Approved March 27, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

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

12:00 ~~a.m./p.m.~~ Noon on March 26, 1987 in room 514-S of the Capitol.

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

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Jim Robertson, Social and Rehabilitation Services
Commissioner Robert Barnum, Social and Rehabilitation Services
Marjorie Van Buren, Office of the Judicial Administrator
Representative Snowbarger

House Bill 2134 - Procedure for enforcement of support oblications.

Jim Robertson, Social and Rehabilitation Services, appeared in support of the bill. He stated the majority of the proposed Chapter 23 amendments to the Kansas Uniform Reciprocal Enforcement of Support Act are geared towards satisfying a recently promulgated federal mandate that all states give full faith and credit to another state's support and paternity orders. This mandate was designed to enhance the interstate enforcement of support orders and is sorely needed. The main principle behind income withholding is to establish dependable periodic support payments that can be relied upon by the custodial parent to pay periodic expenses, and to avoid the need to pay welfare benefits because obligors do not satisfy their support obligations in a timely fashion. Copies of his testimony and other documents are attached (See Attachments I). Committee discussion with him followed.

House Bill 2170 - Periodic review of placements of children in need of care.

Commissioner Robert Barnum, Social and Rehabilitation Services, appeared in support of the bill. He testified this bill is designed to require periodic review hearings for children in foster care as federally mandated in the Adoption Assistance and Child Welfare Act of 1980. This bill will help ensure compliance with federal law thus preserving ongoing federal funds for child welfare services. This bill will provide the checks and balance system necessary in ensuring that all children in foster care are given a timely permanency plan. Commissioner Barnum recommended an amendment to the bill in line 46 by adding "if the secretary has custody of the child, such a hearing shall be held no more than 18 months after the child is placed outside the child's home and at least every 12 months thereafter." Copies of his testimony and the balloon amendment are attached (See Attachments II).

Marjorie Van Buren, Office of the Judicial Administrator, testified the office has been aware of this situation with the federal audit, and they do understand the importance of complying in that way. The reviews have been taking place but the reviews have not been documented. She advised the committee it will have an impact on workload in the urban counties. It will create 200 to 300 additional hearings in the three urban counties.

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 12:00 Noon ~~xxx~~ p.m. on March 26, 1987

House Bill 2170 continued

Commissioner Barnum added federal would accept that order in the files.

Marjorie Van Buren stated they support the amendment Commissioner Barnum brought up.

Marjorie Van Buren noted Terry Schowalter could not be present to testify on the bill and he does support the proposed amendment by Commissioner Barnum.

House Bill 2296 - Termination of parental rights, counsel for unlocated father.

Representative Snowbarger, sponsor of the bill, explained the section of the law this deals with is a part of the Parentage Act passed last year. The new language addresses the problem that rises when the father's identity is known but he cannot be located. The purpose of appointing counsel it to protect that father's parental rights from being terminated without due process. A copy of his testimony is attached (See Attachment III).

House Bill 2288 - Availability of SRS file to guardian ad litem before hearing under code for care of children.

Since Representative Graeber, sponsor of the bill, could not be present, a copy of his testimony was passed out to committee members (See Attachment IV). This bill would require SRS to make available at least 48 hours before the hearing their files and reports to the attorney appointed by the court in child in need of care cases. Commissioner Barnum testified the department can live with this language.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-26-87 Noon

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Nathan Carter	Topeka	Washburn
Jeff Lewis	Topeka	Washburn
KEITH R LANDIS	"	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
BOB BARNUM	"	YOUTH SVC SRS
Jim Robertson	"	SRS/CSE
Kay Billeaus	Topeka	Office of Judicial Admin
Marjorie Van Buren	Topeka	OJA
Jim Clark	Topeka	KCDAA

attch. I
Senate Judiciary
3-26-87

Testimony Regarding H.B. 2134

Submitted By:
J.A. Robertson
Child Support Enforcement Program
Administrator & Senior Legal Counsel
296-3237

The majority of the proposed Chapter 23 amendments to the Kansas Uniform Reciprocal Enforcement of Support Act are geared towards satisfying a recently promulgated federal mandate that all states give full faith and credit to another state's support and paternity orders. This mandate was designed to enhance the interstate enforcement of support orders and is sorely needed.

Although Kansas law does currently provide for "full faith and credit" for the most part, we need to make it clear that we will recognize any support order legally established by another state's court or agency, if that agency has been granted the legal authority to establish enforceable orders. The proposed amendment in Section 1, lines 26 and 27 is suggested to accomplish this result by altering the definition of "court" to include such an agency of another state.

K.S.A. 23-472 in its current form does conflict with the principle of "full faith and credit" by providing a paternity defense to an obligor even though another state has issued a legally valid order establishing paternity. The proposed amendment on lines 110-111 would strike that defense.

The remaining Chapter 23 amendments are technical in nature and are designed to "clean up" the existing law and to resolve inconsistencies.

The proposed amendments to K.S.A. 23-4,107 (Section 10, lines 209-293) are required to fully satisfy federal mandates concerning income withholding and to insure that Kansas continues to receive full federal funding for the Title IV-D (child support) and IV-A (ADC) programs. SRS has been officially notified by the federal Office of Child Support Enforcement that - after considering our numerous requests for reconsideration - Kansas law does not comply with the requirement that wage withholding occur when there is an arrearage in support payments in an amount equal to or greater than the amount of support payable for one month. Specifically, Section 466(b)(3) of the Social Security Act, 42 U.S.C. 666(b)(3) provides that:

> an absent parent shall become subject to withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of -
>
> > (A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month;
> >
> > (B) the date as of which the absent parent requests that such withholding begin, or;
> >
> > (C) such earlier date as the state may select.

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Senate Judiciary
3-26-87

When S.B. 51 (the Kansas Legislation geared towards satisfying the Child Support Enforcement Amendments of 1984) was enacted by the 1985 legislature, a ten day grace period was added as a criteria which must occur before an income withholding order can be obtained. The ten extra days provided for by Kansas law is the sole reason for the federal determination of non-compliance.

As a result of the federal decision that Kansas law does not comply with the Child Support Enforcement Amendments of 1984, SRS has also been officially notified that the Kansas Title IV-D State Plan will be rejected. Unless the law is amended, this State Plan rejection will result in the immediate loss of approximately five million dollars in federal funding currently provided to the Child Support Program and a potential three million dollars in federal incentives paid to Kansas for Title IV-D support collections. Further, since IV-A (Aid to Dependent Children) funding is dependent on Kansas having an acceptable IV-D plan for support enforcement, Kansas could ultimately lose approximately thirty million dollars in ADC as well. (Prior to withdrawal of all federal IV-A funding, the state would most likely be penalized from 1% ($300,000) to 5% ($1,500,000) of IV-A funding.)

Aside from satisfying the federal mandate, the result of the proposed income withholding amendment would benefit Kansas children whose parents do not - as a routine matter - pay child support as ordered by the court by speeding up the withholding process. The main principle behind income withholding is to establish dependable periodic support payments that can be relied upon by the custodial parent to pay periodic expenses, and to avoid the need to pay welfare benefits because obligors do not satisfy their support obligations in a timely fashion.

Attach. I

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support Enforcement

Director
Washington, D.C. 20201

MAR 10 1987

Dr. Robert C. Harder
Secretery
State Department of Social
and Rehabilitation Services
915 Harrison Street
Topeka, Kansas 66612

Dear Dr. Harder:

This is in response to your letter of December 31 to Mr. Max Smith in which you requested an exemption from the wage withholding provisions of P.L. 98-378.

We cannot approve your request for this exemption because Kansas failed to adequately demonstrate that implementation of certain withholding provisions would not increase the effectiveness and efficiency of the State's Child Support Enforcement program as required by section 466(d) of the Social Security Act, 45 CFR 302.70(d)(2) and OCSE-AT-86-08. In addition, in accordance with 45 CFR 302.70(d)(2), this disapproval is a final adminstrative decision and is not subject to appeal. However, should circumstances in the State change, a request for an exemption from implementing wage withholding may be resubmitted.

Your request was for an exemption to operate a similarly existing wage withholding procedure which would be "...equally efficient and effective..." to that required in 45 CFR 303.100. Specifically, you maintained that "...except for minor variations with respect to 45 CFR 303.100(a)(4) and (8)...," Kansas' procedures complied in all respects with OCSE's wage withholding requirements, and that collections resulting from these variations would be identical to the collections available under procedures which were in full compliance. We believe that the evidence presented by Kansas does not support this assertion. Your procedures would allow the obligor to pay the entire arrearage in full between the receipt of the notice and the preparation of the affidavit to withhold. Although this would result in the collection of the entire arrearage existing at that time, it would also result in a failure to establish wage withholding for the obligor. Any procedure which results in fewer wage withholding actions is not an effective or efficient procedure. Congress made clear in House Report No. 98-527 that the establishment of regular and ongoing support payments was the primary aim of the wage withholding provisions.

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Kansas was previously notified on February 10, of my intent, subject to an opportunity for hearing, to dissaprove your State plan. I again urge you to take the necessary steps to promptly submit an approvable State plan to the Regional Office.

Sincerely,

Wayne A. Stanton
Director

cc: Regional Representative

Attach. I

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support Enforcement

Director
Washington, D.C. 20201

KANSAS SOCIAL AND REHABILITATION SERVICES

FEB 10 1987

FEB 13 1987

OFFICE OF THE SECRETARY

Dr. Robert C. Harder
Secretary
Department of Social
and Rehabilitation Services
915 Harrison Street
Topeka, Kansas 66612

Dear Dr. Harder:

In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Social Security Act (the Act), and 45 CFR 301.10 and 301.13, this constitutes formal notice of my intent, subject to an opportunity for hearing, to disapprove Kansas' State IV-D plan. The basis for my intent to disapprove, is as follows:

- The State has failed to submit an approvable amendment to its State plan at section 2.12-1 providing for a program for wage withholding, in accordance with the requirement at 45 CFR 302.70(a)(1).

As provided in program instructions issued in OCSE-AT-86-21, prior to issuance of a final determination to disapprove your State plan, you have the option to request a hearing under procedures at 45 CFR Part 213. Election of administrative review prior to the final decision to approve or disapprove the State IV-D plan will constitute a waiver of reconsideration hearing rights contained in 45 CFR 301.14. You have 60 days from the date of this letter to request a formal hearing regarding the matters at issue in the proposed disapproval. Requests for a hearing should be sent to the Director, Office of Child Support Enforcement. If Kansas requests such pre-decision review, a Notice of Hearing will be issued setting forth the time and place of the hearing and the issues which will be considered therein. This notice will be published in the Federal Register.

Should the Department of Health and Human Services conclude following the hearing that Kansas does not have an approved State plan, you will be notified that further Federal payments under title IV-D of the Social Security Act will not be made until a State IV-D plan is submitted and approved. The effective date for the withholding of Federal funds shall not be earlier than the date of my decision and shall not be later than the first day of the next calendar quarter following such decision.

Should Kansas decline the opportunity for a hearing at this time, a determination will be made whether the State's IV-D plan must be disapproved for failure to conform with the requirements of section 454 of the Social Security Act (the Act). If you are dissatisfied with my decision you may request reconsideration of the decision pursuant to regulations at 45 CFR 301.14. Federal funding, however, will be suspended and may not be stayed pending reconsideration. If I subsequently determine that my original decision was incorrect, restitution of funds

Attach I

withheld or otherwise denied will immediately be certified in a lump sum.

I urge you to take the necessary steps to promptly submit an approvable State plan to the Regional Office. The State is completely and independently responsible for preparation, submission, and content of its State IV-D plan.

In addition, Kansas may be subject to reductions in title IV-A funding for failure to comply substantially with the requirements of section 402(a)(27) of the Act. These reductions will be governed by section 404(d) of the Act.

Should you have any questions in regard to this Notice, please contact your OCSE Regional Representative, Max W. Smith, at (816) 758-3584.

Sincerely,

Wayne A. Stanton
Director

Attch. I

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Child Support Enforcement

Region VII
Federal Building
601 East 12th Street
Kansas City, Missouri 64106
Telephone: (816) 374-3584

FEB 5 1987

Dr. Robert C. Harder, Secretary
Social and Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Dear Dr. Harder:

As you will recall, in our letter of November 6, 1986 (copy attached) we emphasized the importance of the State of Kansas submitting an approvable State plan amendment on Mandatory Wage Withholding no later than December 31, 1986.

As indicated in our said letter, the transmittal of August 27, 1986 is not approvable for the reason that the Kansas law on mandatory wage withholding does not comply with 45 C.F.R. 303.100(a)(4) which requires the State take steps to implement withholding and to send advance notice "the date on which the parent fails to make payments in an amount equal to the support payable for one month." According to Kansas law, Senate Bill 51 section 3(b), wage withholding does not occur until all or part of at least one payment is more than ten days overdue in addition to the existence of an arrearage which is equal to or greater than the amount of support payable for one month.

Accordingly, I have no alternative but to recommend to Mr. Wayne A. Stanton, Director of the Office of Child Support Enforcement (OCSE) and Administrator of the Family Support Administration (FSA) that the current Kansas State plan be disapproved pursuant 45 C.F.R. 301.13(c). As you are aware, 45 C.F.R. 301.10 makes an approved State plan the basis for federal financial participation in the cost of operating the State's program. Without an approved State plan, such funding is not available.

Upon receipt of our recommendation, the Director of OCSE pursuant Action Transmittal, OCSE-AT-86-21, dated December 31, 1986, will officially determine whether the Kansas State plan complies fully with Federal law and may issue a notice of intent to disapprove the State plan in accordance with 45 C.F.R. 301.13(c).

Attch. I

Due to the extreme gravity of these circumstances, you are urged to take whatever steps are necessary to secure the enactment and implementation of the required legislation and to submit an approvable State plan as soon as possible.

If you have any questions or if our office can be of any assistance in these matters, please advise.

Sincerely,

Max W. Smith

Max W. Smith
Regional Representative, OCSE

Attach. I

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

NOV 6 1986

Dr. Robert C. Harder, Secretary
Social and Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Dear Dr. Harder:

As you are aware, section 3 of Public Law 98-378, which added sections 454(20) and 466 to the Social Security Act, requires that States have in effect and use the procedures specified in section 466 to improve the effectiveness of the child support enforcement program. Section 466 of the Social Security Act identifies the eight mandatory procedures to improve program effectiveness as: wage withholding, expedited process, state income tax refund offset, liens, bonds, paternity, consumer credit reporting and wage withholding in all orders. The specifics concerning these mandatory procedures are found at section 466 of the Act and at 45 C.F.R. sections 302.70 and 303.100 - 303.105.

The purpose of this letter is to call to your attention the effective date for the implementation of these mandatory procedures and a compliance problem with the Kansas wage withholding provisions. Federal law, at section 3(g)(3) of Public Law 98-378, requires the States to implement the mandatory procedures by October 1, 1985, unless the Secretary of the Department of Health and Human Services has determined that State legislation is required to implement these new procedures. If such a determination is made, the State is granted an implementation delay until the beginning of the fourth month after the end of the first session of the State's legislature which ends on or after October 1, 1985.

The State of Kansas was granted an implementation delay. The first session of the Kansas legislature ending on or after October 1, 1985, ended on June 7, 1986. Accordingly, Kansas must implement the mandatory procedures by October 1, 1986. Pursuant to 45 C.F.R. section 301.13(g), the effective date of a State plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted. Therefore, Kansas must submit its State plan amendments no later than December 31, 1986. Kansas has filed and we have approved State plan amendments for seven of the eight mandatory procedures. In addition, on August 27, 1986, this office received your transmittal of the State plan amendment for the remaining procedure, Mandatory Wage Withholding.

Attch. I

Upon review it has been determined that the Kansas law on manadatory wage withholding does not comply with 45 C.F.R. 303.100(a)(4) which requires that the State take steps to implement withholding and to send advance notice "the date on which the parent fails to make payments in an amount equal to the support payable for one month." According to Kansas law, Senate Bill 51 section 3(b), wage withholding does not occur until all or part of at least one payment is more than ten days overdue in addition to the existence of an arrearage which is equal to or greater than the amount of support payable for one month.

Should the above ten day requirement in Senate Bill 51 remain in effect, the Kansas State plan will not meet the requirements for an approvable State plan. Under the applicable exemption procedures at 45 C.F.R. 302.70(d), and instructions issued in OCSE Action Transmittal, OCSE-AT-86-08, dated March 31, 1986, Kansas would have to demonstrate that compliance with the requirements of 45 C.F.R. 303.100(a)(4) (i.e., dropping the ten day rule in Kansas Senate Bill 51) would not increase the effectiveness and efficiency of the State's child support enforcement program in order to warrant approval of an exemption request. Since keeping the ten day rule would clearly result in fewer wage withholding actions, an exemption would not be warranted.

As you are aware, 45 C.F.R. 301.10 makes an approved State plan the basis for federal financial participation in the cost of operating the State's program. Without an approved State plan, such funding is not available. Due to the extreme gravity of these circumstances, you are urged to take whatever steps are necessary to secure the enactment and implementation of the required legislation and to submit an approvable State plan amendment no later than December 31, 1986.

If you have any questions or if our office can be of any assistance in these matters, I would appreciate an opportunity of meeting with you and your staff next week to explore options available.

Sincerely,

Max W. Smith

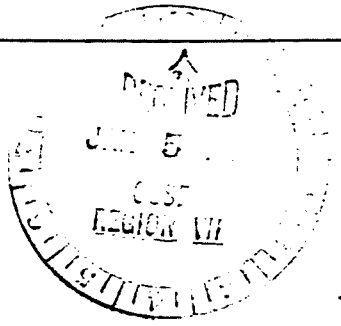
Max W. Smith
Regional Representative, OCSE

Attach. I

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support Enforcement

Director
Washington, D.C. 20201



PROGRAM INSTRUCTION

ACTION TRANSMITTAL
OCSE-AT-86-21
December 31, 1986

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Procedures for Determining That a State IV-D Plan is Disapproved

BACKGROUND: Section 455(a)(1)(A) of the Social Security Act (the Act) specifies that funds appropriated under title IV-D of the Act shall be paid to States with approved State IV-D plans. There is no authority to expend Federal funds under title IV-D of the Act for the operation of a State Child Support Enforcement Program unless such State has an approved State IV-D plan. Congress has made no provision for limited or partial suspension of funds, as it did under section 404(a) of the Act for AFDC programs.

Section 454 of the Act sets forth the statutory requisites for the State IV-D plan. In addition, regulations at 45 CFR 301.10 define the State IV-D plan as a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program. The State IV-D plan contains all the information necessary for the Office of Child Support Enforcement (OCSE) to determine whether the plan can be approved, as a basis for Federal financial participation in the State IV-D program.

Section 452(a)(3) of the Act requires that the Director of the Office of Child Support Enforcement review and approve State plans for Child Support Enforcement programs under title IV-D of the Act. The authority to approve State plans is delegated to the Regional Office, but the Director retains authority for determining that a State IV-D plan is not approvable.

Section 402(a)(27) of the Act provides that an approved State IV-D plan is a requirement for approval of a State

Attch. I

plan under title IV-A. If a State IV-D plan is disapproved, Federal IV-A funding may be reduced pursuant to section 404(d) of the Act. A reduction under section 404(d) will be imposed in accordance with section 403(h) of the Act.

The Child Support Enforcement Amendments of 1984, P.L. 98-378, created a new section 466 of the Act which requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of certain mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws. For States which required legislation in order to conform their State IV-D plans to the revised statute, the requirement was delayed until the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. By this date, a State must have enacted any required legislation. By the end of the quarter in which this date occurs, the State must submit new or amended State plan material to the OCSE Regional Office. This deadline for submitting State plan material has passed with respect to a number of States, and is imminent for the majority of States.

OCSE has been tracking the progress of each of the States in enacting the new mandatory laws and is noting the date when each State's legislative session ends in order to ascertain when these laws are required to be in effect and when the State must submit new or amended State plan material for approval by OCSE in order to operate a Child Support Enforcement program according to the requirements of title IV-D of the Act. If a State fails to submit the necessary State plan amendments, OCSE will have to determine that the State does not have an approvable State plan.

A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with the Director's decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Although it is not required under Title IV-D of the Act, OCSE will give States an advance notice of "Intent to Disapprove" a previously approved State IV-D plan. The

Attach. I

State will then be permitted the opportunity to waive reconsideration of the Director's final decision and to exercise, prior to the State plan approval/disapproval decision, the right to a hearing under the procedures set forth at 45 CFR Part 213. If the State elects to pursue its hearing rights prior to issuance of the Director's decision, no further administrative appeal will be allowed.

CONTENT: This action transmittal addresses the process for disapproving a State IV-D plan and the procedures for taking subsequent action to withhold Federal payments under title IV-D of the Act, including provision for notice and an optional hearing to States prior to disapproval.

INQUIRIES TO: OCSE Regional Representatives

Wayne A. Stanton
Director
Office of Child Support Enforcement

Attach. I

I. NOTICE OF INTENT TO DISAPPROVE

The Director of OCSE will issue a Notice of Intent to Disapprove a State Plan to the State umbrella agency head when he has determined that either of the following situations exist:

A. Pursuant to the requirements at 45 CFR 301.13(d) the State IV-D plan no longer meets the requirements for an approved State plan based on relevant Federal statutes and guidelines.

B. Pursuant to the requirements at 45 CFR 301.13(e) or (f) the State IV-D plan or amendment submitted for approval does not meet the requirements under title IV-D of the Act and regulations issued pursuant to the Act.

II. NOTICE OF OPPORTUNITY FOR HEARING

The Notice of Intent to Disapprove issued by the Director will provide opportunity for the State to request a hearing prior to issuance of the final decision if the State waives its right to a reconsideration of the Director's decision under 45 CFR 301.14. The State must request a hearing within 60 days of the date of the Notice of Intent to Disapprove. If the State does not request a hearing, the Director shall proceed according to the procedures set forth under Determination to Withhold outlined below.

Upon request of the State for a hearing, the Director will issue a Notice of Hearing which will state the time and place of the hearing, the issues which will be considered, and shall be published in the Federal Register. The hearing procedures contained in regulations at 45 CFR Part 213 shall apply to these proceedings.

III. NEGOTIATIONS

As provided in regulations at 45 CFR 213.1(b) the hearing process does not preclude or limit negotiations between OCSE and the State, whether before, during or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the hearing procedures, except as expressly provided for in such procedures.

IV. DETERMINATION TO WITHHOLD

If the Director of OCSE concludes that the State does not have an approved State IV-D plan under section I of these instructions, he will notify the State that further Federal payments under title IV-D of the Act will not be made to the State until a State IV-D plan is submitted and approved. Until a State IV-D plan is approved, no further Federal payments under title IV-D will be

Attch. I

made to the State for any child support enforcement activities. Pursuant to 45 CFR 213.33, the effective date for the withholding of Federal funds shall not be earlier than the date of the Director's decision and shall not be later than the first day of the next calendar quarter following such decision.

V. RECONSIDERATION

Any State which has not waived its right to reconsideration and is dissatisfied with the Director's decision that the State does not have an approvable State plan may request reconsideration of the decision pursuant to regulations at 45 CFR 301.14. Funding, however, will be suspended and may not be restored unless the Director subsequently determines that the original decision to withhold Federal IV-D funding was incorrect.

Attach I

DEPARTMENT OF HEALTH & HUMAN SERVICES

Memorandum

Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

Date : November 28, 1986

From : Office of the General Counsel
Region VII, Kansas City

Subject: Kansas - Mandatory Wage Withholding

To : Max Smith
Regional Representative, OCSE
Region VII, Kansas City

We have reviewed your memorandums of November 7, 1986, and November 20, 1986, regarding mandatory wage withholding in Kansas. We previously advised you that Kansas did not comply with the requirement that wage withholding occur when there is an arrearage in support payments in an amount equal to or greater than the amount of support payable for one month. Specifically, Section 466(b)(3) of the Social Security Act, 42 U.S.C. § 666(b)(3), provides that:

> An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of-
> (A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,
> (B) the date as of which the absent parent requests that such withholding begin, or
> (C) such earlier date as the State may select.

Kansas provides that wage withholding may not occur until a support payment is at least 10 days overdue. Senate Bill No. 51 § 3(b). Section 466(b)(3) is stated in terms of an amount of money in arrears, however, not a length of time. See also 45 C.F.R. § 303.100(a)(4). In addition, if an absent parent paid the overdue support within 10 days, wage withholding could not occur because support would not then be 10 days overdue, as required by Senate Bill No. 51 § 3(b). The Secretary's regulations specifically provide that an absent parent may contest withholding only if there is a mistake of fact. 45 C.F.R. § 303.100(a)(5). Payment of overdue support may not be the sole basis for not implementing withholding. 45 C.F.R. § 303.100(a)(8).

We believe you would be justified to conclude that the Kansas statute does not comply with Section 466(b)(3) of the Act or the Secretary's regulations. We have consulted Bob Keith in the Office

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of the General Counsel, Family Support and Human Development Division, about this matter and he agrees that Kansas is not in compliance. He has suggested, however, that a waiver may be available under § 1115 of the Social Security Act.

We hope this is helpful to you. If we may be of any further assistance, please call me.

Kristi A. Schmidt
Assistant Regional Counsel

Enclosures

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

K-88
LEG

Regional Representative, OCSE
Region VII, Kansas City

Kansas - Mandatory Wage Withholding

Kristi A. Schmidt
Assistant Regional Counsel
Office of General Counsel

The State of Kansas advises that under their current procedures the Notice of Delinquency and the Affidavit are not filed at the same time. However, they are amenable to modifying the procedures and/or notice to clarify the issue you have raised in this regard. Please advise which language you referred to which indicates that the State may be filing both the notice and affidavit at the same time.

In addition, it is their position that even under the most optimistic scenario for serving the Notice of Delinquency, that a ten day period will pass before the earliest opportunity arrives for filing the affidavit requesting the income withholding order.

For service of the notice by certified mail, the Kansas Code of Civil Procedure, KSA 60-206(e), provides that the prescribed period after service of notice to a party shall automatically be extended an additional three (3) days where service of process is by mail. (See attachment.)

For service of notice by the Sheriff, the State of Kansas offers the following scenario:

Day No.	Activity Involved
Day 0	Support due, unpaid by 11:59 PM.
Day 1	Notice of Delinquency delivered to clerk of court (for filing and preparation of paperwork transmitting notice to Sheriff for service.)
Day 2	Clerk of court delivers notice to Sheriff for service.
Day 3	Sheriff serves notice.
Day 4	--Day 1 of waiting period.
Day 5	--Day 2 of waiting period.

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•U.S. GPO: 1986-151-173

Day 6 --Day 3 of waiting period.

Day 7 --Day 4 of waiting period.

Day 8 --Day 5 of waiting period.

Day 9 --Day 6 of waiting period.

Day 10 --Day 7 of waiting period.

The monthly payment is more than ten days overdue and the State can immediately file the affidavit requesting wage withholding.

Please review and advise.

Max W. Smith

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OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE

•U.S. GPO: 1986-151-173

3. Subsection (e) noted; 22-3609 (2) construed to require written notice of criminal appeal from municipal court. City of Overland Park v. Nikias, 209 K. 643, 647, 498 P.2d 56.

4. Question whether defendant counsel entitled to notice of default judgment raised but not determined. Goldsberry v. Lewis, 220 K. 69, 71, 551 P.2d 862.

5. Section applied; service of process sufficient under 82a-724. Frontier Ditch Co. v. Chief Engineer of Water Resources, 1 K.A.2d 186, 188, 189, 563 P.2d 509.

6. Referred to in determining appeal not filed within time prescribed by 60-2103; dismissal ordered. Kittle v. Owen, 1 K.A.2d 748, 749, 573 P.2d 1115.

7. Party attempting to revive action under 60-225 subject to provisions of nonclaim statute; personal service requirement. Gatewood v. Bosch, 2 K.A.2d 474, 476, 581 P.2d 1198.

8. Subsection (b) cited; notice required hereunder need not be given to counsel who has been dismissed by plaintiff; court order of service of notice on plaintiff proper. Alexander v. State Dept. of Social & Rehab. Serv., 4 K.A.2d 57, 58, 59, 602 P.2d 544.

9. Mentioned; notice of hearing served on attorney of record is sufficient under facts of case. Krumme v. Krumme, 6 K.A.2d 939, 943, 636 P.2d 814 (1981).

10. Section governs service of motion to intervene. Wilson & Walker v. State, 230 K. 49, 55, 56, 630 P.2d 1102 (1981).

11. Considered in construing 21-4603 as permitting district court to retain jurisdiction and act on timely motion for probation or sentence reduction after 120-day period. State ex rel. Owens v. Hodge, 230 K. 804, 808, 641 P.2d 399 (1982).

12. Severance of parental rights invalid for lack of adequate notice and because relief granted by default was not requested in pleadings. Sweetser v. Sweetser, 7 K.A.2d 463, 465, 643 P.2d 1150 (1982).

60-206. Time, computation and extension. The following provisions shall govern the computation and extension of time:

(a) *Computation; legal holiday defined.* In computing any period of time prescribed or allowed by this chapter, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the legislature of this state. When an act is to be performed within any prescribed time under any law of this state, or any rule or regulation lawfully promulgated thereunder, and the method for computing such time is not otherwise specifically provided, the method prescribed herein shall apply.

(b) *Enlargement.* When by this chapter or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the judge for cause shown may at any time in the judge's discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under K.S.A. 60-250 (b), 60-252 (b), 60-259 (b), (d) and (e) and 60-260 (b) except to the extent and under the conditions stated in them.

(c) *Unaffected by expiration of term.* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action pending before it.

(d) *For motions — affidavits.* A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the judge. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in K.S.A. 60-259 (d), opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at the time of hearing.

(e) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, three (3) days shall be added to the prescribed period.

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(a) G.S. 1868,
R.S. 1923, 60-38
(b). G.S. 1868,
R.S. 1923, 60-72
(c). G.S. 1868,
R.S. 1923, 60-30
(d). G.S. 1868
87, § 10; L. 1871
313, 558; R.S. 1

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Memorandum

Refer to:

Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

Date : November 7, 1986

From : Regional Representative, OCSE
Region VII, Kansas City

Subject: Kansas - Mandatory Wage Withholding

To : Kristi A. Schmidt
Assistant Regional Counsel
Office of the General

The State of Kansas has submitted the attached Program Clearance to address the issue raised in your opinion of October 9, 1986.

Basically, the State has amended their procedures to take steps and to send the advance notice immediately when there is an arrearage in an amount equal to or greater than the amount of support payable for one month.

It is our position that this change in their procedures adequately addresses the issue and brings the State's Mandatory Wage Withholding process into compliance.

Please review and advise as soon as possible, for I will be meeting with the State umbrella agency head next week on the matter.

Max W. Smith

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KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Child Support Enforcement Program

M E M O R A N D U M

TO: CSE Specialist IIs
CSE Attorneys
IV-D Contractors
CSE Specialist Is
Central Office Management Staff

DATE: November 6, 1986

FROM: J.A. Robertson

SUBJECT: Program Clearance 86-16
Procedures to Implement
Income Withholding

This program clearance is issued to supplement Program Clearance 85-9, dated October 9, 1986, to ensure the full and effective implementation of income withholding in the State of Kansas.

PROCEDURES MANDATORY

The provisions of income withholding are mandatory for all title IV-D cases. Thus, the State must take immediate steps to implement the withholding and to send the Notice of Delinquency form when there is an arrearage in an amount equal to or greater than the amount of support payable for one month. Specialist IIs, the Contractors, the SRS Attorneys, and other program personnel shall, upon behalf of the State, promptly file the notice of delinquency and request issuance of the withholding order in all appropriate cases. If the absent parent fails to contest the withholding or the Court determines upon contest that the withholding shall occur, the request for wage withholding shall be filed immediately and the income withholding order issued to the employer.

JAR:RM:vr

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support Enforcement

Refer to:

Rockville MD 20852

OCT 28 1986

MEMORANDUM

FROM: Director
Policy and Planning Division

SUBJECT: Kansas State Plan - Mandatory Wage Withholding

TO: Max W. Smith
Regional Representative
Region VII

This is in response to your memorandum of October 9 requesting our review of the adequacy of Kansas Senate Bill 51 in complying with the requirements at 45 CFR 303.100(a)(4).

The Regional Attorney has indicated that the Kansas statute is not in compliance since it requires that all or part of at least one payment be more than 10 days overdue in addition to the existence of an arrearage which is equal to or greater than the amount of support payable for one month. We agree with the Regional Attorney's assessment. The requirement at 303.100(a)(4) is stated in terms of an amount of money in arrears not a length of time in arrears. If a monthly support payment is missed by a single day, or the second missed biweekly payment is a few days late, the amount in arrears could equal payment for one month even though the payment is not 10 days late.

Should the above 10 day requirement in Senate Bill 51 remain in effect, the Kansas State plan will not meet the requirements for an approvable State plan. Your reference to the possible need for an exemption is not appropriate in this situation. Under the applicable exemption procedures at 45 CFR 302.70(d), and instructions issued in OCSE-AT-86-08 Kansas would have to demonstrate that compliance with the requirements at 303.100(a)(4) (i.e., dropping the 10 day rule in Kansas Senate Bill 51) would not increase the effectiveness and efficiency of the State's child support enforcement program. Since keeping the 10 day rule would clearly result in fewer wage withholding actions, an exemption would not be warranted.

David B. Smith

DEPARTMENT OF HEALTH & HUMAN SERVICES

Memorandum

Date • OCT - 9 1986

From Regional Representative, OCSE
Region VII, Kansas City

Subject Kansas State Plan - Mandatory Wage Withholding

To David B. Smith, Director
Policy and Planning Division

Attached is the opinion from the Regional Office of General Counsel on the Kansas Wage Withholding procedures.

The OGC has cleared the procedures except for the following issue:

45 CFR 303.100(a)(4) requires that the State take steps to implement the withholding "the date on which the absent parent fails to make payments in an amount equal to the support payable for one month."

Kansas Senate Bill 51 requires that the State take steps to implement the withholding at the point "(1) that an arrearage exists in an amount equal to or greater than the amount of support payable for one month; (2) that all or part of at least one payment is more than 10 days overdue."

It is possible to read the Kansas law as more stringent than the federal. Monthly payments one-month in arrears will certainly be more than 10 days overdue.

Please review and advise whether this minor deviation is serious enough to require an exemption.

Max W. Smith

Attachments

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Memorandum

Refer to:

Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

Date : October 9, 1986

From : Office of the General Counsel
Region VII, Kansas City

Subject: Kansas - Mandatory Wage Withholding

To : Max W. Smith
Regional Representative
Office of Child Support Enforcement
Region VII

We have reviewed, at your request, amendments to Kansas' procedures with regard to the Secretary's regulations governing Mandatory Wage Withholding, 45 C.F.R. § 303.100, along with your comments and believe that you would be justified to conclude that Kansas complies with the Secretary's regulations in all but one area.[1] Kansas still does not comply with section 303.100(a)(4) which requires that the state take steps to implement withholding and to send advance notice at the earliest of:

> (i) the date on which the parent fails to make payments in an amount equal to the support payable for one month, (ii) such earlier date that is in accordance with State law, or (iii) the date on which the absent parent requests withholding.

According to Kansas law, Senate Bill No. 51 § 3(b), wage withholding does not occur until one support payment is more than ten days overdue. Thus, Kansas does not comply with section 303.100(a)(4)(i).

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[1]The Kansas amendments were made in response to the compliance problems indicated in our opinion, re: Kansas - Mandatory Wage Withholding, September 17, 1986.

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We hope this is helpful to you. If we can be of further assistance, please advise.

Kristi A. Schmidt
Assistant Regional Counsel

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COPY

STATE OF KANSAS

JOHN CARLIN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ADMINISTRATIVE SERVICES

ROBERT C. HARDER, SECRETARY

STATE OFFICE BUILDING
TOPEKA KANSAS 66612

Child Support Enforcement Program
P.O. Box 497
Topeka, KS 66601
(913) 296-2629

December 31, 1986

Mr. Max Smith
Regional Representative
Office of Child SupportEnforcement
Region VII, Federal Building
601 East Twelfth Street
Kansas City, Missouri 64106

Dear Mr. Smith:

This is to advise that the State of Kansas hereby requests, pursuant to Section 454(20) of the Social Security Act, an exemption from mandatory wage/income withholding requirements to operate a similar, equally efficient and effective procedure. The justification for this exemption request, as required by Action Transmittal OCSE-AT-86-08, follows below.

The Office of the General Counsel, OCSE Region VII, has reviewed the Kansas Income Withholding Act and relevant portions of Kansas' state plan and expressed the opinion that Kansas has not met the requirements of 42 USC 466(b) (mandatory practices, mandatory wage/income withholding). A final, formal determination of non-compliance has not yet been rendered, however, in the event that such a determination is made, Kansas is requesting that an exemption be granted to permit Kansas to operate a similar, equally effective income withholding procedure.

The enclosed copy of the Kansas Income Withholding Act (Appendix A) and program clearances (Appendix B) adequately demonstrate that the Kansas deviation from the federal regulations is so minor that the program's effectiveness and efficiency would not be improved by modification of existing procedures. The Kansas procedures comply in all respects with the comprehensive statutory and regulatory requirements for wage/income withholding, except for minor variations with respect to 45 C.F.R. 303.100(a)(4) and (8).

With regard to the date upon which the initial notice of delinquency is to be sent to the absent parent, Kansas Program Clearance 86-9 provides as follows:

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> "The provisions of income withholding are mandatory for all title IV-D cases. Thus, the State must take immediate steps to implement the withholding and to send the Notice of Delinquency form when there is an arrearage in an amount equal to or greater than the amount of support payable for one month."

The regulation provides:

> "The State must...send the advance notice...on...the date on which the parent fails to make payments in an amount equal to the support payable for one month...."

These provisions are virtually identical, and a close reading of the Kansas Income Withholding Act reveals that there is nothing contained in the statute which would impair the Kansas IV-D agency's ability to send the Notice of Delinquency on the date required by the federal regulation.

The Kansas Income Withholding Act provides that the final step to implement withholding is the filing of an affidavit requesting issuance of the income withholding order; the court's issuance of the income withholding order is mandatory once the affidavit has been filed. K.S.A. 1986 Supp. 23-4,107 requires the affidavit to state that "all or part of at least one payment is more than 10 days overdue." Pursuant to 45 C.F.R. 303.100(d)(2), the final step to implement withholding cannot be invoked until the period allowed an obligor to request a stay has expired. Although the Kansas Income Withholding Act specifies a seven-day period for this purpose, K.S.A. 60-206(e) (Appendix C) automatically extends the period by three days when service is by mail. Furthermore, even under the most optimistic scenario for serving the Notice of Delinquency, a ten day period will pass before the earliest opportunity for filing the affidavit arrives; see Appendix D. By such time, all or part of at least one payment will be more than ten days overdue and income withholding will be invoked, resulting in virtually the same number of income withholding orders.

The only case in which income withholding could not be implemented would be one in which the obligor paid the entire arrearage in full between the receipt of the Notice of Delinquency by the obligor and the preparation of the affidavit at the end of the ten day period. Although this is a variation from 45 C.F.R. 303.100(a)(8) ("Payment of overdue support upon receipt of the notice...may not be the sole basis for not implementing withholding."), the amount of support collected from the Kansas income withholding procedures would be identical to the collections available by modifying the ten-day rule to conform to the federal scheme. This equally effective procedure is accomplished at no increase in the administrative costs of the income withholding process.

It is also worth noting that the absence of an income withholding order in such circumstances eliminates a ten-day delay in processing payments (the period allowed the employer for remitting collections), reduces the administrative burden upon the private sector, and leaves as much as $10 per month of the obligor's income unencumbered by the processing fee permitted under the Income Withholding Act, income which can be best used for support.

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Having demonstrated that conformity would not increase the effectiveness or efficiency of its Child Support Enforcement Program, Kansas respectfully requests an exemption for a three year period.

Sincerely,

Robert C. Harder
Secretary

RCH:JLC:vr
Enclosure(s)

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KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Child Support Enforcement Program

MEMORANDUM

TO: CSE Specialist IIs
CSE Attorneys
IV-D Contractors
CSE Specialist Is
Central Office Management Staff

DATE: October 9, 1986

FROM: J.A. Robertson JR

SUBJECT: Program Clearance 86-9
Procedures to Implement
Income Withholding

This program clearance is issued to supplement Program Clearance 85-13, dated October 10, 1985, to ensure the full and effective implementation of income withholding in the State of Kansas.

PROCEDURES MANDATORY

The provisions of income withholding are mandatory for all title IV-D cases. Thus, the State must take immediate steps to implement the withholding and to send the Notice of Delinquency form when the criteria for Income Withholding are met. Specialist IIs, the Contractors, the SRS Attorneys, and other program personnel shall, upon behalf of the State, promptly file the notice of delinquency and request issuance of the withholding order in all appropriate cases. If the absent parent fails to contest the withholding or the Court determines upon contest that the withholding shall occur, the request for wage withholding shall be filed immediately and the income withholding order issued to the employer.

BASIS FOR NOT IMPLEMENTING WITHHOLDING

Under no circumstances shall payment of overdue support upon receipt of the advance notice be the sole basis for not implementing the income withholding order.

TERMINATION OF INCOME WITHHOLDING ORDER

The State must have a process for promptly terminating withholding, as provided on page 10, Program Clearance 85-13, but in no case should payment of overdue support be the sole basis for termination of withholding.

PROMPT REFUND

If it is determined that income has been improperly withheld, arrangements shall be made to promptly refund the improperly withheld amount to the obligor. This process shall be accomplished through the SRS refund process or other local refunding processes if the income is in the control of a contractor.

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PROCEDURES FOR PROMPT DISTRIBUTION

All child support collections from income withholding shall be distributed promptly in accordance with Section 457 of Title IV-D of the Social Security Act and 45 CFR 302.33, 45 CFR 302.51, and 45 CFR 302.52.

For more specific instructions on the distribution process, see Section 5 of the Child Support Enforcement Manual.

CHANGE OF EMPLOYER OR PAYOR

If the obligor changes employment within the State when income withholding is in effect, the obligor's new employer, if known, must be served with a copy of the income withholding order. If the obligor's new employer is unknown, staff shall utilize all location sources available to locate the new employer.

MULTIPLE WAGE WITHHOLDING ORDERS

If there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under the Consumer Credit Protection Act. The allocation shall be made by the State as follows:

1. If the total to be withheld for current and past due support does not exceed Consumer Credit Protection Act limitations, the support will be withheld in full and disbursed to the respective courts.

2. If the total to be withheld for current support alone exceeds Consumer Credit Protection Act limitations, the State shall disburse to the court designated in each income withholding order an amount for current support which bears the same ratio to the aggregate amount withheld for current support as the amount designated for current support in such order bears to the aggregate of all amounts designated for current support in all the withholding orders.

3. If the total to be withheld for current and past due support exceeds Consumer Credit Protection Act limitations and if all withholding orders for current support have been satisfied, the State shall disburse to the court designated in each income withholding order an amount for past due support which bears the same ratio to the aggregate amount withheld for past due support as the amount designated for past due support in such order bears to the aggregate of all amounts designated for past due support in all the withholding orders.

JAR:RM:vr

FROM: Bears

DATE October 10, 1985

CSE Specialist IIs
CSE Attorneys
IV-D Contractors
CSE Specialist Is
Central Office Management Staff

SUBJECT Program Clearance 85-13
Procedures to Implement Income Withholding for Kansas Orders

PROCEDURES TO IMPLEMENT INCOME WITHHOLDING FOR KANSAS ORDERS
(pursuant to S.B. 51, sections 1-14; Chapter 115, 1985 Session Laws)

In order to fully utilize the new income withholding legislation, as required by Kansas and federal law, a total committment is needed from all CSE and contract staff to identify appropriate withholding cases, compute accurate arrearage figures, and to insure that withholding orders are properly modified (when arrearages are paid in full or the underlying support order changes) by closely monitoring such cases. SRS attorneys and contract agencies will be responsible for identifying cases in their referred caseload in which withholding is the proper remedy. CSE program staff will be responsible for identifying cases which meet the criteria for wage withholding and for referring such cases for legal action.

CSE Specialist I's through their normal monitoring and review systems will be required to review all cases to determine the feasibility of establishing income withholding orders. In addition, CSE Specialist I's will be responsible for informing legal staff of all potential withholding cases regardless of the present legal status of the case. In general, cases which would meet the criteria for garnishment will also meet the criteria for income withholding.

MONITORING

It is imperative that cases be effectively monitored throughout the income withholding process because of the short time allowances and the serious consequences of missing deadlines. Because of variations between offices' record keeping resources and normal office practices, only a few of the monitoring responsibilties below have been specifically assigned. It is expected that the Specialist II's, the Contractors, the SRS Attorneys, and other program personnel will work together to devise an effective monitoring system with responsibilities clearly defined in writing.

The monitoring system must:

1. Identify cases eligible for income withholding
2. Identify cases with outstanding Notices of Delinquency and the date the obligor's response time is expected to expire
3. Identify cases ready for Affidavit Requesting Withholding Order to be filed (response time expired and late payments credited)
4. Identify cases with a pending Motion to Stay, the deadline for holding the hearing or the date set for hearing, and the time by which the court must rule on withholding

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5. Identify cases with withholding orders in which the current obligation changes (a) by court order, (b) because child turns 18, dies, or is emancipated or adopted, or (c) because child begins receiving SSI which satisfies all or part of current obligation
6. Identify cases with income withholding orders in which payments cease or otherwise vary unexpectedly
7. Identify cases with new payors subject to existing withholding orders
8. Identify cases with income withholding orders in which arrearages will be paid in full in 30 days
9. Identify cases with payments not reflected on court record

FEDERAL AND STATE LAW REQUIRE THE USE OF INCOME WITHHOLDING IN EVERY CASE IN WHICH ALL OF THE FOLLOWING CRITERIA ARE SATISFIED. (If a withholding order could be applied for and instead we file a garnishment or a contempt, federal auditors could find the state out of compliance and levy a financial penalty.)

Criteria for Income Withholding

1. Kansas Court Order requiring the payment of support (child support or for maintenance of a spouse or ex-spouse living with a child for whom an order for support is also being enforced); and
2. An arrearage in an amount equal to or greater than the amount of support owed for one month; and
3. At least all or part of one payment is more than 10 days overdue; and
4. The obligor has income from a source which is subject to the jurisdiction of a Kansas Court. "Income" means any form of periodic payment to an individual, regardless of source, including but not limited to wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits and any other periodic payments made by any person, private entity or federal state or local government or any agency or instrumentality thereof. Section 2 of Chapter 115 of the 1985 Session Laws also provides "Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply."

Once a determination is made that a case is eligible for income withholding, an accurate up-to-date arrearage computation must be completed for use in the notice of delinquency to be sent to obligor.

If program personnel have questions about how arrearages should be computed, they should consult a IV-D attorney who will make the final decision on method and amount. If a case has been previously referred for legal services, the contract agency or SRS attorney will have the responsibility for determining the total arrearage owed. CSE program staff will have the responsibility for preparing arrearage computations in cases prior to referral of a case for legal services. Because persons enforcing support by withholding must make a commitment regarding the amount of arrearages, they MUST BE ACCURATELY COMPUTED.

It is desirable to know the approximate amount of income paid the obligor and frequency of payment prior to initiating the withholding process, as a specific amount to be withheld must be stated on several documents. To assist

determining the amount of income and other employment information. The statute allows any "public office" (SRS, Court Trustees, IV-D Contractor) to send written requests for information to employers or other payors of income AT ANYTIME (even before a withholding is initiated) (1985 Kan. Sess. Laws Ch. 115, sec. 4). The law states "It shall be the affirmative duty of any payor to respond within ten (10) days to written requests for information presented by the 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 obligor's claimed dependents;
(6) The obligor's gross income;
(7) The obligor's net income;
(8) An itemized statement of deductions from the obligor's income;
(9) The obligor's pay schedule; and
(10) the obligor's health insurance coverage.

This is an exclusive list of information that the payor is required to provide under this section." A form has been prepared for your use in requesting information from payors. (See Attachment 1)

Since federal and state law require the use of income withholding the day after the above stated four criteria are satisfied, it is suggested that the information request form be sent as soon as possible on existing cases (unless you have sufficient information from other sources to designate the sum to be withheld) and as soon as possible after a IV-D case is opened. Generally, income information should be obtained by the office enforcing the support order. The SRS attorney or contract agency to whom a particular case has been referred would usually send the information request form for that case. For cases which have not been referred, the Program Technician should normally obtain income information during the case assessment period or when employment is identified or verified.

FORMS (attachments 1 - 25)

The attached forms are the work product of the Office of Judicial Administration, CSE Central Office and a subcommittee of the Kansas Commission on Child Support. In developing the forms, input and direction were received from District Court Judges, Administrators, and Clerks as well as from the general membership of the Kansas Commission on Child Support. Each form was drafted to comply with very specific statutorily required notices, consequently, CSE personnel and IV-D contractors should use the attached forms unless extraordinary circumstances arise. If original pleadings or documents are used for withholding, a careful review of Ch. 115 of the 1985 Kansas Session Laws should be conducted to insure that statutorily required notices are provided the obligor and the payor.

Summary of the Withholding Process

Uncontested Case

1. Notice of Delinquency served on obligor
2. Obligor fails to file Motion to Stay within seven days after being served the Notice of Delinquency
3. Affidavit filed with court
4. Court issues a WITHHOLDING ORDER to the payor

Contested Case

1. Notice of Delinquency served on obligor
2. Obligor files Motion to Stay within seven days
3. Court sets hearing date and conducts hearing with 14 days
4. Court enters an Order granting or denying relief, amending the notice of delinquency or otherwise resolving the matter

NOTICE OF DELINQUENCY

When it is determined that the criteria necessary to initiate income withholding have been met, the Notice of Delinquency form must be filled in completely (see attachment 3). A Notice of Delinquency must be served on the obligor whether or not the underlying support order includes a conditional withholding order. (A conditional withholding order is a statement by the court in the support order that if an arrearage develops, the obligor's income may be subject to withholding.) The case caption in the upper left-hand corner of the form must be identical to the case caption on the underlying support order.

In paragraph A, the amount and period of payment in the most recent order must be inserted.

Please note that income withholding may be used to collect current support only. (This would apply if an obligor voluntarily requests a withholding order even though arrearages are not owed or after arrearages are fully paid pursuant to an involuntary withholding order.) Withholding may also be used to collect an arrearage only. (This would apply when enforcing assigned arrearages after ADC case closure or after a current support order terminates.)

NOTE: When the criteria for Income Withholding are met, withholding must be initiated for the entire amount of current support plus some amount to reduce the total arrearage. Orders cannot be set for an amount less than current support. If the obligor does not have the present ability to pay the current support order, he/she always has the right to file a motion to modify the support order.

Generally, the initial income withholding order will require withholding for both the full amount of current support and a portion of the arrearage. For

example, if withholding is established because the obligor owes $100/month current support and $100 in arrearages, the withholding order might read "$150 per month, to be applied:

$100 for current support and
$ 50 for current support"

Once a withholding order is established with a stated arrearage, it is imperative that the case be closely monitored to determine when the arrearage is paid so that an Income Withholding Order-Modification (attachment 19) can be filed to reduce withholding to current support only.

Failure to modify the withholding order in a timely fashion could result in liability for damages, therefore a monitoring system must be used to alert staff at least 30 days prior to the date arrearages will be satisfied to allow enough time for preparation of an order to modify the withholding.

On page 2 of the Notice of Delinquency (after paragraph 4), the person sending the notice of delinquency should list his/her name and mailing address.

Once the Notice of Delinquency form has been filled out, it must be served on the obligor in one of the following ways:

1) Personal service - send the Clerk of Court where the support order was issued the original and one copy of the Notice of Delinquency and a written request (conforming to court rules) that the Notice of Delinquency be served upon the obligor. Be sure to give the obligor's address, including the county, to the Clerk.
2) Certified mail - Sent a copy of the Notice of Delinquency to the obligor by certified mail, return receipt requested, delivery restricted to the addressee. Note on the original Notice of Delinquency the date the copy was mailed to the obligor and file the original with the Court Clerk. Be sure to keep the return receipt; it must be attached to the affidavit requesting the Income Withholding Order.

   If service is by certified mail and a return receipt bearing the obligor's signature is not received, proper service has not been achieved. Often it takes 2-3 weeks to receive a return receipt from the post office; this makes personal service a more attractive choice in light of the time standards imposed by federal law.

   If service of the notice is attempted by mail, the Certificate of Mailing on page 3 of the Notice of Delinquency must be completed by the person preparing and mailing the notice.

Initially, IV-D legal staff will prepare the Notice of Delinquency for most cases because the majority of cases meeting the criteria for a wage withholding order are presently in legal status. IV-D attorneys will bear the ultimate responsibility for proper preparation of the Notice of Delinquency and other legal forms for income withholding, however, IV-D attorneys and CSE Specialist II's may wish to develop a local procedure in which Specialist I's

would be delegated the authority to prepare and serve delinquency notices for cases as they process the referral to the IV-D attorney/contractor. If such authority is delegated to program personnel, the attorney must approve the arrearage computation if the support order is more than five years old (involving the issue of dormant or void judgments). If anyone other than an attorney prepares the Notice, the worker's title MUST be indicated to prevent misunderstandings.

After the obligor is service the Notice of Delinquency, he/she may contest the action by filing a Motion To Stay Income Withholding Order (attachment 16) with the Court within seven days and serving a copy of this motion on the public office filing the Notice of Delinquency. The motion will normally be addressed to the person who prepared the Notice, but it might be sent to the attorney of record (or whose name is on the Notice of Assignment). All motions received must be brought immediately to the SRS or contract attorney's attention because of the extremely short time allowed to prepare for the hearing.

To insure that timely follow-up action is taken, a monitoring system must be designed to call attention to cases as the date for hearing approaches or as the time for the obligor's response expires.

The individual who filed the Notice of Delinquency is responsible for monitoring to insure that all motions filed receive immediate legal attention and to insure that income withholding orders are issued promptly.

It is recommended that the monitoring system allow time before further action is prompted for (1) the Notice to be served, (2) the seven days the obligor is given for response to run, and (3) any Motion mailed by the obligor on the seventh day to be received. Examples of monitoring systems are a tickler system, a desk calendar system, or a weekly review list showing when the notice was filed or mailed.

If it is determined that the obligor has been properly served the Notice of Delinquency and that no Motion to Stay has been filed with the court within seven days after service of the Notice of Delinquency, IV-D personnel must then file an affidavit with the court.

AFFIDAVIT REQUESTING INCOME WITHHOLDING ORDER

If the obligor does not contest the withholding after being served the Notice of Delinquency or if the court holds a hearing and determines that a withholding order should be served, the affidavit form (attachment 4) must be completed for filing with the court. An affidavit must be sent to the court whether or not the underlying support order includes a conditional withholding order.

When filling out the affidavit form, the name and address of the payor of income must be shown at the end of the case caption. The court will need this information to properly serve a withholding order on the payor.

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The name of the attorney filing the affidavit should be inserted in the first paragraph of the body of the document. The attorney will also sign at the end of the document and certify the mailing of copies of the affidavit to the obligor and any other interested party. Consequently, the attorney is responsible for the accuracy of the information in the affidavit. PLEASE NOTE: Section 3(f) of the statute provides that any person filing an affidavit with knowledge of falsity of the declaration of notice is subject to being found in contempt of court in addition to any other penalty provided by law.

The affidavit form requires the selection of a specific dollar amount to be withheld for current support, past due support, or a combination of both. As the Notice of Delinquency provides, if "earnings" are to be withheld, the maximum amount subject to withholding ranges from 50%-65% per pay period (depending on the amount of the arrearage and the obligor's other dependents). If the obligor's earnings are so low that the dollar amount asked for in the affidavit exceeds the maximum percentage allowed by law (the percentage circled on the Notice of Delinquency), actual withholding will be limited to the maximum percentage of disposable income.

Even though it may be lawful to attach from 50%-65% of an obligor's earnings, it is not recommended that we do so. Please remember that, unlike garnishment, withholding applies to each pay period and is not limited to one attachment per month. If it does not remain profitable for the obligor to continue working, he/she is likely to quit or file for bankruptcy, neither of which is desirable.

At this time, determination of the total dollar amount to withhold is left to the discretion of IV-D personnel, giving consideration to the particular case circumstances (i.e., the amount of the arrearage, the obligor's income, other dependents, the length of time the obligor has been employed, work history, etc.). It is suggested that the total amount withheld from earnings range between 30% to 40% of disposable income.

Earnings are defined in K.S.A. 60-2310 as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise." If a Withholding Order is sought to attach income other than earnings, the 50%-65% percentage limitations do not apply. Therefore, 100% of such income may be legally withheld. Circumstances, again, will determine what is reasonable. For example, payment to an independent contractor are not technically earnings, but they may be an obligor's sole source of income.

After the affidavit form is completed, attach a copy of the Notice of Delinquency served on the obligor (showing the type of service obtained and the return receipt for service by certified mail) and submit both documents to the court which issued the underlying support order with the proposed Income Withholding Order package (see Below).

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INCOME WITHHOLDING ORDER

Upon receipt of the affidavit Requesting an Income Withholding Order, the court should, as expediciously as possible, issue an order requiring the withholding of income from the named payor without further hearing, amendment of the support order, or further notice to the obligor. Once the affidavit is filed with the court, the withholding order must be issued; the judge has no discretion.

Obviously, with this type of procedure, the burden of obtaining proper service of process, monitoring, computing of an accurate arrearage , and the determining a proper amount to be withheld rests with IV-D personnel.

It is important to note that the amount of the arrearage owed is to be computed on the basis of the support payments due and unpaid on the date the Notice of Delinquency was served on the obligor. If the arrearage was at least equal to the amunt of support owed for one month, an Income Withholding Order must still be obtained even if the obligor pays the entire arrearage after receiving the notice. If this occurs, IV-D personnel must insure that the order issued the payor requires withholding for current support only.

In paragraph 6 of the withholding order, the payor should be directed to send payments to the Clerk of Court or Court Trustee.

To simplify matters as much as possible for the ordinary business person, separate forms have been drafted for employers (forms labeled "employer") and for payors other than employers (forms labeled "payor"). The IV-D attorney must: (1) Complete the Income Withholding Order for either the employer (attachment 5) or payor (attachment 9) for the "hearing officer's" signature (Judge, Magistrate, Court Trustee); (2) select the proper Notice to Employer (attachment 6) or Notice to Payor (attachment 10); (3) select the proper Employer Answer (attachments 7 & 8) or Payor Answer (attachments 11 & 12); (4) add a change of address/termination of employment form (attachment 13); and (5) submit the package of forms to the court with the Affidavit and a copy of the Notice of Delinquency.

Chapter 115 of the 1985 Session Laws allows for service of an Income Withholding Order on a self-employed obligor [see section 2(f)]. However, if the self-employed obligor does not honor the withholding order, the only action IV-D personnel may take under the Act is to obtain a judgment against the obligor for the total amount of the arrearages due. One solution may be found in section 11 of Chapter 115 which provides that a self-employed obligor may be ordered to post bond or give some other security or guarantee to insure that support is paid.

Once the hearing officer signs the Income Withholding Order, the Clerk of Court will have it personally served on the payor of income. The payor must deduct the required amount beginning with the next payment of income due the obligor after 14 days following receipt of service of the withholding order. Thereafter, the payor must continue to withhold income from each periodic payment until further order of the court.

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NGE OF EMPLOYER OR PAYOR

If the obligor changes employment or has a new source of income after an income withholding order is issued by the court, the new source of income, if known, should be served with the Income Withholding Order. The obligor need not be given prior notice (do not send a new Notice of Delinquency) if the terms of the Income Withholding Order are not changed. An Income withholding Order can be extended to other income sources as follows:

(1) A new income source is identified;
(2) The IV-D attorney completes and files a Motion For Modification of the Income Withholding Order (attachment 15);
(3) The IV-D attorney completes and submits the appropriate Income Withholding Order form along with the proper Notice and Answer forms;
(4) The Court has the new payor of income served in the same fashion as the original payor.

NOTE: These instructions may not apply if the new source of income is in addition to, not in place of, the old income source.

Although the payor of income is required by statute to promptly notify the Clerk of the District Court or Court Trustee of the termination of the obligor's employment or other source of income, it is suggested that a local monitoring system be developed to identify income withholding cases in which payments cease.

MOTIONS TO MODIFY THE WITHHOLDING ORDER

IV-D program personnel must be alert to the need for modification of the withholding order. If any office receives a copy of a private attorney's Motion to Modify the support order on which the withholding is based or a Motion to Terminate the withholding order, the document must be immediately referred to the IV-D attorney who established the withholding order.

A monitoring system must be established which will alert the IV-D attorney at least 30 days before arrearages will be fully paid so that a Motion to Modify the Withholding Order can be prepared, filed, and served on the payor in time to avoid any overpayment.

IV-D attorneys are required to file motions to: (1) Modify or terminate the withholding order because of a modification or termination of the underlying support order; and (2) Modify the amount of income withheld to reflect full payment of the arrearage. (See attachment 19)

NOTE: Brady v. Brady may require a modification in the current support order.

The obligor has the right to file a motion to request a termination of the withholding order if all arrearages have been paid and payments have been withheld for at least 12 months. The court has discretion concerning whether

not the order should be terminated. IV-D attorneys may wish to contest such a motion by arguing that the court has good cause to continue the order because of a poor payment history, etc.

If a withholding order is terminated by the court and the obligor subsequently develops a one month arrearage and all or part of one payment is more than 10 days overdue, the IV-D agency must obtain another withholding order by taking all the steps which were taken to establish the initial order (service of the Notice of Delinquency, etc.). The federal requirement that income withholding be used in such circumstances for IV-D cases may be useful in pursuading the court not to terminate a withholding order in the first place.

MOTION TO STAY ISSUANCE OF THE INCOME WITHHOLDING ORDER

After the obligor receives the Notice of Delinquency he/she may contest the establishment of a withholding order by filing a Motion to Stay with the court (and a sending copy to the preparer of the Notice) within seven (7) days. (See attachment 16) Do not send a blank copy of the Motion to Stay along with the Notice of Delinquency unless you are requested to do so by the Administrative Judge of the Court which issued the underlying support order.

If the obligor files a Motion to Stay, the court has the responsibility of conducting a hearing within 14 days after receipt of the motion. Notice of the date and time of hearing will be provided by the clerk of court (see attachment 17). The only grounds available to the obligor to prevent the withholding concern "mistakes of fact" as set forth in the Notice of Delinquency. Specifically, the obligor must show errors in one or more of the following:

(1) the amount of the current support order
(2) the amount of the arrearage
(3) the amount of income to be withheld (i.e., the total exceeds 50%-65% of disposable earnings or the income is earnings rather than non-earnings)
(4) the identity of the obligor

As part of the Motion to Stay, the obligor must specify one or more of the above listed "mistakes of fact." If the amount of the support order or the amount of the arrearage is challenged, the obligor must specify the amount he/she believes is correct.

If, at the hearing, the court determines that at least the minimum arrearage for initiating income withholding existed at the time the Notice of Delinquency was served on the obligor, the Judge should immediately issue the withholding order; other proceedings may be necessary to determine the precise arrearage or any other issue properly raised. In any contested case, the court must rule within 45 days from the date the obligor received the Notice of Delinquency on whether income withholding is to take place.

CONDITIONAL WITHHOLDING ORDER

Any new or modified order of support issued after January 1, 1986, must include an appropriate conditional withholding statement similar to the ones shown in attachment 21.

It is suggested that conditional withholding statements be included in support orders prior to January 1, 1986, if the Judge concurs. It is also important to note that the Judge always has discretion to order the establishment of an immediate income withholding order at the time the support order is established, before any arrearage accumulates. IV-D attorneys are urged to obtain such orders whenever possible.

VOLUNTARY WITHHOLDING ORDER

Section 3(g) of the Act requires the court to issue a withholding order on the request of the obligor regardless of whether an arrearage exists. (See attachment 14)

A form (attachment 2) is also provided which waives the Notice of Delinquency and the right to file a Motion to Stay. It is suggested that this form be signed in conjuction with a voluntary application for withholding if no Notice of Delinquency has been served on the obligor.

PRIORITIES

An Income Withholding Order has priority over garnishments, earlier voluntary income assignments, income assignments executed pursuant to K.S.A. 60-1613, and "any other legal process under state law against the same income;" the only exception is another income withholding order (as explained below). For example, if a garnishment to collect child support is served on an employer before an income withholding order, the withholding order takes priority and must be satisfied first.

If the payor receives more than one withholding order for support owed by one obligor, the payor must comply on a first-come-first-served basis. If the withholding order served first can be satisfied without exceeding the limits of the Consumer Credit Protection Act (CCPA 50%-65%), the difference between the CCPA limit and the amount withheld on the first order is all that is available to satisfy the second order. However, withholding to enforce current support takes priority over withholding to collect arrearages, so all withholding to satisfy current support under all withholding orders must be completed before any withholding for arrearages can be done.

PAYOR PENALTIES

If a payor ignores the order to withhold, the court must enter a judgment against the payor for the amount which should have been withheld and may enter judgment against the payor for the amount of the entire arrearage owed by the obligor. IV-D attorneys are expected to take judgments against payors when necessary.

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Any payor who intentionally fires, refuses to hire, or disciplines an obligor solely because of a withholding order is subject to a civil penalty not exceeding $500 and "such other equitable relief as the court considers proper" (i.e., reinstatement to job with back pay). These issues do not directly involve CSE and very little impact on IV-D offices is expected.

MISCELLANEOUS FORMS

(1) CHANGE OF ADDRESS/TERMINATION of PAYMENTS - The withholding law requires the obligee and the obligor to notify the clerk of court or IV-D office in writing of any change of address within 7 days after the change. The obligor must also provide 7 days written notice of any change in income source. In addition, the statute requires the payor of income to promptly notify the court of the termination of the obligor's income source and provide the obligor's last known address and the name and address of the obligor's current employer, if known.

A form has been drafted for use in providing notice of these changes (see attachment 13).

(2) JUDGMENT FORM - Attachment 18 can be used in place of a Journal Entry to cover various circumstances which may arise if the obligor contests the action and a hearing is held. It is designed so the hearing officer can quickly complete it at the conclusion of the hearing.

(3) NOTICE OF FUNDS ATTRIBUTABLE AS SUPPORT - The statute requires that the Clerk of Court or Court Trustee be notified in writing of amounts of support which have been collected directly by the agency or obligee. The form shown as attachment 20 must be used to accomplish this purpose. Please note that the source of payment must be indicated by placing the appropriate code number in the last column on the form.

(4) NOTICE OF LIEN ON VEHICLE - Although the placement of a lien on the obligor's vehicle is not a part of the Income Withholding section of statute, if you can obtain a vehicle identification nunber, this enforcement remedy can be quite useful. To be effective, the lien must appear on the certificate of title in the hands of the obligor.

The statute does not provide for any foreclosure or forced sale. Rather, the obligor must obtain a Release of Lien (similar to the release we sometimes provide concerning real estate) or a consent in writing prior to transfer of title or use of the vehicle as collateral. (See attachment 25 for a Consent to Release of Lien form.)

PROCEDURE FOR FILING A VEHICLE LIEN

(1) Liens may be obtained only if a support arrearage exists which is equal to or greater than the amount of support payable for one month (no requirement of 10 days past due). However, it is suggested that liens only be filed when a significant arrearage exists since IV-D personnel must insure that a lien is released when the arrearage is satisfied. If liens are established, payment on arrearages must be closely monitored to insure that a timely release is filed when appropriate.

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(2) The Notice of Lien and affidavit (see attachment 22) must be completed and the original (white copy) sent to the Department of Revenue, Division of Vehicles (DMV). DMV may be able to identify the obligor's vehicle even though you do not have all the information on the form concerning the vehicle year, make, style, identification number and tag number, but you must have either the vehicle identification number or the tag number. (We are working on a tape exchange with DMV to obtain vehicle I.D. numbers.)

A $5 fee must accompany the Notice and affidavit when sent to DMV. (we will also attempt to arrange for a lump-sum monthly payment by interfund voucher for SRS-initiated liens in the near future.)

(3) At the same time the Notice and affidavit are sent to DMV, the yellow copy must be sent by first-class mail to the obligor at his/her last known address. The pink copy is for the IV-D case record.

(4) The DMV will send a letter to the obligor (attachment 23) demanding the surrender of the title certificate so the lien can be recorded (DMV reports a 90% return rate when similar requests are made). Once the lien is recorded, a transfer of the title is not valid unless the lien is released or consent is given in writing.

(5) If the obligor fails to surrender the title in 15 days, DMV will send attachment 24 to the person who requested the lien.

(6) If the obligor fails to return the title on demand, a Motion may be filed in the court which issued the underlying support order seeking a court order requiring the surrender of the title. If the title is obtained in this manner, it must be sent to DMV so that they may record the lien and return the document to the obligor.

The establishment of a vehicle lien need not be accomplished by an attorney. If a case has been referred to a contractor, contract staff will have the responsibility of establishing the lien, advising CSE program personnel of its establishment, and monitoring to insure that a release is filed when arrearages are paid (unless other arrangements are made with local CSE staff). The CSE Specialist I has the authority to take the steps necessary to establish and release vehicle liens concerning cases not referred to a contractor. However, if a case has been referred to a CSE attorney, the Specialist I must inform the attorney of planned lien activity. If the CSE attorney determines that the notice of lien could damage pending legal activity or negotiations, the notice of lien must not be filed.

DB:JAR:JLC:DH:va
4223C

ATTACHMENTS OMITTED

3. Subsection (e) noted; 22-3609 (2) construed to require written notice of criminal appeal from municipal court. City of Overland Park v. Nikias, 209 K. 643, 647, 498 P.2d 56.

4. Question whether defendant counsel entitled to notice of default judgment raised but not determined. Goldsberry v. Lewis, 220 K. 69, 71, 551 P.2d 862.

5. Section applied; service of process sufficient under 82a-724. Frontier Ditch Co. v. Chief Engineer of Water Resources, 1 K.A.2d 186, 188, 189, 563 P.2d 509.

6. Referred to in determining appeal not filed within time prescribed by 60-2103; dismissal ordered. Kittle v. Owen, 1 K.A.2d 748, 749, 573 P.2d 1115.

7. Party attempting to revive action under 60-225 subject to provisions of nonclaim statute; personal service requirement. Gatewood v. Bosch, 2 K.A.2d 474, 476, 581 P.2d 1198.

8. Subsection (b) cited; notice required hereunder need not be given to counsel who has been dismissed by plaintiff; court order of service of notice on plaintiff proper. Alexander v. State Dept. of Social & Rehab. Serv., 4 K.A.2d 57, 58, 59, 602 P.2d 544.

9. Mentioned; notice of hearing served on attorney of record is sufficient under facts of case. Krumme v. Krumme, 6 K.A.2d 939, 943, 636 P.2d 814 (1981).

10. Section governs service of motion to intervene. Wilson & Walker v. State, 230 K. 49, 55, 56, 630 P.2d 1102 (1981).

11. Considered in construing 21-4603 as permitting district court to retain jurisdiction and act on timely motion for probation or sentence reduction after 120-day period. State ex rel. Owens v. Hodge, 230 K. 804, 808, 641 P.2d 399 (1982).

12. Severance of parental rights invalid for lack of adequate notice and because relief granted by default was not requested in pleadings. Sweetser v. Sweetser, 7 K.A.2d 463, 465, 643 P.2d 1150 (1982).

60-206. Time, computation and extension. The following provisions shall govern the computation and extension of time:

(a) *Computation; legal holiday defined.* In computing any period of time prescribed or allowed by this chapter, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the legislature of this state. When an act is to be performed within any prescribed time under any law of this state, or any rule or regulation lawfully promulgated thereunder, and the method for computing such time is not otherwise specifically provided, the method prescribed herein shall apply.

(b) *Enlargement.* When by this chapter or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the judge for cause shown may at any time in the judge's discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under K.S.A. 60-250 (b), 60-252 (b), 60-259 (b), (d) and (e) and 60-260 (b) except to the extent and under the conditions stated in them.

(c) *Unaffected by expiration of term.* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action pending before it.

(d) *For motions — affidavits.* A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the judge. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in K.S.A. 60-259 (d), opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at the time of hearing.

(e) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, three (3) days shall be added to the prescribed period.

APPENDIX D

DAY #	SERVICE BY CERTIFIED MAIL (under most favorable conditions)	
Day 0	Support due and unpaid by 11:59 PM	
Day 1	Notice of Delinquency mailed (certified mail)	
Day 2	Notice of Delinquency delivered to absent parent (SERVICE COMPLETED)	
Day 3	Day 1 (period for Motion to Stay):	Return receipt received by IV-D Attorney from Post Office; Attorney prepares Affidavit requesting income withholding order
Day 4	Day 2 (period for Motion to Stay)	
Day 5	Day 3 (period for Motion to Stay)	
Day 6	Day 4 (period for Motion to Stay)	
Day 7	Day 5 (period for Motion to Stay)	
Day 8	Day 6 (period for Motion to Stay)	
Day 9	Day 7 (period for Motion to Stay)	
Day 10	Day 8 (automatic extension of period for Motion to Stay)	
Day 11	Day 9 (automatic extension of period for Motion to Stay)	
Day 12	Day 10 (automatic extension of period for Motion to Stay)	
Day 13	EARLIEST opportunity for filing Affidavit (support is 13 days past due)	

DAY #	SERVICE BY SHERRIFF (under most favorable conditions)	
Day 0	Support due and unpaid by 11:59 PM	
Day 1	Notice of Delinquency delivered to Court Clerk (filing and preparation of paperwork transmitting Notice of Delinquency to Sheriff for service)	
Day 2	Court Clerk delivers Notice of Delinquency to Sheriff for service	
Day 3	Sheriff serves Notice of Delinquency (SERVICE COMPLETED) and files return of service with Court Clerk	
Day 4	Day 1 (period for Motion to Stay):	Clerk mails Sheriff's return to IV-D Attorney
Day 5	Day 2 (period for Motion to Stay):	Attorney receives Sheriff's return and prepares Affidavit requesting income withholding order
Day 6	Day 3 (period for Motion to Stay)	
Day 7	Day 4 (period for Motion to Stay)	
Day 8	Day 5 (period for Motion to Stay)	
Day 9	Day 6 (period for Motion to Stay)	
Day 10	Day 7 (period for Motion to Stay)	
Day 11	EARLIEST opportunity for filing Affidavit (support is 11 days past due)	

noon
3-26-87
Barnum

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding Proposed Bill No. (H.B. 2170)

1. Title

An Act concerning the Kansas Code for Care of Children and amending K.S.A. 1986 Supp. 38-1565 and K.S.A. 1986 Supp. 38-1584 to require a review hearing within 18 months and periodic hearings every 12 months thereafter.

2. Purpose

This bill is designed to require periodic review hearings for children in foster care as federally mandated in the Adoption Assistance and Child Welfare Act of 1980.

3. Background

Through the above referenced act, Congress mandated a review of a child's foster care status external to the public agency since it saw the need for checks and balances in the child welfare system. Periodic reviews help ensure that a child receives appropriate care and treatment and help assess the adequacy and timeliness of efforts to provide permanence for the child.

In October 1986, the SRS foster care program experienced a federal audit. The following is quoted from the results of this audit;

"A reading of case records found that over seven percent of the cases did not contain the annual review by the court. An error rate of ten percent would have placed the state out of compliance and jeopardized approximately $564,727 in Title IV-B funds for FY-85. We recommend the state examine present laws to determine those steps that should be taken that will ensure future compliance. We believe there is a high risk that a subsequent review may result in non-compliance, given the present error margin of less than three percent."

It should also be noted that in those cases where a review was adjudged to have taken place, often there was no documentation available from the court.

4. Effect of Change

This bill will help ensure compliance with federal law thus preserving ongoing federal funds for child welfare services. This bill will provide the checks and balance system necessary in ensuring that all children in foster care are given a timely permanency plan.

5. SRS Recommendation

SRS recommends passage of this bill.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271

Attach. II
Senate Judiciary
3-26-87

Noon
3-26-87
Barnum

Session of 1987

HOUSE BILL No. 2170

By Committee on Public Health and Welfare

2-2

AN ACT concerning the Kansas code for care of children; requiring periodic review of certain placements; amending K.S.A. 38-1565 and 38-1584 and repealing the existing sections; also repealing K.S.A. 38-1584a.

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

Section 1. K.S.A. 38-1565 is hereby amended to read as follows: 38-1565. (a) If a child is placed outside the child's home and no plan is made a part of the record of the dispositional hearing, a written plan shall be prepared which provides for reintegration of the child into the child's family or, if reintegration is not a viable alternative, for other placement of the child. If the goal is reintegration into the family, the plan shall include measurable objectives and time schedules for reintegration. The plan shall be submitted to the court not later than 60 days after the dispositional order is entered. If the child is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the child is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer.

(b) A court services officer or, if the child is in the secretary's custody, the secretary shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the plan submitted pursuant to subsection (a). ~~If a goal is to reintegrate the child into the family,~~ The court shall review the progress being made toward ~~reintegration.~~ *the goals of the plan and,* if the court determines that progress is inadequate or that ~~reintegration of the child into the family is no longer a viable alternative, the court, upon notice to all interested parties and after hearing,~~ *the goals are no longer viable, the court shall hold*

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a hearing pursuant to subsection (c).

(c) Whenever a hearing is required under subsection (b), ~~*but not more than 18 months after a child is placed outside the child's home and at least every 12 months thereafter*~~*, the court shall notify all interested parties and hold a hearing regarding the adequacy of the plan submitted pursuant to subsection (a), progress toward the goals of such plan and the viability of such goals. If, after hearing, the court determines that the child's needs are not adequately being met, the plan is inadequate or the goals are not viable, the court* may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration, or an alternative plan for the child's placement, be prepared and submitted to the court.

If the secretary has custody of the child, such a hearing shall be held no more than 18 months after the child is placed outside the child's home and at least every 12 months thereafter.

Sec. 2. K.S.A. 38-1584 is hereby amended to read as follows: 38-1584. (a) *Purpose of section.* The purpose of this section is to provide stability in the life of a child who must be removed from the home of a parent, to acknowledge that time perception of a child differs from that of an adult and to make the ongoing physical, mental and emotional needs of the child the decisive consideration in proceedings under this section. The primary goal for all children whose parents' parental rights have been terminated is placement in a permanent family setting.

(b) *Notice of dispositional hearing.* After terminating parental rights and before granting custody of the child for adoption proceedings or long-term foster care, the court shall require notice of the time and place of the hearing on custody to be given to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known. Such notice shall be given by restricted mail not less than 10 business days before the hearing. The provisions of this subsection shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto.

(c) *Actions by the court.* (1) *Custody for adoption.* When parental rights have been terminated and it appears that adop-

Court II

tion is a viable alternative, the court shall enter one of the following orders:

(A) An order granting custody of the child, for adoption proceedings, to a reputable person of good moral character, the secretary or a corporation organized under the laws of the state of Kansas authorized to care for and surrender children for adoption as provided in K.S.A. 38-112 *et seq.* and amendments thereto. The person, secretary or corporation shall have authority to place the child in a family home, be a party to proceedings and give consent for the legal adoption of the child which shall be the only consent required to authorize the entry of an order or decree of adoption.

(B) An order granting custody of the child to proposed adoptive parents and consenting to the adoption of the child by the proposed adoptive parents.

(2) *Custody for long-term foster care.* When parental rights have been terminated and it does not appear that adoption is a viable alternative, the court shall enter an order granting custody of the child for foster care to a reputable person of good moral character, a youth residential facility, the secretary or a corporation or association willing to receive the child, embracing in its objectives the purpose of caring for or obtaining homes for children.

(3) *Preferences in custody for adoption or long-term foster care.* In making an order under subsection (c)(1) or (2), the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to granting such custody to a relative of the child and second to granting such custody to a person with whom the child has close emotional ties.

(d) *Guardian and conservator of child.* The secretary shall be guardian and conservator of any child placed in the secretary's custody, subject to any prior conservatorship.

(e) *Reports and review of progress.* After parental rights have been terminated and up to the time an adoption has been accomplished, the person or agency awarded custody of the child shall within 60 days submit a written plan for permanent placement which shall include measurable objectives and time

Count II

schedules and shall thereafter not less frequently than each six months make a written report to the court stating the progress having been made toward finding an adoptive or long-term foster care placement for the child. Upon the receipt of each report the court shall review the contents thereof and determine whether or not a hearing should be held on the subject. *In any case, the court shall notify all interested parties and hear evidence regarding progress toward finding an adoptive home or the acceptability of the long-term foster care plan within 18 months after parental rights have been terminated and every 12 months thereafter.* If the court determines that inadequate progress is being made toward finding an adoptive placement or establishing an acceptable long-term foster care plan, the court may rescind its prior orders and make other orders regarding custody and adoption that are appropriate under the circumstances. Reports of a proposed adoptive placement need not contain the identity of the proposed adoptive parents.

(f) *Discharge upon adoption.* When the adoption of a child has been accomplished, the court shall enter an order discharging the child from the court's jurisdiction in the pending proceedings.

Sec. 3. K.S.A. 38-1565, 38-1584 and 38-1584a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Attach. II

3-26-87
noon

STATE OF KANSAS

VINCENT K. SNOWBARGER
REPRESENTATIVE 26TH DISTRICT
JOHNSON COUNTY
1451 ORLEANS DRIVE
OLATHE, KANSAS 66062
(913) 764-0457

ROOM 446-N, CAPITOL BLDG.
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(913) 296-7677

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN LEGISLATIVE JUDICIAL AND CONGRESSIONAL APPORTIONMENT
MEMBER JUDICIARY
PENSION INVESTMENTS AND BENEFITS
TRANSPORTATION

SENATE JUDICIARY COMMITTEE: Testimony for March 26, 1987, Noon, Rm. 519-S

Proponent for HB-2296

MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU ON HB-2296. THE SECTION OF THE LAW THIS DEALS WITH IS A PART OF THE PARENTAGE ACT PASSED LAST YEAR. IT IS THE SECTION THAT DEALS WITH THE MANNER IN WHICH THE RIGHTS OF AN UNMARRIED FATHER MAY BE TERMINATED.

THE CHANGE PROPOSED IS IN LINES 77 - 79. CURRENTLY THE STATUTE PROVIDES FOR APPOINTMENT OF COUNSEL IF THE IDENTITY OF THE FATHER IS UNKNOWN. THE NEW LANGUAGE ADDRESSES THE PROBLEM THAT ARISES WHEN THE FATHER'S IDENTITY IS KNOWN BUT HE CANNOT BE LOCATED.

THE PURPOSE OF APPOINTING COUNSEL IS TO PROTECT THAT FATHER's PARENTAL RIGHTS FROM BEING TERMINATED WITHOUT DUE PROCESS. IT IS IMPOSSIBLE TO GIVE ACTUAL NOTICE WHEN EITHER THE IDENTITY OR THE LOCATION OF THE FATHER IS UNKNOWN. COURT APPOINTED COUNSEL IS AN ASSURANCE THAT EVERY APPROPRIATE EFFORT HAS BEEN MADE TO IDENTIFY AND LOCATE THE FATHER.

THE BILL PASSED WITHOUT OPPOSITION IN THE HOUSE JUDICIARY COMMITTEE AND IN THE HOUSE.

Attach. III
Senate Judiciary
3-26-87

3-26-87

CLYDE D. GRAEBER
REPRESENTATIVE, FORTY-FIRST DISTRICT
LEAVENWORTH
1900 KINGMAN
LEAVENWORTH, KANSAS 66048-4230

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: COMMERCIAL AND FINANCIAL INSTITUTIONS
MEMBER: GOVERNMENTAL ORGANIZATION
LOCAL GOVERNMENT

Testimony by Representative Clyde D. Graeber in Re H. B. 2288

Mr. Chairman, Committee Members -- H. B. 2288 is a very simple proposal and one I sincerely feel is needed in the best interest of children involved in child in need of care hearings. Many times SRS files and reports are not made available to attorneys appointed as Guardian ad litem in child in need of care cases until shortly before the appointed time for the hearing. This bill would require SRS to make available at least 48 hours before the hearing their files and reports to the attorney appointed by the court in child in need of care cases. This would allow the Guardian ad litem the opportunity to better prepare for the hearing to best represent the child in these cases and be better prepared to protect the child's interests. How can attorneys appointed as Guardian ad litem be properly prepared without access to SRS files at least 48 hours before these hearings? I ask your favorable support of H. B. 2288.

Attach. II.
Senate Judiciary
3-26-87