officer thereof. Any individual
1411 claiming benefits in any proceeding before the secretary of
1412 human resources or a court may be represented by counsel or
1413 other duly authorized agents, but no such counsel or agents shall
1414 either charge or receive for such services more than an amount
1415 approved by the secretary of human resources. Any person who

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1416 violates any provision of this subsection shall, for each such
1417 offense, be fined not less than \$50 nor more than \$500, or
1418 imprisoned for not more than six months, or both.

1419 (c) *No assignment of benefits; exemptions.* No assignment,
1420 pledge or encumbrance of any right to benefits which are or may
1421 become due or payable under this act shall be valid; and such
1422 rights to benefits shall be exempt from levy, execution, attach-
1423 ment, or any other remedy whatsoever provided for the collec-
1424 tion of debt; and benefits received by an individual, so long as
1425 they are not mingled with other funds of the recipient, shall be
1426 exempt from any remedy whatsoever for the collection of all
1427 debts except debts incurred for necessities furnished to such
1428 individual or such individual's spouse or dependents during the
1429 time when such individual was unemployed. No waiver of any
1430 exemption provided for in this subsection shall be valid.

1431 (d) *Child Support exception.* (1) ~~On and after September 26,~~
1432 ~~1982,~~ An individual filing a new claim for unemployment com-
1433 pensation shall, at the time of filing such claim, disclose whether
1434 or not the individual owes child support obligations as defined
1435 under paragraph (7). If any such individual discloses that such
1436 individual owes child support obligations, and is determined to
1437 be eligible for unemployment compensation, the secretary shall
1438 notify the state or local child support enforcement agency en-
1439 forcing such obligation that the individual has been determined
1440 to be eligible for unemployment compensation.

1441 (2) The secretary shall deduct and withhold from any un-
1442 employment compensation payable to an individual that owes
1443 child support obligations as defined under paragraph (7):

1444 (A) The amount specified by the individual to the secretary
1445 to be deducted and withheld under this subsection, if neither (B)
1446 nor (C) is applicable; or

1447 (B) the amount, if any, determined pursuant to an agreement
1448 submitted to the secretary under section 454(20)(B)(i) of the
1449 social security act by the state or local child support enforcement
1450 agency, unless subparagraph (C) is applicable; or

1451 (C) any amount otherwise required to be so deducted and
1452 withheld from such unemployment compensation pursuant to

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1453 legal process (as that term is defined in section 462(e) of the
1454 social security act) properly served upon the secretary.

1455 (3) Any amount deducted and withheld under paragraph (2)
1456 shall be paid by the secretary to the appropriate state or local
1457 child support enforcement agency.

1458 (4) Any amount deducted and withheld under paragraph (2)
1459 shall for all purposes be treated as if it were paid to the individ-
1460 ual as unemployment compensation and paid by such individual
1461 to the state or local child support enforcement agency in satis-
1462 faction of the individual's child support obligations.

1463 (5) For purposes of ~~paragraph~~ paragraphs (1) through (4), the
1464 term "unemployment compensation" means any compensation
1465 payable under the employment security law after application of
1466 the recoupment provisions of subsection (d) of K.S.A. 44-719 and
1467 amendments thereto, (including amounts payable by the secre-
1468 tary pursuant to an agreement under any federal law providing
1469 for compensation, assistance or allowances with respect to un-
1470 employment).

1471 (6) This subsection applies only if appropriate arrangements
1472 have been made for reimbursement by the state or local child
1473 support enforcement agency for the administrative costs in-
1474 curred by the secretary under this section which are attributable
1475 to child support obligations being enforced by the state or local
1476 child support enforcement agency.

1477 (7) For the purposes of this subsection, the term "child
1478 support obligations" is defined as means only those obligations
1479 which are being enforced pursuant to a plan described in section
1480 451 of the *federal social security act* which has been approved by
1481 the secretary of health and human services under part D of title
1482 IV of the *federal social security act*.

1483 (8) For the purposes of this subsection, the term "state or
1484 local child support enforcement agency" is defined as means any
1485 agency of this state or a political subdivision thereof operating
1486 pursuant to a plan described in paragraph (7).

1487 Sec. 40. K.S.A. 60-1610 is hereby amended to read as fol-
1488 lows: 60-1610. A decree in an action under this article may
1489 include orders on the following matters:

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1490 (a) *Minor children.* (1) *Child support and education.* The
1491 court shall make provisions for the support and education of the
1492 minor children. The court may modify or change any prior order
1493 when a material change in circumstances is shown, irrespective
1494 of the present domicile of the child or the parents. *Regardless of*
1495 *the type of custodial arrangement ordered by the court,* the
1496 court may order the child support and education expenses to be
1497 paid by either or both parents for any child less than 18 years of
1498 age, at which age the support shall terminate unless the parent or
1499 parents agree, by written agreement approved by the court, to
1500 pay support beyond the time the child reaches 18 years of age. In
1501 determining the amount to be paid for child support, the court
1502 shall consider all relevant factors, without regard to marital
1503 misconduct, including the financial resources and needs of both
1504 parents, the financial resources and needs of the child and the
1505 physical and emotional condition of the child. Until a child
1506 reaches 18 years of age, the court may set apart any portion of
1507 property of either the husband or wife, or both, that seems
1508 necessary and proper for the support of the child.

Every order requiring support shall provide that the support be paid through the clerk of court or the court trustee.

1509 (2) *Child custody.* (A) *Changes.* Subject to the provisions of
1510 the uniform child custody jurisdiction act (K.S.A. 38-1301 *et seq.*
1511 and amendments thereto), the court may change or modify any
1512 prior order of custody when a material change of circumstances
1513 is shown.

1514 (B) *Examination of parties.* The court may order physical or
1515 mental examinations of the parties if requested pursuant to
1516 K.S.A. 60-235 and amendments thereto.

1517 (3) *Child custody criteria.* The court shall determine custody
1518 in accordance with the best interests of the child.

1519 (A) If the parties have a written agreement concerning the
1520 custody of their minor child, it is presumed that the agreement is
1521 in the best interests of the child. This presumption may be
1522 overcome and the court may make a different order if the court
1523 makes specific findings of fact stating why the agreement is not
1524 in the best interest interests of the child.

1525 (B) In determining the issue of custody, the court shall con-
1526 sider all relevant factors, including but not limited to:

1527 (i) The length of time that the child has been under the actual
1528 care and control of any person other than a parent and the
1529 circumstances relating thereto;

1530 (ii) the desires of the child's parents as to custody;

1531 (iii) the desires of the child as to the child's custodian;

1532 (iv) the interaction and interrelationship of the child with
1533 parents, siblings and any other person who may significantly
1534 affect the child's best interests; and

1535 (v) the child's adjustment to the child's home, school and
1536 community.

1537 Neither parent shall be considered to have a vested interest in
1538 the custody of any child as against the other parent, regardless of
1539 the age of the child, and there shall be no presumption that it is
1540 in the best interests of any infant or young child to give custody
1541 to the mother.

1542 (4) *Types of custodial arrangements.* Subject to the provi-
1543 sions of this article, the court may make any order relating to
1544 custodial arrangements which is in the best interests of the child.
1545 The order shall include, but not be limited to, one of the
1546 following, in the order of preference:

1547 (A) *Joint custody.* The court may place the custody of a child
1548 with both parties on a shared or joint-custody basis. In that event,
1549 the parties shall have equal rights to make decisions in the best
1550 interests of the child under their custody. When a child is placed
1551 in the joint custody of the child's parents, the court may further
1552 determine that the residency of the child shall be divided either
1553 in an equal manner with regard to time of residency or on the
1554 basis of a primary residency arrangement for the child. The
1555 court, in its discretion, may require the parents to submit a plan
1556 for implementation of a joint custody order upon finding that
1557 both parents are suitable parents or the parents, acting individu-
1558 ally or in concert, may submit a custody implementation plan to
1559 the court prior to issuance of a custody decree. If the court does
1560 not order joint custody, it shall include in the record the specific
1561 findings of fact upon which the order for custody other than joint
1562 custody is based.

1563 (B) *Sole custody.* The court may place the custody of a child

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1564 with one parent, and the other parent shall be the noncustodial
1565 parent. The custodial parent shall have the right to make deci-
1566 sions in the best interests of the child, subject to the visitation
1567 rights of the noncustodial parent.

1568 (C) *Divided custody.* In an exceptional case, the court may
1569 divide the custody of two or more children between the parties.

1570 (D) *Nonparental custody.* If during the proceedings the
1571 court determines that there is probable cause to believe that the
1572 child is a child in need of care as defined by subsections (a)(1),
1573 (2) or (3) of K.S.A. 4983 1984 Supp. 38-1502 and amendments
1574 thereto or that neither parent is fit to have custody, the court may
1575 award temporary custody of the child to another person or
1576 agency if the court finds the award of custody to the other person
1577 or agency is in the best interests of the child. The court may
1578 make temporary orders for care, support, education and visitation
1579 that it considers appropriate. Temporary custody orders are to be
1580 entered in lieu of temporary orders provided for in K.S.A. 4983
1581 1984 Supp. 38-1542 and 38-1543, and amendments thereto, and
1582 shall remain in effect until there is a final determination under
1583 the Kansas code for care of children. An award of temporary
1584 custody under this paragraph shall not be a ~~severance~~ *termina-*
1585 *tion* of parental rights nor give the court the authority to consent
1586 to the adoption of the child. When the court enters orders
1587 awarding temporary custody of the child to an agency or a person
1588 other than the parent, the court shall refer a transcript of the
1589 proceedings to the county or district attorney. The county or
1590 district attorney shall file a petition as provided in K.S.A. 4983
1591 1984 Supp. 38-1531 and amendments thereto and may request
1592 termination of parental rights pursuant to K.S.A. 4983 1984 Supp.
1593 38-1581 and amendments thereto. The costs of the proceedings
1594 shall be paid from the general fund of the county. When a final
1595 determination is made that the child is not a child in need of
1596 care, the county or district attorney shall notify the court in
1597 writing and the court, after a hearing, shall enter appropriate
1598 custody orders pursuant to this section. If the same judge pre-
1599 sides over both proceedings, the notice is not required. Any
1600 disposition pursuant to the Kansas code for care of children shall

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1601 be binding and shall supersede any order under this section.
1602 (b) *Financial matters.* (1) *Division of property.* The decree
1603 shall divide the real and personal property of the parties,
1604 whether owned by either spouse prior to marriage, acquired by
1605 either spouse in the spouse's own right after marriage or ac-
1606 quired by the spouses' joint efforts, by: (A) a division of the
1607 property in kind; (B) awarding the property or part of the prop-
1608 erty to one of the spouses and requiring the other to pay a just
1609 and proper sum; or (C) ordering a sale of the property, under
1610 conditions prescribed by the court, and dividing the proceeds of
1611 the sale. In making the division of property the court shall
1612 consider the age of the parties; the duration of the marriage; the
1613 property owned by the parties; their present and future earning
1614 capacities; the time, source and manner of acquisition of prop-
1615 erty; family ties and obligations; the allowance of maintenance
1616 or lack thereof; dissipation of assets; and such other factors as the
1617 court considers necessary to make a just and reasonable division
1618 of property.

1619 (2) *Maintenance.* The decree may award to either party an
1620 allowance for future support denominated as maintenance, in an
1621 amount the court finds to be fair, just and equitable under all of
1622 the circumstances. The decree may make the future payments
1623 modifiable or terminable under circumstances prescribed in the
1624 decree. In any event, the court may not award maintenance for a
1625 period of time in excess of 121 months. If the original court
1626 decree reserves the power of the court to hear subsequent
1627 motions for reinstatement of maintenance and such a motion is
1628 filed prior to the expiration of the stated period of time for
1629 maintenance payments, the court shall have jurisdiction to hear a
1630 motion by the recipient of the maintenance to reinstate the
1631 maintenance payments. Upon motion and hearing, the court may
1632 reinstate the payments in whole or in part for a period of time,
1633 conditioned upon any modifying or terminating circumstances
1634 prescribed by the court, but the reinstatement shall be limited to
1635 a period of time not exceeding 121 months. The recipient may
1636 file subsequent motions for reinstatement of maintenance prior
1637 to the expiration of subsequent periods of time for maintenance

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1638 payments to be made, but no single period of reinstatement
1639 ordered by the court may exceed 121 months. Maintenance may
1640 be in a lump sum, in periodic payments, on a percentage of
1641 earnings or on any other basis. At any time, on a hearing with
1642 reasonable notice to the party affected, the court may modify the
1643 amounts or other conditions for the payment of any portion of the
1644 maintenance originally awarded that has not already become
1645 due, but no modification shall be made without the consent of
1646 the party liable for the maintenance, if it has the effect of
1647 increasing or accelerating the liability for the unpaid mainte-
1648 nance beyond what was prescribed in the original decree.

1649 (3) *Separation agreement.* If the parties have entered into a
1650 separation agreement which the court finds to be valid, just and
1651 equitable, the agreement shall be incorporated in the decree.
1652 The provisions of the agreement on all matters settled by it shall
1653 be confirmed in the decree except that any provisions for the
1654 custody, support or education of the minor children shall be
1655 subject to the control of the court in accordance with all other
1656 provisions of this article. Matters settled by an agreement incor-
1657 porated in the decree, other than matters pertaining to the
1658 custody, support or education of the minor children, shall not be
1659 subject to subsequent modification by the court except: (A) As
1660 prescribed by the agreement or (B) as subsequently consented to
1661 by the parties.

1662 (4) *Costs and fees.* Costs and attorney fees may be awarded to
1663 either party as justice and equity require. The court may order
1664 that the amount be paid directly to the attorney, who may enforce
1665 the order in the attorney's name in the same case.

1666 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the
1667 request of a spouse, the court shall order the restoration of that
1668 spouse's maiden or former name.

1669 (2) *Effective date as to remarriage.* Any marriage contracted
1670 by a party, within or outside this state, with any other person
1671 before a judgment of divorce becomes final shall be voidable
1672 until the decree of divorce becomes final. An agreement which
1673 waives the right of appeal from the granting of the divorce and
1674 which is incorporated into the decree or signed by the parties

Every order requiring the payment of maintenance shall direct the payment or payments to be made through the clerk of court or court trustee.

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1675 and filed in the case shall be effective to shorten the period of
1676 time during which the remarriage is voidable.

1677 Sec. 41. K.S.A. 60-1613 is hereby amended to read as fol-
1678 lows: 60-1613. The court may order the person obligated to pay
1679 support or maintenance to make an assignment of a part of the
1680 person's periodic earnings or trust income to the person entitled
1681 to receive the support or maintenance payments. The assign-
1682 ment is (a) *The provisions of section 2 shall apply to all orders of*
1683 *support issued under K.S.A. 60-1610 and amendments thereto.*
1684 (b) *Any assignment previously ordered under this section*
1685 *remains binding on the employer, trustee or other payor of the*
1686 *earnings or income two weeks after service upon the payor of*
1687 *notice that the assignment has been made. The payor shall*
1688 *withhold from the earnings or trust income payable to the person*
1689 *obligated to support the amount specified in the assignment and*
1690 *shall transmit the payments to the district court trustee or the*
1691 *person specified in the order. The payor may withhold from the*
1692 *earnings or trust income payable to the person obliged to pay*
1693 *support an additional sum not exceeding \$2 as reimbursement*
1694 *for expenses for each payment. An employer shall not discharge*
1695 *or otherwise discipline an employee as a result of an assignment*
1696 *authorized by previously ordered under this section.*

1697 Sec. 42. K.S.A. 60-2310 is hereby amended to read as fol-
1698 lows: 60-2310. (a) *Definitions.* As used in this act and the acts of
1699 which this act is amendatory, unless the context otherwise re-
1700 quires, the following words and phrases shall have the meanings
1701 respectively ascribed to them:

1702 (1) "Earnings" means compensation paid or payable for per-
1703 sonal services, whether denominated as wages, salary, commis-
1704 sion, bonus or otherwise;

1705 (2) "disposable earnings" means that part of the earnings of
1706 any individual remaining after the deduction from such earnings
1707 of any amounts required by law to be withheld;

1708 (3) "wage garnishment" means any legal or equitable pro-
1709 cedure through which the earnings of any individual are re-
1710 quired to be withheld for payment of any debt; and

1711 (4) "federal minimum hourly wage" means that wage pre-

(d) The supreme court shall establish by rule an expedited judicial process which shall be used in the establishment of support orders pursuant to K.S.A. 39-718a, 39-755, 38-1101, 38-1542, the enforcement of any child support and maintenance order, the modification of any child support order, and the establishment and enforcement of support orders in interstate cases pursuant to K.S.A. 23-451 et seq. and sections 14-26 of this Act.

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1712 scribed by subsection (a)(1) of section 6 of the federal fair labor
1713 standards act of 1938, and any amendments thereto.

1714 (b) *Restriction on wage garnishment.* Subject to the provi-
1715 sions of subsection (c) of this section, only the aggregate dispos-
1716 able earnings of an individual may be subjected to wage gar-
1717 nishment. The maximum part of such earnings of any wage
1718 earning individual which may be subjected to wage garnishment
1719 for any workweek or multiple thereof may not exceed either (1)
1720 twenty-five percent of the individual's aggregate disposable
1721 earnings for that workweek or multiple thereof, or (2) the amount
1722 by which the individual's aggregate disposable earnings for that
1723 workweek or multiple thereof exceed an amount equal to 30
1724 times the federal minimum hourly wage, or equivalent multiple
1725 thereof for such longer period, whichever is less. No one creditor
1726 may issue more than one garnishment against the earnings of the
1727 same judgment debtor during any one month, but the court shall
1728 allow the creditor to file amendments or corrections of names or
1729 addresses of any party to the order of garnishment at any time.
1730 Nothing in this act shall be construed as charging the plaintiff in
1731 any garnishment action with the knowledge of the amount of any
1732 defendant's earnings prior to the commencement of such gar-
1733 nishment action.

1734 (c) *Sickness preventing work.* If any debtor is prevented from
1735 working at the debtor's regular trade, profession or calling for
1736 any period greater than two weeks because of illness of the
1737 debtor or any member of the family of the debtor, and this fact is
1738 shown by the affidavit of the debtor, the provisions of this section
1739 shall not be invoked against any such debtor until after the
1740 expiration of two months after recovery from such illness.

1741 (d) *Assignment of account.* If any person, firm or corporation
1742 sells or assigns an account to any person or collecting agency,
1743 that person, firm or corporation or their assignees shall not have
1744 or be entitled to the benefits of wage garnishment. The provision
1745 of this subsection shall not apply to assignments of support rights
1746 to the secretary of social and rehabilitation services made by
1747 applicants for or recipients of aid to families with dependent
1748 children under subsection (b) of K.S.A. 39-709 and amendments

1740 thereto; the assignments of support rights to the secretary of
1750 social and rehabilitation services made pursuant to K.S.A. 39-756
1751 and amendments thereto; pursuant to K.S.A. 39-709 and 39-756,
1752 and amendments thereto, or to support rights which have been
1753 assigned to any other state pursuant to title IV-D of the federal
1754 social security act (42 U.S.C. § 651, *et seq.*), or to the assignments
1755 of accounts receivable or taxes receivable to the director of
1756 accounts and reports made under K.S.A. 75-3728b and amend-
1757 ments thereto.

1758 (c) *Exceptions to restrictions on wage garnishment.* The
1759 restrictions on the amount of disposable earnings subject to wage
1760 garnishment as provided in subsection (b) shall not apply in the
1761 following instances:

1762 (1) Any order of any court for the support of any person,
1763 including any order for support in the form of alimony, but the
1764 foregoing shall be subject to the restriction provided for in
1765 subsection (g);

1766 (2) any order of any court of bankruptcy under chapter XIII of
1767 the federal bankruptcy act; and

1768 (3) any debt due for any state or federal tax.

1769 (f) *Prohibition on courts.* No court of this state may make,
1770 execute or enforce any order or process in violation of this
1771 section.

1772 (g) The maximum part of the aggregate disposable earnings
1773 of an individual for any workweek which is subject to garnish-
1774 ment to enforce any order for the support of any person shall not
1775 exceed:

1776 (1) If the individual is supporting a spouse or dependent
1777 child (other than a spouse or child with respect to whose support
1778 such order is used), 50% of the individual's disposable earnings
1779 for that week;

1780 (2) if the individual is not supporting a spouse or dependent
1781 child described in clause (1), 60% of such individual's disposable
1782 earnings for that week; and

1783 (3) with respect to the disposable earnings of any individual
1784 for any workweek, the 50% specified in clause (1) shall be 55%
1785 and the 60% specified in clause (2) shall be 65%, if such earnings

1786 are subject to garnishment to enforce a support order for a period
1787 which is prior to the twelve-week period which ends with the
1788 beginning of such workweek.

1789 Sec. 43. K.S.A. 75-6202 is hereby amended to read as fol-
1790 lows: 75-6202. As used in this act:

1791 (a) "Debtor" means any person ~~owing~~ *who*:

1792 (1) *Owes* a debt to the state of Kansas or any state agency; or

1793 (2) *owes support to an individual, or an agency of another*
1794 *state, who is receiving assistance in collecting that support*
1795 *under K.S.A. 39-756 and amendments thereto or under part D of*
1796 *title IV of the federal social security act (42 U.S.C. §651 et seq.),*
1797 *as amended.*

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1798 (b) "Debt" means:

1799 (1) Any liquidated sum due and owing to the state of Kansas
1800 or any state agency which has accrued through contract, subro-
1801 gation, tort, operation of law, or any other legal theory regardless
1802 of whether there is an outstanding judgment for that sum; or

1803 (2) *any amount of support due and owing an individual, or*
1804 *an agency of another state, who is receiving assistance in col-*
1805 *lecting that support under K.S.A. 39-756 and amendments*
1806 *thereto or under part D of title IV of the federal social security*
1807 *act (42 U.S.C. § 651 et seq.), as amended, which amount shall be*
1808 *considered a debt due and owing the department of social and*
1809 *rehabilitation services for the purposes of this act.*

1810 (c) "Refund" means any amount of Kansas income tax refund
1811 due to any person as a result of an overpayment of tax, and for
1812 this purpose, a refund due to a husband and wife resulting from a
1813 joint return shall be considered to be separately owned by each
1814 individual in the proportion of each such spouse's contribution
1815 to income, as the term "contribution to income" is defined by
1816 rules and regulations of the secretary of revenue.

1817 (d) "Net proceeds collected" means gross proceeds collected
1818 through final setoff against a debtor's earnings, refund or other
1819 payment due from the state or any state agency minus any
1820 collection assistance fee charged by the director of accounts and
1821 reports of the department of administration.

1822 (e) "State agency" means any state office, officer, depart-

1823 ment, board, commission, institution, bureau, agency or author-
1824 ity or any division or unit thereof.

1825 (f) "Person" means an individual, proprietorship, partner-
1826 ship, limited partnership, association, trust, estate, business
1827 trust, corporation, other entity or a governmental agency, unit or
1828 subdivision.

1829 (g) "Director" means the director of accounts and reports of
1830 the department of administration.

1831 Sec. 44. K.S.A. 23-452, 23-473, 23-475, 38-1104, 39-718a, 39-
1832 755, 60-1610, 60-1613, 60-2310 and 75-6202 and K.S.A. 1984
1833 Supp. 38-1512, 38-1616, 39-709, 39-754 and 44-718 are hereby
1834 repealed.

1835 Sec. 45. This act shall take effect and be in force from and
1836 after its publication in the statute book.

See attachment for additional sections.

H
A.

Section 46. K.S.A. 23-493 is hereby amended to read as follows:

23-493. Definitions.

(1) "Court" means the district court of this state.

(2) "Duty of support" includes any duty of support imposed by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, separate maintenance or otherwise.

(3) "Support," as used in this section and K.S.A. 23-495 and 23-496, means child support, whether interlocutory or final, and maintenance, ~~but only if the maintenance has been assigned to the secretary of social and rehabilitation services pursuant to K.S.A. 39-709 and the court trustee has contracted with the secretary to provide support enforcement services.~~

(4) "Obligor" means any person owing a duty of support.

(5) "Obligee" means any person or entity to whom a duty of support is owed.

Section 47. K.S.A. 23-494 is hereby amended to read as follows:

23-494. The court may provide by rule adopted by the judge or judges of each of the judicial districts of Kansas for the establishment of the office of court trustee for the judicial district. The court trustee shall be a person licensed to practice law in the state of Kansas and shall be appointed by and serve at the pleasure of the administrative judge, ~~or judges of the judicial district.~~

Section 48. K.S.A. 23-496 is hereby amended to read as follows:

23-496. Court trustee; powers. (a) The court trustee shall be authorized and empowered to pursue all civil remedies which would be available to the obligee in establishing and enforcing payment of support.

(b) The court trustee may also file motions for an increase or a decrease of the amount of support on behalf of any child, ~~obligor or obligee~~, and may file motions for an increase of the amount of support on behalf of any obligee who is the recipient of public assistance. Any such motion to modify the amount of support shall not be heard until notice has been given to the obligee, the obligor and their attorneys of record, if any.

(c) The court trustee shall have the following additional powers and duties upon approval of the administrative judge:

- (1) To issue summonses, subpoenas and subpoena duces tecum to obligors, obligees and other witnesses who possess knowledge or books and records relating to enforcement of support to appear in the office of the Trustee or before the District Court for examination;
- (2) To administer oaths and take sworn testimony on the record or by affidavit;
- (3) To appoint special process servers as required to carry out his responsibilities under this section;
- (4) To enter into stipulations, acknowledgments, agreements and journal entries subject to approval of the Court.

Section 49. K.S.A. 23-497 is hereby amended to read as follows:

23-497. To defray the expenses of operation of his or her office, the court trustee is authorized to charge an amount, not to exceed five percent (5%) of the funds collected from obligors through such office, as determined necessary by the ~~district~~ administrative judge, ~~or judges~~. Such amounts to be paid to the county general fund of the county where the same were collected. The court trustee shall be paid compensation as determined by the ~~district~~ administrative judge, ~~or judges~~. The board of county commissioners of each county to which this act may apply shall provide suitable quarters for the office of court trustee, furnish stationery and supplies, and such furniture and equipment as shall in the discretion of the ~~district~~ administrative judge ~~or judges~~, be necessary for the use of the court trustee. The ~~district~~ administrative judge ~~or judges~~ shall fix and determine the annual budget of the office of the court trustee.

Section 50. K.S.A. 23-499 is hereby amended to read as follows: 23-499.

The expenditure for salaries, compensation and necessary expenses of the office of court trustee provided for in this act may be paid during any budget year, even though the same was not included in the budget expenditures for such budget year, until such time as the office shall become self-supporting, as determined by the administrative judge, ~~or judges of the judicial district~~.

Section 51. K.S.A. 20-302b is hereby amended to read as follows:
20-302b. District magistrate judges; jurisdiction, powers and duties; appeals. (a) A district magistrate judge shall have the jurisdiction, power and duty, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions or misdemeanor charges and the preliminary examination of felony charges. In civil cases, a district magistrate judge shall have concurrent jurisdiction, powers and duties with a district judge, except that, unless otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

(1) Any action in which the amount in controversy, exclusive of interests and costs, exceeds \$5,000, except that in actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction; nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;

(3) actions for specific performance of contracts for real estate;

(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established, except that nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in article 23 of chapter 61 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto; and nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(5) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto;

(6) actions for divorce, separate maintenance or custody of minor children, except that nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas code for care of children or the Kansas juvenile offenders code, or to establish, enforce or modify support obligations under K.S.A. 60-1610, K.S.A.

39-718a, K.S.A. 39-755, K.S.A. 23-451 et seq., K.S.A. 38-1101 et seq.,
38-1542, and sections 1-26 of S.B. 51.

- (7) habeas corpus;
- (8) receiverships;
- (9) change of name;
- (10) declaratory judgments;
- (11) mandamus and quo warranto;
- (12) injunctions;
- (13) class actions;
- (14) rights of majority; and
- (15) actions pursuant to the protection from abuse act.

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge or associate district judge, a district magistrate judge may:

- (1) Grant a restraining order, as provided in K.S.A. 60-902 and amendments thereto;
 - (2) appoint a receiver, as provided in K.S.A. 60-1301 and amendments thereto;
 - (3) make any order authorized by K.S.A. 60-1607 and amendments thereto;
- and
- (4) grant any order authorized by the protection from abuse act.

(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined de novo by a district judge or an associate district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge or an associate district judge.

Section 52. K.S.A. 60-1612 is hereby amended to read as follows:
60-1612. Obligation to pay support or maintenance or to permit visitation;
not suspended by failure of other party to comply with orders issued under
this article.

(a) If a party fails to comply with a provision of a decree, temporary
order or injunction issued under this article, the obligation of the other
party to make payments for support or maintenance or to permit visitation is
not suspended, but the other party may request by motion that the court grant
an appropriate order.

(b) Motions to modify visitation or custody in proceedings where support
obligations are enforced under part D of title IV of the federal social
security act (42 U.S.C. §651 et seq.) as amended, shall be considered
proceedings in connection with the administration of the title IV-D program
for the sole purpose of disclosing information necessary to obtain service of
process on the parent with physical custody of the child.

2-26-85

A Response to Child Support Enforcement Legislation
Introduced to the 1985 Kansas Legislature

This paper represents concerns of noncustodial parents who make regular support payments to custodial parents as ordered by the court and as represented by the organization, Divorced Dads of Topeka.

There are a number of bills that have been introduced to the Kansas Legislature during the current session in regard to child support enforcement. These bills include Senate Bill Number 51. It is important for legislators to realize a major intent of Senate Bill 51 and facets for which this bill does not address. First of all, bills supporting stricter enforcement of child support payments do not guarantee anything to the children for which this money has been designated. Second, this legislation places no responsibility on the custodial parent to use the child support payment for proper child care for which the support has been ordered.

It should be recognized by those interested in child support enforcement that Senate Bill 51 is based on federal regulations which were recently passed by Congress. This federal legislation has been advertized as an attempt to require noncustodial parents to pay support which will decrease the need for federal assistance programs for single parents and children in need. Based on this premise child support enforcement has been regulated to decrease the need for federal dollars and not due to concern for proper care of children.

A child support order forces responsibility on one and only one parent, namely the noncustodial parent. There are numerous inequities which are involved with the break-up of a family. One of these is in regard to the noncustodial parent who cares very much about his/her child(ren). This individual, through the break-up of the family, has lost the opportunity to share on a daily basis the life of his/her child or children. In addition, he/she is required to pay and pay and pay the individual who has the opportunity to be with his/her child(ren) on a daily basis. In addition the noncustodial parent has no control over the systems' indictment and is controlled by the custodial parent.

It is imparative that children receive proper care. Likewise, there is no question that child support should be provided for proper care of children. However, there must be equity in providing for the support, care and needs of these children. In this manner it should be of equal concern to the legislature that laws be enacted which protect the noncustodial parents' rights to visitation with force equal to that proposed in Senate Bill 51. In addition, there is need to identify and document that child support payments are used in such a manner which meet the physical and psychological needs of the children.

(OVER)

2/26/85
Attch. IV

For these reasons and since the federal regulations do not go into effect until 1986, I would request Senate Bill 51 be tabled until:

- A. Legislation can be drafted to support children considering the responsibility of both parents to the child.
- B. Legislation be drafted to encourage rather than force: the payment of child support orders, visitation by noncustodial parents and visitation orders.

Woody Houseman
2913 Ohio
Topeka, KS 66605
Chairman, Public Policy
Divorced Dads of Topeka

2-26-85
2:30

CHILDREN'S COALITION

P.O. Box 5314
Topeka, Kansas 66605
913-232-0543

1985
POSITION STATEMENT
ON
CHILD SUPPORT ENFORCEMENT

POSITION

The Children's Coalition supports Senate Bill 51, a bill that would dramatically improve child support enforcement tools in Kansas. The Coalition also supports the efforts of the Kansas Commission on Child Support to amend this bill to put Kansas in compliance with Federal law. In addition:

- 1) The Coalition advocates the Kansas Commission on Child Support continue in existence at least until the Federal mandates have been fully implemented.
- 2) The Coalition supports the Kansas Commission on Child Support in its investigation of the following issues, and we encourage the Legislature to be aware of them as well:
 - A. Future child support orders need to reflect the true cost of living in Kansas. Statewide guidelines need to be developed to ensure consistency in child support orders.
 - B. A central registry should be established for all support awards to ensure all Kansas children receive the child support to which they are entitled.
 - C. The appropriateness of ongoing administration of the child support enforcement program by the Department of Social and Rehabilitation Services should be evaluated.
 - D. The State should scrutinize the availability, cost, and effectiveness of child support enforcement services both to children who are eligible for AFDC and those who are not.

COALITION MEMBER GROUPS

Association of Community Mental Health Centers in Kansas	Kansas Chapter - American Civil Liberties Union
Church of Our Lord Jesus Christ-Topeka	Kansas Children's Service League
Cross-Lines Cooperative Council, Inc.- Kansas City, Kansas	Kansas Committee for Prevention Child Abuse
Girls Clubs of Topeka	Kansas Council for Children & Youth
Junior League of Topeka	Kansas Council on Crime & Delinquency
Kansas Action for Children	Kansas-National Education Association
Kansas Association for Education of Young Children	Kansas State Nurses Association
Kansas Association of Child Care Workers	Kansas Trial Lawyers Association
Kansas Association of Licensed Private Child Care Agencies	Martin Luther King Urban Center - Kansas City, Kansas
	Public Assistance Coalition of Kansas
	The Villages, Inc.

2/26/85
Attch V