

Approved: 5/13/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 27, 1997 in Room 313 of the Capitol.

All members were present except: Representative Haley (excused)
Representative Kline (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Rochelle Chronister, Secretary of Social Rehabilitation Service
Jamie Corkhill, Attorney, SRS
Linda Jesseph, ACES
Jaclyn Jesseph
Phyllis Young, ACES
Nancy Davis, ACES
Susan Clemons
Jim Dolenz
Mark Forsyth, Stark, Kansas
Sherry Smith, Kansas Tenth Amendment Society
Roger Mundy, Kansas Tenth Amendment Society
Joseph Ledbetter

Others attending: See attached list

The Chair called the meeting to order.

The Chair referred to the minutes of March 19 and March 20, 1997 and asked the Committee members to review them for approval at a later date.

The Chair discussed concerns expressed by some Committee members on SB 291 regarding the inclusion of an offense that did not involve a child or violence (sodomy between consenting adults) under the definition of sexually violent crime. The Chair referred to a balloon that reinstates the definition of sexually violent crime with a child and then moves some crimes from the third page to the first page of the balloon. (Attachment 1)

Representative Carmody made a motion to adopt the balloon (noted as Representative Carmody, March 27, 1997) as an amendment to SB 291. Representative Dahl seconded the motion. The motion carries.

Representative Mays discussed HB 2232 dealing with the access to expunged criminal records. Representative Mays stated that this bill will allow, in some but not in all cases, the Commissioner to look at records before they are expunged.

Representative Mays made a motion to include HB 2232 into SB 291. The motion was seconded by Representative Dahl.

Representative Garner spoke against the motion.

The motion fails with 5 members in favor and 6 members voting against.

A motion was made by Representative Adkins to amend the contents of SB 263 into SB 291. The motion was seconded by Representative Powell. The motion carries.

The Committee members discussed the threshold age for registration on the offenses listed in SB 291, and the federal requirements.

Representative Adkins made a motion to include the contents of SB 257 into SB 291. The motion was seconded by Representative Shultz.

Representative Adkins discussed the contents of SB 257.

Representative Garner related that he opposes the motion and feels that this bill needs some additional consideration.

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The motion fails.

Representative Adkins made a motion to amend the contents of SB 261 into SB 291.

Representative Adkins discussed the contents of SB 261.

The Adkins motion to amend the contents of SB 261 into SB 291 fails for lack of a second.

Representative Mays made a motion to amend HB 2232 into SB 291 with the exception of all references state gaming agencies. Representative Swenson seconded the motion.

Representative Powell made a substitute motion to report SB 291 favorably as amended by the balloon and the inclusion of SB 263. Representative Mayans seconded the motion. The motion carries.

The Chair noted that due to time limitations the Committee will not be able to work on SB 292 during this meeting. The Chair stated that he will discuss with the Speaker the possibility of having further hearings on SB 292.

SB 140: Enforcement of child support, uniform interstate family support act.

The Chair opened the hearing on SB 140 and introduced the Secretary of SRS, Rochelle Chronister. The Secretary reviewed the contents of her written testimony. The Secretary stated that she has done an informal survey of child support legislation during a meeting of CEOs of similar agencies from other states. The conferee stated she learned that Utah, South Carolina, Wyoming, and Virginia have passed legislation. Ohio and Oregon have already passed legislation. The conferee stated that the Mississippi bill has passed both houses and is in conference committee. The conferee stated that several other states have the bill through one house and are working on the second house. The conferee stated that some of the most controversial portions of this bill had already been passed in a number of states. The conferee stated that 23 states have new hires directories, and a different 23 states have many of the administrative procedures that are included in this bill. The conferee stated that in Kansas there are 80,000 cases with orders that courts have set up and on a monthly basis 10.8 million dollars is currently owed. The conferee stated that a little over half of that is paid in full. The conferee stated that if a person is current in paying child support, they will not be affected by this bill.

The conferee stated that while this bill expands administrative procedures, many states already have such administrative procedures to establish or enforce support obligations. The conferee stated that there is a provision for a fair hearing in the bill. The conferee related there would be significant financial consequences for not passing a bill like SB 140. The purpose of SB 140 is to put the state in compliance with child support enforcement requirements of the federal government. The conferee offered that a sunset provision could be added to the bill. (Attachment 2) and (Attachment 3)

Jamie Corkhill, Attorney, SRS testified in support of SB 140. The conferee stated that there are provisions in this bill which are necessary to meet the federal requirements in child support enforcement as set forth in the Personal Responsibility and Work Opportunity Act of 1996. Ms Corkhill stated that there is nothing in this bill to authorize the Secretary of SRS to determine the level of support or establish paternity. The conferee referred to written testimony, "Road Map for SB 140" and discussed the various areas of the bill. (Attachment 4).

Ms Corkhill discussed the changes in the bill as contained in the balloon she provided the Committee members. Specifically, the conferee referred to Section 73 and the addition of language as requested by the KBI concerning the accessing of information. The conferee referred to the changes in Section 83 as requested by the governors office. (Attachment 5)

The Committee members discussed with the conferee issues concerning property and joint tenancy rights. The conferee stated that it would be okay to state a fifty-percent presumption of ownership in joint property assets.

The Committee members discussed with the conferee the procedure of voluntary establishment of paternity. The expansion of the scope of existing sanctions involving drivers licenses and professional/occupational licenses to include outstanding subpoena or warrant was discussed. In response to Representative Presta's inquiry, Ms Corkhill stated that the legislature could provide that employers be reimbursed for compliance of the reporting requirements of this bill.

In response to Representative Powell's question regarding the language, "notwithstanding any law to the

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contrary," Ms Corkhill stated that this provision is to ensure that the federal requirements are met. In response to a Committee member's inquiry, Ms Corkhill stated that the language in New Section 10 regarding concurrent jurisdiction with the court of this state in proceedings in which a support obligation is or may be enforced is mandated. The conferee discussed with the Committee members Section 15 regarding a fair hearing. The Committee members discussed with the conferee modification orders. The conferee and the Committee members discussed the definition of a "tribunal." The conferee stated that tribunals are district courts in the state of Kansas, but may be defined as other entities in different states. Representative Pauls requested that tribunal be defined in this bill to mean the district court. Issues regarding the New Hire registry and the role of the employers were discussed between the conferee and the Committee members.

In response to Representative Howell's inquiry regarding the constitutionality of this bill, the conferee stated that challenges are expected.

The Chair announced that the hearing on SB 140 will continue on Monday, March 31 for those conferees who were able to come on that day. The Chair stated that today's hearing will continue with testimony from those conferees who were from out-of-town or unable to attend the Monday meeting.

Linda Jesseph, ACES testified in support of SB 140 as a custodial parent. The conferee related her personal experience of attempts to collect child support from her children's father who moved frequently. The conferee stated that this bill will remedy situations where the non-custodial parent moves and adopts several aliases to avoid paying child support. (Attachment 6)

Jaclyn Jesseph testified in support of SB 140. The conferee testified as a child whose father had not paid child support. (Attachment 7)

Phyllis Young, ACES testified in support of SB 140. The conferee related her personal experience and referred to the written testimony of Michelle Staley, Johnson County Chapter Coordinator, of ACES. (Attachment 8)

Nancy Davis, ACES testified in support of SB 140. Ms Davis related her experience with collection of child support arrearages and the difficulty in collecting the child support.

Susan Clemons testified in support of SB 140. The conferee related her personal experience with trying to collect child support from her ex-husband. The conferee questioned the contention of the right to privacy when a single custodial parent is not receiving court-ordered child support. The conferee stated that child support is not about the rights of the parents, but the rights of the child or children that are involved. (Attachment 9)

Mr. Jim Dolenz presented written testimony in opposition to SB 140, and waived his time for oral testimony. Mr. Dolenz cited several concerns with SB 140 as to invasion of privacy and circumvention of due process. The conferee stated that in any legal due process by which an individual is required to involuntarily surrender personal property or cash should be presided over by a sitting judge, not an SRS surrogate. (Attachment 10)

Mark Forsyth from Stark, Kansas testified in opposition to SB 140. Mr. Forsyth related his personal experience in which he requested a hearing to clarify the amount of arrearages, because the SRS had notified him that his tax return was to be intercepted. The conferee stated that he presented court records of payment as well as a chart showing the individual dates that the child support was due. The conferee stated that the difference between the amount paid and the amount due was \$67.23, but that SRS determined that he was behind \$569.99 and upheld their right to take his tax return. The conferee stated that he appealed this finding and a determination has not been made during the five months since the appeal. The conferee stated that SRS asked the court to increase the amount of child support paid. The conferee related that the judge found that the SRS figures were inflated by over three hundred dollars a month. The conferee questioned the ability of the SRS to administer additional responsibilities. (Attachment 11)

Sherry Smith, Kansas Tenth Amendment Society testified in opposition to SB 140. The conferee in referring to the new hires directory, stated that this bill is an invasion of privacy. The conferee cited the definition of "state" on page 8 of the bill referring to foreign jurisdictions. The conferee discussed the term "tribunal." The conferee stated opposition to giving the SRS more power. (Attachment 12)

Roger Mundy, Chairman of the Kansas Tenth Amendment Society testified in opposition to SB 140. The conferee stated several objections to the bill including the mandate by the federal government for such a bill. The conferee stated that this bill violates constitutional state's rights. (Attachment 13)

Joseph Ledbetter testified in opposition to SB 140. The conferee stated that this bill violates the 5th, and

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1-4th amendments of due process, and privacy of the 4th amendment. The conferee stated that there are already laws to collect child support. The conferee stated that participation of non-custodial parents was not sought in the development of this bill. The conferee asked to whom is the SRS accountable to? The conferee stated that under this system there was no post-custody recourse. The conferee expressed his concern with the language in the bill referring to a tribunal. The conferee stated that there could be a system of tribunals if the SRS subcontracted the collection of child support to others. (Attachment 14)

The Chair recessed the hearing on SB 140 and adjourned the meeting at 5:45 p.m.

The next meeting is scheduled for March 31, 1997.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/27/97

NAME	REPRESENTING
David Tallman	KS BAR ASSN
Mr & Mrs Mack Forsyth	myself
Linda Jackson Joseph	ACES / Parent / child
SUSAN Clemons	myself
Sky Westerlund	KS National Association of Social Workers
Jim Delenz	self
Dean Reynolds	KDOR-ABC
& Sicilian	KDOR
Betty McBride	KDOR
Rick Scheibe	KDOR
Mark Gleeson	OJA
Jamie Corkhill	SRS / CSE
Rochelle Chronister	SRS
John Barber	SRS
John Gorlingier	SRS
Mary Becker	Mother to Mother
Jenny Haven	KDWP
Amelia McIntyre	KDWP
Selen Stephens	KPOA / KSA

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/27/97

NAME	REPRESENTING
Bill Laves	KS. Dept. Human Resources
Roger Aeschliman	KDHR
Larae Elliott	KCSOV
Chuck Stokes	KBA
Kathy Taylor	"
Sharon Resmeistr	Dept. of Health & Human Serv.
Matt Goddard	HCBA
Callie Jill Denton	Bottenberg's Assoc.
Nancy J. Davis	ALLS
GREG DeBACKER	National Congress for Fathers and Children
JOSEPH LEDBETTER	Taxon + Father
Liz Furse de Sormani	Washburn U. - Master Social Work Student
Gary Munk	Kansas Action for Children
Paul Johnson	PACK
Whitney Danner	KBA

SENATE BILL No. 291

By Special Committee on Judiciary

2-12

Rep. Carmody
March 27, 1997

House Judiciary
Attachment 1
3/27/97

10 AN ACT concerning criminal procedure; relating to registration of per-
11 sons who commit certain crimes; amending K.S.A. 22-4901, 22-4902,
12 22-4905, 22-4906, 22-4908 and 22-4909 and K.S.A. 1996 Supp. 22-
13 4904, 22-4907 and 45-221 and repealing the existing sections; also
14 repealing K.S.A. 1996 Supp. 45-221d.
15

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

17 Section 1. K.S.A. 22-4901 is hereby amended to read as follows: 22-
18 4901. K.S.A. 22-4901 through 22-4910; and amendments thereto; shall
19 be known and may be cited as the *Kansas crimes against children and*
20 *sex offender registration act.*

21 Sec. 2. K.S.A. 22-4902 is hereby amended to read as follows: 22-
22 4902. As used in this act, unless the context otherwise requires:

23 (a) "Offender" means ~~a sex offender as defined in subsection (b) or a~~ **(1)**
24 **violent offender as defined in subsection (d) or any person who, on** **(2)**
25 **and after the effective date of this act, is convicted of any of the following** **(3)**
26 **crimes when the victim is less than 18 years of age:**

(A) ~~(1)~~ **(1)** Kidnapping as defined in K.S.A. 21-3420 and amendments
28 thereto, except by a parent;

(B) ~~(2)~~ **(2)** aggravated kidnapping as defined in K.S.A. 21-3421 and amend-
30 ments thereto;

(C) ~~(3)~~ **(3)** criminal restraint as defined in K.S.A. 21-3424 and amendments
32 thereto, except by a parent;

(5) ~~(4)~~ **(4)** any conviction for an offense in effect at any time prior to the
34 effective date of this act, that is comparable to any crime defined in ~~this~~

(3) or (4) ~~(5)~~ **(5)** subsection, or any federal or other state conviction for an offense that
36 under the laws of this state would be an offense defined in ~~this~~ subsection;

(6) ~~(6)~~ **(6)** or
37 or
38 ~~(7)~~ **(7)** an attempt, conspiracy or criminal solicitation, as defined in

39 K.S.A. ~~21-3301a, 21-3302a or 21-3303a~~ and amendments thereto, of an
40 offense defined in ~~this~~ subsection.

(3) or (4) **(8)**
41 Upon such conviction, the court shall certify that the person is an of-
42 fender subject to the provisions of K.S.A. 22-4901 et seq. and amendments

43 thereto and shall include this certification in the order of commitment.

21-3301, 21-3302 or 21-3303

: (1)

; (2)

; (3)

or

(4) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

(A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;

(C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;

(D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;

(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto; or

(F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;

1 to the effective date of this act, that is comparable to a sexually violent
2 crime as defined in subparagraphs (1) through ~~(9)~~ ~~(13)~~ or any federal or
3 other state conviction for a felony offense that under the laws of this state
4 would be a sexually violent crime as defined in this section;

(10)

5 ~~(11)~~ ~~(15)~~ an attempt, conspiracy or criminal solicitation, as defined in
6 K.S.A. ~~21-3301a, 21-3302a or 21-3303a~~ and amendments thereto, of a
7 sexually violent crime, as defined in this section; or

(12)

21-3301, 21-3302 or 21-3303

8 ~~(12)~~ ~~(16)~~ any act which at the time of sentencing for the offense has
9 been determined beyond a reasonable doubt to have been sexually moti-
10 vated. As used in this subparagraph, "sexually motivated" means that
11 one of the purposes for which the defendant committed the crime was
12 for the purpose of the defendant's sexual gratification.

(13)

13 (d) "Violent offender" includes any person who, after the effective
14 date of this act, is convicted of any of the following crimes:

15 (1) Capital murder as defined by K.S.A. 21-3439 and amendments
16 thereto;

17 (2) murder in the first degree as defined by K.S.A. 21-3401 and
18 amendments thereto;

19 (3) murder in the second degree as defined by K.S.A. 21-3402 and
20 amendments thereto;

21 (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amend-
22 ments thereto;

23 (5) involuntary manslaughter as defined by K.S.A. 21-3404 and
24 amendments thereto; or

25 (6) any conviction for an offense in effect at any time prior to the
26 effective date of this act, that is comparable to any crime defined in this
27 subsection, or any federal or other state conviction for an offense that
28 under the laws of this state would be an offense defined in this subsection;
29 or

30 (7) an attempt, conspiracy or criminal solicitation, as defined in
31 K.S.A. ~~21-3301a, 21-3302a or 21-3303a~~ and amendments thereto, of an
32 offense defined in this subsection.

21-3301, 21-3302 or 21-3303

33 Upon such conviction, the court shall certify that the person is an of-
34 fender subject to the provisions of K.S.A. 22-4901 et seq. and amendments
35 thereto and shall include this certification in the order of commitment.
36 Convictions which result from or are connected with the same act, or
37 result from crimes committed at the same time, shall be counted for the
38 purpose of this section as one conviction. Any conviction set aside pur-
39 suant to law is not a conviction for purposes of this section. A conviction
40 from another state shall constitute a conviction for purposes of this sec-
41 tion.

42 ~~(e)~~ ~~(d)~~ (e) "Law enforcement agency having jurisdiction" means the
43 sheriff of the county in which the offender expects to reside upon the

1-2

1 Convictions which result from or are connected with the same act, or
2 result from crimes committed at the same time, shall be counted for the
3 purpose of this section as one conviction. Any conviction set aside pur-
4 suant to law is not a conviction for purposes of this section. A conviction
5 from another state shall constitute a conviction for purposes of this sec-
6 tion.

7 (b) "Sex offender" includes any person who, after the effective date
8 of this act, is convicted of any sexually violent crime set forth in subsection
9 ~~(b)~~ (c). Upon such conviction, the court shall certify that the person is a
10 sex offender and shall include this certification in the order of commit-
11 ment. Convictions which result from or are connected with the same act,
12 or result from crimes committed at the same time, shall be counted for
13 the purpose of this section as one conviction. Any conviction set aside
14 pursuant to law is not a conviction for purposes of this section. A convic-
15 tion from another state shall constitute a conviction for purposes of this
16 section.

17 ~~(b)~~ (c) "Sexually violent crime" means:

18 (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

19 (2) indecent liberties with a child as defined in K.S.A. 21-3503 and
20 amendments thereto;

21 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-
22 3504 and amendments thereto;

23 (4) criminal sodomy as defined in subsection ~~(a)(2)~~ and ~~(a)(3)~~ of _____ subsection (a)(2) and (a)(3) of
24 K.S.A. 21-3505 and amendments thereto;

25 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and
26 amendments thereto;

27 (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and
28 amendments thereto;

29 (7) aggravated indecent solicitation of a child as defined by K.S.A.
30 21-3511 and amendments thereto;

31 ~~(8) promoting prostitution as defined by K.S.A. 21-3513 and amend-~~
32 ~~ments thereto when the prostitute is less than 18 years of age;~~

33 ~~(9) patronizing a prostitute as defined by K.S.A. 21-3514 and amend-~~
34 ~~ments thereto when the prostitute is less than 18 years of age;~~

35 ~~(10)~~ sexual exploitation of a child as defined by K.S.A. 21-3516 and
36 amendments thereto;

37 ~~(0)~~ ~~(11)~~ sexual battery as defined by K.S.A. 21-3517 and amendments
38 thereto;

39 ~~(12)~~ aggravated sexual battery as defined by K.S.A. 21-3518 and
40 amendments thereto; or (9)

41 ~~(13)~~ aggravated incest as defined by K.S.A. 21-3603 and amendments
42 thereto; or (10)

43 ~~(10)~~ ~~(14)~~ any conviction for a felony offense in effect at any time prior (11)



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

March 27, 1997

TO: House Judiciary Committee Members
FROM: Rochelle Chronister *Rochelle*
RE: Senate Bill 140

In the past few days I have had the opportunity to be in contact with my counterparts who are CEO's of similar agencies in other states and asked many questions of them. This is not a scientific poll, as not all the states were present at the meeting, but there were 20-25 states represented. Below are the answers to some of my questions.

1. Q. Has your state passed the necessary legislation to fulfill the requirements of the Child Support Enforcement provisions in the federal welfare reform act?
 - A. Utah, South Carolina, Wyoming, and Virginia all told me they had passed their legislation. Ohio and Oregon already had the necessary legislation on the books except for some technical amendments in Ohio, that they have already passed this session. The Mississippi bill had passed both houses and was in conference committee. Several other states told me they had the bill through one house and were working in the second house.
2. Q. Why are other states' bills not as long as the Kansas bill?
 - A. The size of the bill depends on what was already present in state law. Ohio told me they had done a major rework of their child support laws two years ago; therefore, their bill was very brief. Some states chose to separate the different parts of the law into different bills. As an example, the Idaho bill Senator Brownlee discussed during floor debate in the Senate, which is only eight pages long, was one of 11 bills that state is involved in passing to reach compliance.

House Judiciary
Attachment 2
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3. Q. Why did Congress include the bill in the welfare reform legislation?
- A. Congress had been working on a Child Support Enforcement Bill for two years, and had chosen to model the bill after Massachusetts's bill. My understanding is that since Congress was removing the safety net that was the old Aid to Families with Dependent Children (AFDC) Program as an entitlement, they decided that the new safety net should insure that both parents contribute to a child's support through increasing the tools that all states had available to them to collect all the child support possible. A motion was made on the floor of the U.S. House of Representatives to remove the child support provisions from the bill and it failed 400-6.
4. Q. What are the penalties for not passing this bill?
- A. I have included a copy of Sen. Dave Kerr's conversation with Ron Haskins, who is the Staff Director for the U.S. House of Representatives Human Resources Committee, and is probably one of the two or three most knowledgeable people in the country on the federal bill. Mr. Haskins indicates we would lose \$5 million off of our TANF grant for certain, the first year, and increasing amounts each year after that. He also speaks about the \$29 million which the federal government provides to support our child support program, and if the Secretary of Health and Human Services would not certify our program, we would start losing that money. Finally he states that Kansas could lose the entire TANF grant of \$101.9 million; although he did not see that as an immediate threat, and neither do I as that is an extraordinary measure.
5. Q. When would penalties start being assessed?
- A. The penalties would start the first day of the first quarter after each state's legislature adjourns in 1997. This means July 1, 1997 in Kansas.
6. Q. Are there ways we could change the legislation and still meet the mandate from the federal government?
- A. Yes, as long as the basic thrust of the bill remains. We have written this bill as a "bare bones" bill, but we are willing to work with you on what is possible to change. The federal bill requires that we have a "new hires registry", but it is our decision as to where it should be located and how we make it work. We chose to not put sanctions on Kansas employers; although the federal bill would allow us to do so. We have reached an agreement with financial institutions on how they could be reimbursed for

participating in locating assets of non-custodial parents who have not paid their child support.

Sanctions could be added to the bill for anyone in our employ or the employ of one of our contractors who accesses information on anyone who is not in arrears of their child support. A sunset could be added to the bill which would allow the legislature to study the provisions in other states' laws to see what other ways are used to implement parts of the bill. The Administrative Hearings could be moved to the Department of Administration (a position I've advocated since coming to SRS to avoid any appearance of a conflict of interest). Senator Bond and Representative Shallenburger have written to the Congressional delegation, letting them know of their displeasure with the requirements of the bill. A Concurrent Resolution could be passed by both houses expressing the Kansas legislature's position on this legislation to Congress. In summary we are willing to work with you in any way we can, but the bottom line still is that we need the legislation.

In closing let me say that if you pay your child support, you will never become a part of this system. One-third of those now receiving benefits from the welfare rolls would not be there if child support was being paid. Children deserve the support of both parents and taxpayers deserve not to pay the millions of dollars necessary to support those who are on the rolls only because child support is not paid.

RC:hb
Enclosure

A-24
(1)

NOTES FROM TELEPHONE CONVERSATION BETWEEN SENATOR DAVE KERR AND MR. RON HASKINS ON MARCH 17, 1997. (Staff Director, Human Resources Committee)

- 1) What are the financial consequences of not passing a bill like SB 140 to put us in compliance with child support enforcement requirements?
 - 5% penalty \pm \$5 million (certain)
 - If we cannot be certified as being in compliance, Secretary of Health and Human Services could give us some temporary breathing room but would be justified in taking all IV-D money. Loss - \$25.3 million administration funding and \$4.2 million performance incentive payment.
 - Also, have to certify that we are IV-D qualified in order to receive TANF funding. \$101.9 million. Could lose all of it although such a thing has never happened.
- 2) Would be willing to have the foregoing put in writing for us from the Office of Congressional Research. Could not be done in time for this meeting.
- 3) How much flexibility do we have?
 - After working with states for more than two years, very specific guidelines have been laid out by the Feds, states have no real flexibility.
- 4) Action in other states?
 - Has been told Mississippi has passed all legislation but has not seen and has doubts.
 - Oklahoma hit a problem when the assertion was made that "State required child support orders" meant every case would be a government case. This is not true. It is estimated 1/3 to 1/2 of all cases will not be a part of this system. Mostly,

these will be cases where the :

- Mother and father agree and have a good record
- The Judge says it should be outside the system

5) What information would be required from employees?

- Name
- Employer address
- Social Security number

6) What is the deadline? When could we start losing money?

- First day of first quarter after the end of the session.

#3
Corkhill

Department of Social and Rehabilitation Services
Rochelle Chronister, Secretary

JLC: Legis\TESTHJ27.037

SRS Mission:

To provide services to Kansans in need that contribute to their safety and promote dignity, independence, and responsibility.

Before the House Committee on Judiciary

March 27, 1997

Senate Bill 140 - Child Support Enforcement

Mr. Chairman and members of the committee, thank you for this opportunity to testify concerning Senate Bill 140 and the Child Support Enforcement Program. The primary responsibility of CSE is to help children by establishing regular, adequate support payments and enforcing past due obligations. This service on behalf of children has gained new importance under welfare reform, as the old safety net of public assistance is replaced by personal and parental responsibility.

For the sake of the children served by SRS, our existing child support remedies and procedures must be improved. In recent years CSE collections have soared, and we are now collecting a record-high 57% of each month's court-ordered support – but that still leaves a 43% gap in our safety net. Add to that the harsh reality that only half of the children who ought to have orders actually do have one, and the need to improve our safety net is clear indeed.

I want to stress that we are seeking to *improve* existing procedures, not embark on experimental adventures. The program improvements in Senate Bill 140 have been used successfully in many other states, some for more than a decade. It is time for Kansas to catch up.

One of the most useful improvements will be speedier reporting of new hires. Make no mistake, the information about new employment is already being reported to the State of Kansas – we've just never called it "new hires reporting." Information from the W-4 – the employer and employee's name, address, and tax identification number – is already being reported to the Department of Revenue for state income tax purposes and to the Department of Human Resources for employment security purposes. Senate Bill 140 only changes the due date for that information, to get rid of our 4- to 6-month delay in finding CSE parents who have new jobs. Today at least 23 states are successfully operating new hires directories, including our neighboring states of Missouri, Colorado, Oklahoma, and Iowa.

Another useful improvement to our safety net will be expansion of our existing administrative procedures for enforcing court-ordered support obligations. Since the mid-eighties we have successfully collected support from unemployment benefits, tax

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refunds, and state lottery winnings using only administrative procedures. S.B. 140 builds upon this successful experience. Again, we are not breaking new ground by expanding our administrative procedures – at least 23 states have administrative procedures to establish or enforce support obligations. It is time for Kansas to catch up.

Kansans who feel they have been wronged in the process have the right to be heard in court. The "myth" of an omnipotent SRS secretary is just that – a myth. The authority to encumber or seize property *only* applies post-judgment, after debtors have had their day in court. And they remain entitled to a hearing before an objective judge or hearing officer concerning each collection action.

Some have said that no state has passed the laws needed to bring them into compliance with the CSE provisions of welfare reform. Not true – Utah, South Carolina, and Virginia have passed bills; Ohio passed theirs two years ago, with most of the federal mandates in it; Oregon didn't need a bill, their measures are already enacted; Mississippi's bill has passed both houses and is in conference; Missouri's has passed in the House and is in the Senate; Oklahoma's legislation was passed by the Senate and is in the House. Some have questioned the size of our bill, comparing it to an Idaho bill of less than a dozen pages. In reality, that Idaho bill was only one of 11 bills relating to CSE, totaling about 125 pages, some enacted in previous sessions.

The measures in Senate Bill 140 are not cutting-edge ideas – states have been using them for years – and it is time that we in Kansas put them to work on behalf of our children, too. The bottom line: This is about taking care of Kansas kids, making sure that they have a child support "safety net" they can depend on.

Rochelle Chronister
Secretary

STATE	New Hires Reporting
ALABAMA	
ALASKA	X
ARIZONA	
ARKANSAS	X
CALIFORNIA	X
COLORADO	
CONNECTICUT	X
DELAWARE	
DIST. OF COLUMBIA	
FLORIDA	X
GEORGIA	X
GUAM	
HAWAII	X
IDAHO	
ILLINOIS	
INDIANA	
IOWA	X
KANSAS	
KENTUCKY	
LOUISIANA	
MAINE	X
MARYLAND	X
MASSACHUSETTS	X
MICHIGAN	
MINNESOTA	X
MISSISSIPPI	
MISSOURI	X
MONTANA	
NEBRASKA	

STATE	New Hires Reporting
NEVADA	
NEW YORK	X
NEW HAMPSHIRE	
NEW JERSEY	
NEW MEXICO	
NORTH DAKOTA	
NORTH CAROLINA	
OHIO	X
OKLAHOMA	X
OREGON	X
PENNSYLVANIA	
PUERTO RICO	
RHODE ISLAND	
SOUTH CAROLINA	X
SOUTH DAKOTA	
TENNESSEE	
TEXAS	X
UTAH	
VERMONT	X
VIRGIN ISLANDS	
VIRGINIA	X
WASHINGTON	X
WEST VIRGINIA	X
WISCONSIN	
WYOMING	

As of January 1997

Printed: 3/27/97 (12:01)

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New Hires Directory

S	Has	For:
ALABAMA		
ALASKA	X	Order support, inc. withholding, medical support
ARIZONA		
ARKANSAS		
CALIFORNIA		
COLORADO	X	Paternity establishment
CONNECTICUT		
DELAWARE		
DIST. OF COLUMBIA		
FLORIDA		
GEORGIA	X	Establish support order, inc. withholding
GUAM		
HAWAII	X	Establish and enforce support
IDAHO		
ILLINOIS	X	n/a
INDIANA		
IOWA	X	Establish paternity & support, inc. withholding, enforcement (bank levy, lic. sanctions)
KANSAS		
KENTUCKY	X	n/a
LOUISIANA		
MAINE	X	n/a
MARYLAND	X	n/a
MASSACHUSETTS	X	Inc. withholding, bank levies
MICHIGAN		
MINNESOTA	X	n/a
MISSISSIPPI		
MISSOURI	X	Establish paternity and support, enforcement
MONTANA	X	n/a
NEBRASKA		

STATE	Has	For:
NEVADA	X	Paternity, order support (incl. arrearages)
NEW YORK		
NEW HAMPSHIRE		
NEW JERSEY		
NEW MEXICO		
NORTH DAKOTA		
NORTH CAROLINA	X	n/a
OHIO	X	Establish paternity, inc. withholding
OKLAHOMA	X	n/a
OREGON	X	Estab. paternity and support, modifications
PENNSYLVANIA		
PUERTO RICO		
RHODE ISLAND		
SOUTH CAROLINA		
SOUTH DAKOTA		
TENNESSEE		
TEXAS		
UTAH	X	Establish orders
VERMONT		
VIRGIN ISLANDS	X	n/a
VIRGINIA	X	Establish and enforce orders
WASHINGTON	X	Establish and enforce orders
WEST VIRGINIA	X	Paternity establishment
WISCONSIN		
WYOMING		

As of January 1997 (& per 1995 survey by Arizona)

Printed: 3/27/97 (12:17)

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True Administrative Procedures



DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Children & Families
Region VII

Room 276, Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

March 11, 1997

Mr. James A. Robertson, Administrator
Child Support Enforcement Unit
Department of Social and Rehabilitation
Services
P.O. Box 497
Topeka, Kansas 66601-0497

Dear Jim:

This is in response to your request regarding the estimated amount of Federal funding Kansas could anticipate losing if their IV-D State Plan were found to be out of compliance.

Kansas received approximately \$4.2 million in performance related child support incentive payments and approximately \$25.3 million in Title IV-D funding for the administration of its child support program in Federal fiscal year 96 (October 1, 1995 through September 30, 1996).

As you know, PL 104-193 introduced several new child support enforcement requirements which, pursuant to 454 and 466 of the Social Security Act, must be reflected in State law in order for a State to maintain an approved Title IV-D State Plan. If a State fails to enact any of the required State laws or procedures under Section 466, or otherwise fails to comply with any State plan requirement under Section 454, they are at the risk of having their State plan disapproved and of losing all Federal IV-D funding.

If you have any further questions or need further assistance, please contact Sharan Lesmeister at 816-426-3584, extension 158.

Sincerely,

Max W. Smith
Director, Office of
State and Tribal Operations

Road Map for Senate Bill 140

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
1	[new]; 313	New Hires Reporting	Creation, function of directory	New mechanism for locating absent parent's current employment. CSE now gets this information from automated match with Employment Security (DHR), whose data is 4 to 6 months old. Data will be used for service of process to initiate judicial action for establishing paternity and/or a support order, modifying current support, or enforcement, to serve an initial administrative order or notice (see §§ 8-24 below), or to serve a copy of an existing income withholding order on the new employer.
2	[new]; 331	Paternity	KDHE to provide services for voluntary acknowledgment of paternity	Expands existing process. Kansas has long had a "simple, civil procedure for voluntary acknowledgment of paternity" that parents could access two ways: (1) Through in-hospital acknowledgment at child's birth (recording the father's name on the birth certificate), or (2) through district court under KSA 38-1130 (no court file or record created; ct. sends papers to KDHE to record father's name on birth certificate). The new measure adds KDHE (Vital Statistics Div'n) as a location where parents may receive this service.

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4-2

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
3	[new]; 369	License sanctions (drivers, professional)	If an outstanding subpoena or warrant (added to existing nonpayment grounds)	<p>Expands scope of existing sanctions involving drivers licenses and professional/occupational licenses. Court discretion whether to apply either sanction.</p> <p>Under existing law (KSA 20-1204a), the court may restrict driving privileges for non-payment of support upon finding of contempt, if 6 months' arrearages are owed or there is substantial failure to comply with court payment plan.</p> <p>Under existing law (KSA 20-1204a), the court may initiate suspension of a professional license for non-payment of support upon a finding of contempt. Debtor has a 6-month grace period (with license) to obtain ct's release (full payment of arrearages, compliance with payment plan, etc. -- whatever satisfies the court's expectations). Grace period would also apply to a sanction based on a subpoena/warrant.</p>
4	[new]; 325(c) (1)(D)(ii); (2)	Access to information; private records	Individuals in case registry; employers; public utilities & cable TV; financial inst'ns; immunity.	<p>This section is the private sector companion to KSA 39-758 (see §73 below). It is subject to the safeguards of KSA 39-759 (§74 below). It grants immunity for good faith disclosures by the person or entity furnishing information, and provides for either formal (by subpoena) or informal (by agreement) access.</p> <p><u>Individuals in case registry</u> - would apply only to IV-D cases. Expands existing requirements under KSA 23-4,113 and KSA 23-4,114 for both parents to provide specific information. Custodial parent in a PA (public assistance) case must already keep CSE updated to meet cooperation requirements.</p> <p>(cont'd)</p>

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
4 (continued)		Access to information; private records [cont'd]		<p><u>Employers</u> - expands access currently authorized under KSA 23-4,108(a), which allows the obligee (including CSE) to obtain wage, benefits, and address information if the employee-parent is an obligor (i.e., has a support order). This new section allows similar inquiry when CSE needs to <i>establish</i> an order; info. allows advance preparation of Guidelines worksheet (for agreed order or trial). Employer would have to furnish same information in response to court's subpoena.</p> <p><u>Utility, cable TV, & financial institution customer records</u> - To extent that such records could be obtained by ct. subpoena, this new section allows informal access to the same information. In the case of financial institutions, similar immunities under federal law were immediately effective upon enactment of PRWORA; because fin. institutions are highly regulated under federal & state laws, immunities are needed at both levels.</p>
5	[new]; 372	Financial Institutions	Agreements for data matches	<p>IRS 1099 information (furnished by federal agency) will be the primary way CSE identifies debtors' bank assets. This section gives fin. institutions the option, with concurrence of SRS, to adopt procedures such as electronic/magnetic data transfers as alternatives to individual subpoenas and requests for information, levies (under §22), or garnishments.</p>

4-4

Sec. No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
6	[new]; 317	License applications	Occupational, professional, & marriage licenses; record SSN	<p>The full mandate is a “laundry list” of records and applications on which the parents’ social security number must be recorded. Kansas laws and procedures already require SSN’s to be provided, as mandated, except in 2 instances -- not all professional/occupational applications require the SSN, and marriage license applications do not require the SSN.</p> <p>It is widely recognized that having the absent parent’s social security number is vital for locating both the person and assets. CSE, through the federal parent locator service (FPLS), is generally able to obtain an SSN; this process does require information about the absent parent’s family that not all custodial parents have. If the absent parent has filed one of the applications listed or been involved in a listed proceeding (such as divorce), having the SSN in the records can be beneficial. Recording the SSN in the death certificate records also allows verification that an absent parent is deceased. This is particularly helpful when names are the same or similar (Example: John Smith, Sr. or Jr.)</p> <p>SSN’s obtained by CSE and its contractors are subject to the safeguards of KSA 39-759. Agencies receiving SSN information on applications are subject to limitations under federal laws concerning non-IV-D use and disclosure of SSN’s</p>

Sec. No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
7	[new]; 351	Modification of current support in IV-D cases	When ct. must presume change of circumstances (3-yr cycle of review)	<p>Federal law already requires states to have and use a system (3-year cycle) for reviewing and modifying current support obligations in their IV-D caseloads. In Kansas, the 3-year cycle is part of CSE's internal procedures and is not statutory. Kansas is able to meet federal time frames even with full application of the KS Guidelines; SRS has opted <i>not</i> to seek authority to apply a COLA (cost of living adjustment) or an automated, summary review instead.</p> <p>One change is needed, however. Modifications <i>within</i> the 3-year cycle must be made without requiring proof of a substantial change in circumstances since the last modification (or establishment of current support). Modifications <i>outside</i> the cycle (i.e., additional motions during the 3-year period) must require proof of a substantial change in circumstances. Under existing Kansas law, proving a change of circumstances warranting re-application of the Guidelines is usually not a problem; it does prevent parents from abusing judicial resources and unfairly burdening the other parent. By applying a presumption, §7 meets the federal requirements without overturning the sound legal principles in Kansas' existing law.</p>

4-5

Sec. No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
-----	-----	Administrative Procedures	General Information	<p>In 1984, the Congress required states to adopt expedited processes for establishing and enforcing support obligations; paternity was added in 1993. Compliance was determined by time frames for initiating and completing these actions. <u>Expedited processes were not necessarily administrative processes</u>; states (like Kansas) that could meet the time frames using judicial processes were granted waivers. With respect to procedures for <i>establishing</i> the duty to support, the amount of current support, and judgments for reimbursement, Kansas' CSE will continue to rely solely upon judicial procedures, including negotiated agreed orders. (Due to changes in federal regs regarding the use of judicial procedures for establishment, the old waiver has become obsolete.)</p> <p>With enactment of PRWORA, the Congress has specified that the IV-D agency (SRS) must have the authority, without relying on another judicial or administrative tribunal, to take certain actions. <u>These are true administrative procedures, within the context of expedited processes.</u> The reason for requiring states to adopt these administrative procedures -- results. Over the years a pattern emerged, indicating that states using administrative procedures tend to outperform states that rely on judicial procedures. This is consistent with Kansas' experience for making collections from Unemployment Insurance benefits. When the federal ban on attaching UI</p>

Sec. No	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
-----	-----	Administrative Procedures	General Information (cont'd)	<p>benefits was lifted with respect to child support, Kansas elected to use its State Debt Setoff process, rather than individual garnishments, to make these collections. As a result, Kansas has ranked first or second in the nation over several years for the effectiveness of our UI collection process. This effectiveness stems from automated batch processing, with appropriate safeguards in the form of notices and opportunity for hearing, as well as system edits and alerts for worker intervention.</p> <p>Sections 8 through 15 of SB 140 are general provisions applicable to the seven specific actions for which IV-D administrative procedures are mandated. These general sections provide the framework within which the actions of §§ 16 - 24 must fit .</p>
8	[new]; 325	Administrative Procedures - General	Severability; sovereign immunity; KSA placement	Section 8 preserves Kansas' sovereign immunity under the 11th Amendment to the fullest extent possible. This is important because fully 30% of IV-D cases involve interstate activities.
9	[new]; 325 & 314	Administrative Procedures - General	Definitions	Section 9 provides standard definitions.

4-7

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
10	[new]; 325	Administrative Procedures - General	Subject matter jurisdiction; powers of Sec'y of SRS; authorized agents	Section 10 specifies subject matter limitations, the powers to carry out the administrative actions, and persons to whom the powers may be delegated. It is important to note that we expect our contractors, including court trustees, to also use administrative procedures for their enforcement duties, but we will require appropriate contractual assurances against misuse of such authority.
11	[new]; 325	Administrative Procedures - General	Jurisdiction over persons; service	Section 11 addresses jurisdiction over persons -- the authority granted in section 10 cannot be exercised unless the person or entity involved has received appropriate notice and, at appropriate stages, opportunity for a meaningful hearing (<i>see</i> §§15 and 80). The agency must meet state and federal Constitutional requirements -- particularly due process and equal protection -- in addition to statutory requirements.
12	[new];325	Administrative Procedures - General	Option to waive rights	Section 12 makes it clear that persons may waive their rights if they choose. Any waiver is subject to the same Constitutional limitations as would apply in court actions. In particular, the right must be waivable (for example, no waiver can cure a lack of subject matter jurisdiction) and the person must understand the right being waived.

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
13	[new]; 325	Administrative Procedures - General	Admin. orders; corrections	Section 13 sets out the minimum elements that must be in any administrative order -- information that identifies the case, the findings underlying the order, who to contact (for additional information or to request an administrative hearing), and the time limits for requesting review. This section provides for minor corrections in the order's text -- the judicial parallel is the order <i>nunc pro tunc</i> -- which is also subject to administrative review on request.
14	[new]; 325	Administrative Procedures - General	Judicial Enforcement of Administrative Orders; 2-year limit on subpoenas and certain orders	Instead of authorizing CSE itself to impose sanctions for noncompliance with an administrative order or notice, the bill requires CSE to go to district court for such sanctions. This assures that sanctions will be applied impartially by a judge having the requisite skills and knowledge. With respect to certain orders, a 2-year limitation on enforcement is provided to allow persons (such as financial institutions and utilities) to purge obsolete orders and subpoenas without worry. The 2-year period allows even the mostly lengthy appeal to be completed before the issue becomes moot.

4-9

Sec. No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
15	[new];325	Administrative Procedures - General	Request for Fair Hearing; specifics	<p>Section 15 sets out specific procedures for administrative reviews (fair hearings). The SRS Appeals Section is administered separately from the agency's substantive programs, including CSE, and is even housed at a separate location to assure that hearing officers may render impartial decisions.</p> <p>General procedures for requesting and conducting fair hearings are set out in Kansas Administrative Regulations and the Kansas Administrative Procedures Act. Section 15 only establishes time frames for requesting reviews, establishes when CSE's actions may and may not be suspended (stayed) while the review is pending, and addresses issues unique to CSE cases.</p>
16	[new];325 (c)(1)(B)	Administrative Procedures - Subpoenas	When subpoena may be issued; compliance options; interstate	<p>Section 16 sets out procedures for IV-D administrative subpoenas, modeled on the existing code of civil procedure. These subpoenas are <i>only</i> for production of records. An option is provided if actual copies are not needed; when that option is available, respondent may determine whether it is easier to provide the copies or to complete a form (to be furnished with the subpoena). The format for a business response will allow the documents to be used in court as evidence, under exception to hearsay rules, often without need for respondent to appear as foundation witness.</p>

Sec. No.	KS Stat.; PRWORA §	Area	Tonic	How provision(s) fit(s) into existing laws and procedures
17	[new]; 325 (c)(1)(A) & 331	Administrative Procedures - Genetic testing	Ordering genetic tests; when mandatory; exceptions; relief from judgment; results	<p>Section 17 - CSE prefers to negotiate agreed orders establishing support obligations; the agreed order is filed with the court. A man who is uncertain he is the father may request genetic testing. This section sets forth when an <i>administrative</i> order for tests is barred (i.e., when a court case is pending or when paternity is not an issue under the <u>Ross</u> line of caselaw¹. It also sets forth when granting a request for an admin. order for tests is mandatory. Test results can be the basis for an agreed order or, if an agreed order is not possible, introduced as evidence in a contested paternity action through court.</p> <p>Nothing in the section would affect a court's authority to order genetic testing.</p> <p>-----</p> <p>¹ - In <u>Ross</u> [245 Kan. 591, 783 P.2d 331 (1989)] the KS Sup.Ct. ruled that if the mother was married at the relevant time, paternity would not be an issue unless the court, after a hearing, found that determining the biological parentage of the child would be in the child's best interests.</p>

4-11

Sec. No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
18	[new]; 325(c) (1)(H)	Administrative Procedures - Order for Minimum Payments	Order for minimum payments to reduce arrearages owed	<p>Section 18 - S.B. 140 does NOT authorize CSE to issue an administrative order establishing a parent's duty of support, setting current support, or entering a judgment for reimbursement of assistance. Federal law only requires that CSE have the authority, when the parent owes arrearages, to set a minimum amount (in addition to any current obligation) for the parent to pay each month to reduce any arrearages. The courts in Kansas often use such orders; paying current support plus the arrearage installment protects the debtor from being held in contempt even when arrearages will not be satisfied for several years under the payment plan.</p> <p>Notice and an opportunity for hearing would have to precede entry of an order for minimum payments. The order could only be enforced by a district court (<i>see</i> §15).</p>
-----	-----	Administrative Procedures	Income Withholding	<p>PRWORA requires that CSE have the authority to order income withholding. This includes authority: (1) to serve an existing income withholding order (IWO) on an employer or other payor, (2) to initiate income withholding if no IWO is in effect and pre-conditions are met, and (3) to make appropriate modifications in the IWO's terms (for example, ending the arrearage installment when paid in full).</p> <p>Administrative service of an existing IWO is covered by amendments to the Income Withholding Act (§§ 26-28 below)</p>

Sec. No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
19	[new]; 325(c) (1)(F)	Administrative Procedures - Income Withholding	Initiating income withholding; notice to court	Section 19 sets out procedures for CSE to initiate withholding when no IWO is in effect. It generally parallels the requirements of the income withholding act, citing it for the requirements for prior notice to the obligor and an opportunity for hearing, among other elements. The administrative income withholding order is filed with the court that issued the support order. This will insure ready access for persons with an interest in the case, especially if the Kansas IV-D case closes.
20	[new]; 325(c) (1)(F)	Administrative Procedures - Income Withholding	Modification of withholding order; termination; notice to court	<p>Section 20 addresses when modification of the administrative income withholding order is mandatory (i.e., when the support obligation changes, arrearages are paid in full, or as a result of a fair hearing). It also allows discretionary adjustment of the arrearage installment (if any), although the amount that can actually be deducted from wages is always limited by the Consumer Credit Protection Act.</p> <p>Modifying terms of a medical <i>withholding</i> order (i.e., order to the plan administrator to enroll the child in group benefits and deduct premiums) is sometimes necessary to insure that the plan administrator will treat the MIWO as a "qualified medical child support order." The terms of the underlying medical support order could only be modified by the court.</p>

4-13

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
21	[new]; 325 (c)(1)(F)	Administrative Procedures - Income Withholding	Request to stay issuance of IWO; fair hearing	Issuance of an administrative IWO could be stayed under the same conditions allowed by the Income Withholding Act. The instructions for requesting the fair hearing and stay would be spelled out in the notice of intent required by §19. The decision to allow or stop issuance of the IWO would have to be made within 45 days, same as the Income Withholding Act.
22	[new]; 325(c) (1)(G) (ii) & (iii)	Administrative Procedures - Levy on cash assets	When; effect (attachment); notices; order to disburse; agreements	<p>PRWORA requires that the IV-D Program be able to attach and seize assets held in a financial institution, as well as attaching private retirement funds.</p> <p>Through the use of court-ordered garnishments, bank accounts may already be attached. The disadvantages of the old process are: (1) Delay -- the longer it takes to process paperwork, the greater the risk of the account being depleted. (2) Paperwork -- every garnishment requires at least 4 documents (written request to ct. clerk, garnishment order, written answer from the bank, and the order to pay out the proceeds); an administrative levy (if processed manually) requires only 2 documents (order to restrict transfer and either the bank's response of "no assets" or an order to disburse proceeds). (3) No basis for alternative procedures, such as electronic or magnetic transmissions. (4) Inability to use IRS 1099 information effectively, because of the necessary disclosure to the clerk of court.</p>

4-14

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
23	[new]; 325(c) (1)(E)	Administrative Procedures - Order to Change payee	As supplement to Notice of Assignment; limits; enforcement of other states' orders	<p>PRWORA requires that the IV-D agency be authorized to change the payee under a support order. In other words, that the IV-D agency be able to redirect assigned payments to "the appropriate government entity." This has not been a problem in Kansas; KSA 39-754's mechanism for notice of the IV-D assignment has worked well over the years. The new procedure is more cumbersome and will be used only in special situations.</p> <p>PRWORA requires states to recognize and enforce each others' orders to change payee. This may result in an employer or clerk of court receiving conflicting instructions for disbursing IV-D collections; the section provides an option for resolving such conflicts (through an SRS fair hearing). It also provides that the other state's IV-D agency submits to Kansas' jurisdiction for such a determination when it serves an order to change payee based on a Kansas support order.</p>
24	[new]; 325(c)(1) (G)(iv) & 368	Administrative Procedures - Order of execution	When; cross-reference to writ of execution	<p>PRWORA requires that the IV-D agency be authorized to seize and sell assets. The existing judicial procedures in Kansas for seizing and selling assets (execution) are well-established and, in the rare instances when needed, are readily available to the IV-D agency. For this reason the proposed measure only provides for administrative issuance of the order of execution that is normally issued by the clerk of court; a copy would be filed in the court case. The sheriff would continue to be the officer carrying out the execution, with the return going to the court. All further proceedings, including any hearing on an objection by the parent, would occur in the court case. See §77.</p>

4-15

91-4

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
25	23-4,101 371	International	International reciprocity	Amendment to provision that allows the Kansas Attorney General to declare reciprocity with a foreign country, correcting an obsolete reference to URESA (the interstate act replaced by UIFSA) and addressing declarations of reciprocity made by the US State Department.
-----	-----	Income Withholding Act	-----	The Kansas income withholding laws are nearly in compliance with federal requirements, but some modifications are needed.
26	23-4,106 314	Income Withholding Act	Definitions	Kansas already applies income withholding to any periodic income, not just wages. Income subject to withholding must include periodic workers compensation benefits, so subsection (d) is amended. Also, "business day" is defined as any day on which state offices are open for regular business; <i>see</i> §28.
27	23-4,107 324 & 325	Income Withholding	Order; when; service; notice	<p>KSA 23-4,107 is a key section of the Income Withholding Act. In general, it governs when withholding must be ordered or may be applied for. If withholding was not immediately ordered when the support order was entered, it sets out the information that must be in the notice to the debtor. If the income withholding order is to be issued by the court, it sets out those procedures.</p> <p>Most of the changes in this section are needed to accommodate the new administrative withholding procedures. Obsolete text related to effective dates of past amendments is eliminated. Provisions are added to subsections (e) and (f) to accommodate the mandate that standard federal forms be used in IV-D cases.</p>

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
28	23-4,108 314	Income Withholding	Payor duties	KSA 23-4,108 governs the payor's duties. The current provision requires payors to transmit money within 10 days of the normal payment day (payday); federal law now specifies payment within 7 <i>business</i> days. Also, the states are mandated to provide for transmitting funds to a central collection and disbursement unit (although creation of such a unit is not required until Oct. 1999 in Kansas), so accommodating language has been added to subsection (c). Federal law requires immunity for payors complying with an IWO that is regular on its face; see subsection (h). Finally, the existing \$500 civil penalty for action against the employee must be expanded to include failing to withholding or pay in funds as required.
29	23-4,109 321	Income Withholding	Priority; multiple IWO's	This section guides payors who have more than one IWO to apply to one person's income. The amendment incorporates the provision of UIFSA (§50) that applies if one of the orders come from another state.
30	23-4,110 325	Income Withholding	Motion to stay	The amendment clarifies that the provisions of KSA 23-4,110 apply only to court-issued withholding orders; requests to stay administrative withholding are governed by §21.
31	23-4,111 325	Income Withholding	Modification of IWO	The amendment clarifies that the provisions of KSA 23-4,111 apply only to court-issued withholding orders; modifications to administrative withholding orders are governed by §20.

4-17

Sec. No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
32	23-4,129 325	Interstate Income Withholding Act	Options for registration and initiation of withholding	Before direct income withholding across state lines became common, the Interstate Income Withholding Act was used to perform income withholding based on support orders in other states. The amendment of this section allows CSE to use either the registration and judicial procedures of the Interstate Income Withholding Act or the administrative procedures of §§19-21.
33	23-4,133 325	[same]	[technical amendment]	Adds the language "and amendments thereto" to statutory cross-reference (to the Income Withholding Act).
34	23-4,146 325(c) (1)(G) & 368	Liens - personal property	Liens by operation of law; judgments & settlements, workers compensation	<p>Kansas law already allows establishment of liens on personal property (vehicles, vessels, & aircraft). These liens must now arise by operation of law, though state law may still require steps to <i>perfect</i> the lien. Perfection assures that 3rd parties and the obligor will have adequate notice and, at a meaningful point, will have an opportunity to protect their interests through a fair hearing. Although these personal property liens are not amenable to foreclosure, they do prevent transfer of the property without a release from the creditor.</p> <p>The federal law also requires that CSE be able to administratively intercept or seize workers compensation, judgments, and settlements. The least disruptive mechanism for doing so is to make them subject to a lien that arises by operation of law and is perfected by notice to the persons involved. If payments will be made periodically, the payer may request that an income withholding order be established instead. Provisions are included to address attorney liens or fees.</p>

4-18

Sec. No.	KS Stat., PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
35	23-9,101 §321 (for all UIFSA changes)	UIFSA (Uniform Interstate Family Support Act)	Definitions	<p>Kansas enacted the original Uniform Interstate Family Support Act during the 1994; the act became effective July 1, 1995. Kansas is only required to enact the official amendments to the act that were adopted during the summer of 1996.</p> <p>The changes made by the Commissioners codify practices and interpretations already developed in states like Kansas that had adopted and used UIFSA, or correct inconsistencies with the federal Full Faith & Credit for Child Support Orders Act.</p>
36	23-9,202	UIFSA	[technical change]	<p>“Technical change” as used in this table means that the <i>only</i> amendment to the section involves adding the text “and amendments thereto” to a statutory cross-reference. These technical changes were included by the Office of the Revisor to insure that the Act conforms to Kansas’ standard format for cross-references.</p>
37	23-9,205	UIFSA	Jurisdiction	
38	23-9,206	UIFSA	[technical change]	
39	23-9,207	UIFSA	Jurisdiction	
40	23-9,301	UIFSA	[technical change]	
41	23-9,304	UIFSA	Documentation	
42	23-9,305	UIFSA	Responding state	
43	23-9,306	UIFSA	Inappropriate tribunal	

4-19

Sec. No.	KS Stat., PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
44	23-9,307	UIFSA	Supp. enforcement agency	
45	23-9,311	UIFSA	[technical change]	
46	23-9,313	UIFSA	[technical change]	
47	23-9,401	UIFSA	[technical change]	
48	23-9,501	UIFSA	Direct income withholding across state lines	
49	[new]	UIFSA	Direct inc. withholding.	
50	[new]	UIFSA	Direct inc. w'hold	
51	[new]	UIFSA	Direct inc. w'hold.	<p>The most significant substantive changes involve direct withholding across state lines. Before UIFSA, state courts and agencies in the initiating state could only serve their state's income withholding orders on out-of-state employers who conducted business within the initiating state. If the employer did not do business in the initiating state, the support order had to be registered in the employer's state first. This delayed withholding for what experience showed to be a <i>pro forma</i> step. The Interstate Commission, appointed under the 1988 Family Support Act, strongly recommended that states enact laws to permit sister states to serve income withholding orders across state lines without registration. The result was UIFSA's original direct withholding provision.</p> <p>The expanded provisions for direct withholding clarify procedures and choice of law rules that all states will apply (once all have enacted UIFSA). This will improve uniformity for multi-state employers and prevent unnecessary litigation for state agencies and obligors.</p>
52	[new]	UIFSA	Direct inc. w'hold.	
53	[new]	UIFSA	Direct inc. w'hold.	

4-20

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
54	23-9,605	UIFSA	Registration	
55	23-9,606	UIFSA	[technical change]	
56	23-9,607	UIFSA	[technical change]	
57	23-9,609	UIFSA	[technical change]	
58	23-9,610	UIFSA	[technical change]	
59	23-9,611	UIFSA	Modification	
60	[new]	UIFSA	Change of jurisdiction	
61	[new]	UIFSA	Modification	
62	23-9,801	UIFSA	[technical change]	
63	23-9,902	UIFSA	Short title	
64	32-930 369	Recreational license sanctions	Lifetime licenses; not issued if IV-D arrears or warrant/subpoena; release	Federal law requires the State to create a sanction against recreational licenses for nonpayment of support or for noncompliance with a warrant or subpoena in a support proceeding. Although relatively few lifetime licenses are issued annually by the Dept. of Wildlife and Parks, the sanction proposed in this section does address the federal requirement. Regular hunting and fishing licenses, which are sold over the counter without any central registry or data base, do not lend themselves to an effective sanction.

4-21

Sec. No.	KS Stat., PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
65	38-1113 331	Parentage	How established; unrevoked vol ack	<p>Kansas enacted several changes to the Parentage Act in 1994 to address the requirements of OBRA '93. Only a handful of changes are needed to meet the new refinements.</p> <p>Perhaps the most radical change is the requirement that an unrevoked voluntary acknowledgement of paternity be treated as establishing paternity. Furthermore, state law cannot require or <i>permit</i> a judicial or administrative procedure to ratify the establishment. The proposed amendment to KSA 38-1113 is intended to accomplish this without doing violence to existing laws concerning presumptions of paternity.</p>
66	38-1115 331	Parentage	Action; revocation (60 days; proof)	<p>Kansas law presently requires a person wishing to revoke a voluntary acknowledgement of paternity to file an action with the court within one year of the child's birth. This is intended to minimize the emotional harm to the child that might result from such litigation. If the person requesting revocation was a minor at the time the acknowledgement was signed, the person is allowed to request revocation until age 19 -- if the child is more than one year old at that point, the court may refuse to permit the revocation if it is not in the child's best interests.</p> <p>The new federal law only allows revocation more than 60 days after the acknowledgement (or after a proceeding related to the child, if that is earlier) if the person wanting to revoke can show fraud, duress, or a material mistake of fact. Legal responsibilities arising from the acknowledgement can only be suspended during the action for good cause.</p>

4-22

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
67	38-1119	Parentage	Evidence; test experts; bills	Kansas law already provides for introduction of genetic test results as evidence; minor changes in language are needed to meet federal requirements. Evidence of costs related to pregnancy, birth, and genetic testing has normally been admitted under stipulations or under the "business record" exception to the hearsay rule. Subsection (e) is added to meet the technical requirements of the mandate.
68	38-1131	Parentage	Correct "blood test" reference; temporary support	Kansas law has not provided for temporary support during the pendency of a parentage case; this has encouraged slow resolution of cases to delay imposition of support orders. PRWORA requires temporary support orders when paternity is indicated by "clear and convincing evidence." The provisions of subsection (c) address this mandate and define circumstances which constitute such "clear and convincing evidence." When there is one presumed father, temporary support is required under the amendment if the man does not deny paternity, the mother and the man were married during her pregnancy, an unrevoked voluntary acknowledgement exists, or genetic tests show at least a 97% probability of paternity.
69	38-1137	Parentage	Voluntary acknowledgement programs	This section addresses the federal mandate that voluntary acknowledgement services be provided by the State's vital statistics agency. <i>See</i> §2.

4-23

Sec. No.	KS Stat., PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
70	38-1138	Parentage	Acknowledgment forms; disclosures (1 yr; minors; 60 days); oral disclosure.	Kansas law provides specific language for the disclosure of parental rights and responsibilities to persons who are thinking of signing a voluntary acknowledgement of paternity. These disclosures appear on the acknowledgement forms used by KDHE for birth registrations. The new federal law requires specific disclosure of special rights that minors have; subsection (b) is amended to do so. Federal law now requires that disclosures be made orally as well as in writing; subsection (c) provides that oral disclosure may be accomplished using audio recordings.
71	39-702	SRS	Definitions - add "Title IV-D"	Providing a standard definition of "title IV-D" allows simpler wording of other statutes in Article 7 of Chapter 39.
72	39-753	CSE	CSE program; "state case registry"	This statute governs the general operations of the CSE Program. Obsolete terminology, such as "health, education and welfare" (HEW), and statutory cross-references are updated. The substantive change is creation of the State Case Registry (SCR) in subsection (k). Defining the SCR as a component of the existing CSE data base will allow CSE to meet near-term reporting requirements without creating a separate automated system. The SCR will eventually include non-IV-D cases; by that time federal requirements should be more clearly defined and options for combining the SCR with other data bases (or transferring it) will be better understood.

Sec. No.	KS Stat.; PRWORA §	Area	Topic	How provision(s) fit(s) into existing laws and procedures
73	39-758 325 & 315	Locating parents	Gov't agency cooperation; access to law enforcement & revenue records	This section is the public sector companion to §4 above. It is subject to the safeguards of KSA 29-759 (next section). Access to revenue records and law enforcement locate systems are specific requirements in the federal law. Other states' IV-D agencies would access revenue data through the Kansas CSE Program and would also be subject to the more severe nondisclosure requirements of KSA 79-3234. Interagency agreements to govern the protocols for requesting and transmitting information are authorized in subsection (f).
74	39-759 303	CSE	Unauthorized disclosure; safeguarding information	Expands the safeguards CSE must have concerning confidential information. In the past, information about the noncustodial parent could be disclosed unless the information came from a confidential source, such as DHR or the IRS. Beginning Oct. 1997 (date set by federal mandate), confidential information about either parent is to be safeguarded and used only as needed to administer the IV-D program. Special restrictions will apply if either person is subject to a restraining order, or if CSE has reason to believe release of the person's whereabouts could lead to physical or emotional harm. "Reason to believe" is defined, to protect the State from potential tort litigation based on an ambiguous, subjective standard.
75	44-514 314	Workers Compensation	Benefits; income withholding & liens	This section governs exemption of workers compensation from attachment. It is amended to accommodate the new provisions of §§26 and 34 (income withholding and liens).

4-25

Sec. No.	KS Stat., PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
76	60-2202 368	Liens on real property	Add interstate liens; perfected by filing	Kansas law meets the federal requirements for liens against real estate arising by operation of law, but only with respect to orders entered or registered in Kansas. The federal law requires that we give full faith and credit to liens that arise in other states. The amendment to this section does so, but requires that such liens be perfected by filing a notice in the county where the realty is located. This will assist title searchers in determining whether clear title exists or not.
77	60-2401 325(c) (1)(G)(iv)	Order of execution	Authorize SRS to issue execution to sheriff, copy to court file; steps then follow normal execution & sale	The amendment to this section incorporates the provisions of §24 above.
78	74-146 369	Licensing bodies	Add sanctions for subpoena or warrant	The amendments to this section incorporate the provisions of §3 above.
79	74-147 369	Licensing bodies	Notice; actions upon receiving notice; release	The amendments to this section incorporate the provisions of §3 above.
80	75-3306 325(c)(1)	SRS Fair Hearings	Access to admin. hearings in CSE matters	The amendments to this section incorporate the provisions of §15 above.

4-26

No.	KS Stat.; PRWORA S	Area	Topic	How provision(s) fit(s) into existing laws and procedures
81	79-3234 325(c)(1) (D)(i)(II)	Revenue Dept.	IV-D access to records	The amendments to this section incorporate the provisions of §73 above.
82	n/a	Sections repealed		
83	n/a	Date effective	Statute book	

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4-27

24 New Section 1. (a) There is hereby created a state directory of new
25 hires, which shall operate in accordance with section 453A of title IV-D
26 of the federal social security act and shall include an automated directory
27 containing information reported pursuant to subsection (e). ~~On or before~~
28 ~~July 15, 1997, the governor shall designate the secretary of human re-~~
29 ~~sources or the~~ **The** secretary of social and rehabilitation services ~~to shall~~
30 supervise operation of the directory and ~~to assure compliance with federal~~
31 requirements. **The secretary shall contract with the secretary of rev-**
32 **enue for data collection services related to the state directory of**
33 **new hires.** The secretary may adopt rules and regulations as needed to
34 carry out the duties of this section. The directory shall be implemented
35 on or before October 1, 1997.

36 (b) As used in this section:

37 (1) "Employee" means an individual who is an employee within the
38 meaning of chapter 24 of the internal revenue code of 1986, but does not
39 include an employee of an agency of the state or a political subdivision
40 performing intelligence or counterintelligence functions if the head of
41 such agency has determined that reporting pursuant to subsection (e)
42 could endanger the safety of the employee or compromise an ongoing
43 investigation or intelligence mission.

1 (2) "Employer" has the meaning given such term in section 3401(d)
2 of the internal revenue code of 1986 and includes any labor organization
3 and any governmental entity except a department, agency or instrumen-
4 tality of the United States that is permitted to report newly hired em-
5 ployees to the national directory of new hires. As used in this section,
6 "labor organization" shall have the meaning given such term in section
7 152(5) of the national labor relations act and includes any entity, com-
8 monly known as a "hiring hall," that is used by the organization and an
9 employer to carry out requirements described in section 8(f)(3) of the
10 national labor relations act.

11 (3) "Secretary" means the secretary designated pursuant to subsec-
12 tion (a) ~~to supervise the operation of the state directory of new hires of~~
13 ~~social and rehabilitation services.~~

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14 (4) "Title IV-D" means part D of title IV of the federal social security
15 act (42 U.S.C. § 651 *et seq.*) and amendments thereto.

16 (c) The state directory of new hires shall receive, retain and, to the
17 extent permitted by federal law, make information reported to the direc-
18 tory available pursuant to subsection (d). Nothing in this section shall be
19 construed to prohibit the publication of statistics which are so classified
20 as to prevent the identification of individuals or individual employers
21 without their consent. Except as otherwise required by federal law, the
22 secretary may authorize disposal of reported information at any time after
23 the end of the first calendar quarter beginning after the information was
24 received by the directory.

25 (d) Except as otherwise permitted by federal law, any agency receiv-
26 ing information from the state directory of new hires shall handle the
27 information as confidential information for use in administering the pro-
28 grams for which it was received. The state directory of new hires shall
29 make information available:

30 (1) Upon implementation of the national directory of new hires, to
31 the national directory;

32 (2) to the secretary of social and rehabilitation services for uses in-
33 cluding but not limited to administration of an eligibility verification sys-
34 tem and, not later than May 1, 1998, the title IV-D program; and

35 (3) to the secretary of human resources, for uses including but not
36 limited to administration of employment security and workers compen-
37 sation programs.

38 (e) Except as provided in subsection (h), the employer of any newly
39 hired employee in this state shall submit a report to the state directory
40 of new hires *in accordance with the contract entered into between*
41 *the secretary of social and rehabilitation services and the secretary*
42 *of revenue as provided in subsection (a)* within 20 days of the date of
43 hiring or, if the employer periodically transmits reports magnetically or

1 electronically, by the second report following the date of hiring. Periodic
2 magnetic or electronic reports shall be transmitted no more than 16 days
3 apart. Except as provided in subsection (g), the report shall be transmitted
4 by first class mail.

5 (f) The report shall be made using the employee's W-4 form or, at
6 the option of the employer, an equivalent form. The report shall contain:

7 (1) The employee's name, address, and social security number; and

8 (2) the employer's name, address, and federal employer identification
9 number (EIN).

10 (g) The employer may transmit reports required by this section elec-
11 tronically or magnetically, including but not limited to electronic facsim-
12 iles. Any report transmitted electronically or magnetically to the state
13 directory of new hires of this state shall be made in a manner and format
14 approved by the secretary. The secretary shall take appropriate steps to
15 encourage voluntary use of electronic or magnetic transmission.

16 (h) Any employer who reports electronically or magnetically and is
17 required to report newly hired employees to more than one state may
18 elect to transmit all such reports to one state by complying with the
19 requirements of title IV-D.

Nothing in this section shall be construed as requiring the employer to submit a report for any employee hired before October 1, 1997, whose employment has not terminated for any reason.

43 New Sec. 10. (a) The powers and remedies provided in this section
1 are cumulative and do not affect any other powers of the secretary or the
2 availability of remedies under other law.

3 (b) In any case for which the secretary is providing IV-D services, the
4 secretary may:

5 (1) Obtain access to information as authorized by law;

6 (2) subpoena records pursuant to section 16 and amendments
7 thereto;

8 (3) order genetic tests pursuant to section 17 and amendments
9 thereto;

10 (4) order minimum payments to defray arrearages pursuant to section
11 18 and amendments thereto;

12 (5) enforce any duty of support by income withholding pursuant to
13 the income withholding act and section 19 *et seq.* and amendments
14 thereto;

15 (6) enforce any duty of support by administrative levy pursuant to
16 section 22 and amendments thereto;

17 (7) perfect any lien against property;

18 (8) order executions against property pursuant to K.S.A. 60-2401 and
19 amendments thereto; and

20 (9) change the payee of any support order pursuant to section 23 and
21 amendments thereto.

22 (c) ~~Except as otherwise provided in this subsection or in section 17~~
23 ~~and amendments thereto, and notwithstanding any other law to the con-~~
24 ~~trary, the secretary shall have concurrent jurisdiction with the courts of~~
25 ~~this state in proceedings in which a support obligation is or may be en-~~
26 ~~forced.~~ In any IV-D administrative proceeding, the secretary shall not
27 have jurisdiction over matters involving custody of the child or involving
28 establishment or exercise of visitation rights with the child. Nothing in
29 this subsection shall be construed to prevent the secretary from making
30 findings of fact concerning the child's whereabouts or living arrangements
31 if the facts are relevant to a matter otherwise within the secretary's juris-
32 diction.

Nothing in sections 8 through 24 and amendments thereto shall be construed as authorizing the secretary to enter an order to establish or modify an obligation for current support. Nothing in sections 8 through 24 and amendments thereto shall be construed as limiting or restricting the jurisdiction of the courts of this state.

33 (d) The secretary shall have all powers necessary to carry out the
34 provisions of this section. The powers of the secretary shall include but
35 not be limited to the power to:

36 (1) Conduct investigations into the existence of the parent and child
37 relationship, including but not limited to the power to order persons to
38 cooperate in genetic testing;

39 (2) conduct investigations into the whereabouts of any parent or asset;

40 (3) conduct investigations into the income, resources and expenses of
41 the parties; the ability of the responsible parent to pay arrearages and the
42 alleged nonpayment of support;

43 (4) determine the amount of any arrearages;

1 (5) initiate, modify or enforce an income withholding order for cash
2 support or medical support or both;

3 (6) enforce any support order using any administrative remedy pro-
4 vided by law;

5 (7) attest that a document is a true copy of any document in the
6 records of the secretary or attest that a document derived from records
7 of the secretary accurately reflects the information contained in those
8 records; and

9 (8) delegate the powers described in this section to hearing officers
10 and to authorized agents of the secretary.

11 (e) The secretary may designate employees of the secretary to serve
12 as authorized agents to exercise powers of the secretary in IV-D admin-
13 istrative proceedings. By written contract, the secretary may designate
14 other persons to serve as authorized agents to exercise specific powers of
15 the secretary in IV-D cases.

7 New Sec. 16. (a) ~~As used in this section:~~

8 (1) ~~"Business" means any kind of business, profession, occupation,~~
9 ~~calling or operation of institutions, whether carried on for profit or not.~~

10 ~~(2) "Records" means writings, including but not limited to data stored~~
11 ~~electronically or magnetically, which are memoranda or notations of acts,~~
12 ~~conditions or events. "Records" may also include books, papers, docu-~~
13 ~~ments or tangible things.~~

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14 ~~(b)~~ In any title IV-D case, the secretary may issue a subpoena pur-
15 suant to this section to obtain financial or other information needed to
16 establish, modify or enforce a support order. The subpoena shall be issued
17 by an authorized agent of the secretary and shall require the person to
18 whom it is directed to produce a copy of the records designated in the
19 subpoena or, if applicable, to complete a form furnished pursuant to sub-
20 section ~~(c)~~. At least seven days shall be allowed for compliance with the
21 subpoena.

(b)

(b)

22 ~~(c)~~ The secretary may furnish with the subpoena a form requesting
23 specific information from the records of the person to whom the sub-
24 poena is directed. The person may elect to furnish the copy of the des-
25 ignated records or to complete the form in full. If the person completes
26 the form in full and returns it to the secretary's authorized agent by mail
27 or otherwise within the time allowed, it shall be sufficient compliance
28 with the subpoena.

(b)

29 (d) Except as otherwise provided in this subsection or subsection ~~(c)~~,
30 the person to whom a subpoena is directed shall comply with the sub-
31 poena by delivering to the secretary's authorized agent by mail or oth-
32 erwise a sworn statement and a true and correct copy of the records
33 designated in the subpoena. ~~If the records are not related to a business,~~

The

34 ~~the sworn statement shall certify that the copy delivered by the person is~~
35 ~~a true and correct copy of the records designated in the subpoena. If the~~
36 ~~records are related to a business, the sworn statement shall state that: (1)~~
37 ~~The affiant is a duly authorized custodian of the records and has authority~~
38 ~~to certify records; (2) the copy is a true copy of the records designated in~~
39 ~~the subpoena; and (3) the records were prepared by the personnel or staff~~
40 ~~of the business, or persons acting under their control, in the regular~~
41 ~~course of the business at or about the time of the act, condition or event~~
42 ~~recorded.~~ When more than one person has custody of the records or has

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43 knowledge of the facts required to be stated in the sworn statement, more

5-7

1 than one sworn statement may be made.

2 If the person has none of the records designated in the subpoena, or
3 only part thereof, the person shall so state in the sworn statement and
4 shall send a copy of those records of which the person has custody.

5 (e) Before the time specified in the subpoena for compliance there-
6 with, the person to whom the subpoena is directed may request review
7 of all or part of the subpoena pursuant to section 15 and amendments
8 thereto. The person shall comply with any portion of the subpoena for
9 which review is not requested.

10 (f) A person in this state shall comply with a subpoena issued by a
11 title IV-D agency of any other state for the purpose of obtaining financial
12 or other information needed to establish, modify or enforce a support
13 order in a title IV-D case. Upon request of a IV-D agency in another
14 state, the secretary may enforce such a subpoena as though it had been
15 issued by the secretary.

16 New Sec. 17. (a) This section shall not apply if an action to establish
17 the father's duty of support on behalf of the child is pending before any
18 tribunal. As used in this section, "mother" means the natural mother of
19 the child whose parentage is in issue.

20 (b) Except as otherwise provided in subsection (d), genetic tests may
21 be ordered by the secretary ~~on the secretary's own initiative or if re-~~
22 ~~quested by another title IV-D agency, the alleged father or the mother.~~
23 Except as otherwise provided in subsection (e), the secretary shall pay
24 the costs of genetic tests, subject to recoupment from the father if pa-
25 ternity is established.

26 (c) Except as otherwise provided in subsection (d), the secretary shall
27 enter an administrative order for genetic testing if paternity of the child
28 is contested, genetic testing is requested pursuant to this subsection by a
29 party and the necessary persons are available for testing. For purposes of
30 this section, a person receiving title IV-D services is not available for
31 testing if a claim for good cause not to cooperate under title IV-D is
32 pending or has been determined in the person's favor or if the person
33 ceases to receive title IV-D services for any reason. A request under this
34 subsection shall be supported by a sworn statement by the requesting
35 party:

- 36 (1) Alleging paternity and setting forth facts establishing a reasonable
- 37 possibility of the requisite sexual contact between the parties; or
- 38 (2) denying paternity and setting forth facts establishing a reasonable
- 39 possibility of the nonexistence of sexual contact between the parties.

40 (d) If a presumption of paternity arises pursuant to subsection (a) of
41 K.S.A. 38-1114 and amendments thereto because the mother married or
42 attempted to marry any man, the secretary shall not order genetic testing
43 unless a court of this state or an appropriate tribunal in another state has

{ (c) or

{ with the consent of the alleged father,

1 found that determining the child's biological father is in the child's best
2 interests. If a tribunal subsequently determines that the prohibition of
3 this subsection applied at the time genetic tests were ordered by the
4 secretary, any support order based in whole or in part upon the genetic
5 tests may be set aside only as provided in K.S.A. 60-260 and amendments
6 thereto.

7 (e) Upon receiving the results of genetic testing, the secretary shall
8 promptly send a copy of the results to the parties, together with notice
9 of the time limits for requesting any additional genetic tests or for chal-
10 lenging the results pursuant to K.S.A. 38-1118 and amendments thereto,
11 how to make such request or challenge, and any associated costs. The
12 notice shall state the consequences pursuant to K.S.A. 38-1118 and
13 amendments thereto of failing to act within the time allowed by the stat-
14 ute. Any additional genetic tests shall be at the expense of the person
15 making the request for additional genetic tests. Failure of the person
16 requesting additional tests to make advance payment as required by the
17 secretary shall be deemed withdrawal of the request.

24 New Sec. 20. (a) At any time after issuing an income withholding
 25 order, the secretary shall: (1) Modify or terminate the income withholding
 26 order because of a modification or termination of the underlying support
 27 order; (2) modify the amount of income withheld to reflect payment in
 28 full of the arrearages; (3) modify or terminate the income withholding
 29 order to reflect the final order in a fair hearing pursuant to K.S.A. 75-
 30 3306 and amendments thereto; or (4) modify, or when appropriate ter-
 31minate, an income withholding order consisting in whole or in part of a
 32 medical withholding order because of a modification or termination of
 33 the underlying medical child support order.

34 (b) In addition to modifications required by subsection (a), at any
 35 time the secretary may issue a modified income withholding order: (1)
 36 To change the amount to be withheld to defray arrearages; or (2) to
 37 conform the terms of a medical withholding order to the requirements
 38 of a payer.

39 (c) The secretary shall provide notice of any proposed modification
 40 to the responsible parent, who may request review of the proposed mod-
 41 ification. The issues shall be limited to whether the amount of current
 42 support is as stated in the proposed modification and whether the total
 43 arrearages are less than the proposed installment to defray arrearages.

1 (d) The responsible parent may request that the secretary terminate
 2 an income withholding order for cash support if: (1) Withholding has not
 3 previously been terminated and reinitiated; and (2) there is a written
 4 agreement among the parties that provides for an alternative arrange-
 5 ment. If an income withholding order is terminated and the obligor sub-
 6 sequently accrues any arrearages, the secretary may issue another income
 7 withholding order as provided in section 19 and amendments thereto.

8 (e) If the income withholding order includes both a medical with-
 9 holding order and an income withholding order for cash support, modi-
 10 fication or termination of one portion of the income withholding order
 11 shall not modify or terminate any other portion of the income withholding
 12 order except as expressly provided in the order.

13 (f) The provisions of section 19 and amendments thereto, relating to
 14 transmitting income withholding orders to the tribunal that issued the
 15 underlying support order, shall apply to any order issued modifying or
 16 terminating income withholding that is issued pursuant to this section.

The provisions of this subsection shall apply only to income withholding orders issued pursuant to section 19 and amendments thereto, including any modifications of such orders.

5-11

28 Sec. 64. K.S.A. 32-930 is hereby amended to read as follows: 32-930.

29 (a) ~~Except as provided in subsection (a),~~ the secretary or the secretary's
30 designee is authorized to issue to any Kansas resident a lifetime fishing,
31 hunting or combination hunting and fishing license upon proper appli- (b)
32 cation made therefor to the secretary or the secretary's designee and
33 payment of a license fee as follows: (1) A total payment made at the time
34 of purchase in the amount prescribed pursuant to K.S.A. 32-988 and
35 amendments thereto; or (2) payment may be made over a two-year period
36 in eight quarter-annual installments in the amount prescribed pursuant
37 to K.S.A. 32-988 and amendments thereto. If payment is in installments,
38 the license shall not be issued until the final installment has been paid.
39 A person making installment payments shall not be required to obtain
40 the appropriate annual license, and each installment payment shall be
41 deemed to be such an annual license for a period of one year following
42 the date of the last installment payment made. If an installment payment
43 is not received within 30 days after it is due and owing, the secretary may

1 consider the payments in default and may retain any payments previously
2 received. Any lifetime license issued to a Kansas resident shall not be
3 made invalid by reason of the holder thereof subsequently residing out-
4 side the state of Kansas. Any nonresident holder of a Kansas lifetime
5 hunting or combination hunting and fishing license shall be eligible under
6 the same conditions as a Kansas resident for a big game permit upon
7 proper application to the secretary. Any nonresident holder of a lifetime
8 fishing license issued before July 1, 1989, shall be eligible under the same
9 conditions as a Kansas resident for a big game permit upon proper ap-
10 plication to the secretary.

11 (b) Upon request of the secretary of social and rehabilitation services,
12 the secretary of wildlife and parks shall not issue a lifetime fishing, hunting
13 or combination hunting and fishing license to an applicant except as pro-
14 vided in this subsection. The secretary of social and rehabilitation services
15 may make such a request if, at the time of the request, the applicant

16 ~~(1) Owed arrearages under a support order in a title IV-D case being~~ [owed
17 administered by the secretary of social and rehabilitation services, or delete
18 ~~(2) had outstanding a warrant or subpoena, directed to the applicant,~~ delete
19 in a title IV-D case being administered by the secretary of social and
20 rehabilitation services.

21 Upon receiving a release from an authorized agent of the secretary of
22 social and rehabilitation services, the secretary of wildlife and parks may
23 issue the lifetime fishing, hunting or combination hunting and fishing

24 license. The applicant shall have the burden of obtaining and delivering
25 the release.

26 The secretary of social and rehabilitation services shall issue a release
27 upon request if, as appropriate:

28 (1) The arrearages are paid in full or a tribunal of competent juris-
29 diction has determined that no arrearages are owed;

30 (2) an income withholding order has been served upon the applicant's
31 current employer or payor;

32 (3) an agreement has been completed or an order has been entered
33 setting minimum payments to defray the arrearages, together with receipt
34 of the first minimum payment; or

35 (4) the applicant has complied with the warrant or subpoena or the
36 warrant or subpoena has been quashed or withdrawn.

37 Nothing in this subsection shall be construed to require or permit the
38 secretary of wildlife and parks to determine any issue related to the title
39 IV-D case except to resolve questions of mistaken identity or determine
40 the adequacy of any notice relating to this subsection that the secretary
41 of wildlife and parks provides to the applicant.

42 "Title IV-D" means part D of title IV of the federal social security act
43 (42 U.S.C. § 651 et seq.) and amendments thereto, relating to child sup-
1 port enforcement services.

2 (b) (c) The secretary, in accordance with K.S.A. 32-805 and amend-
3 ments thereto, may adopt rules and regulations necessary to carry out the
4 provisions of this section.

27 Sec. 73. K.S.A. 39-758 is hereby amended to read as follows: 39-758.

28 (a) State, county and local units of government, their officers and em-
29 ployees, shall cooperate with the secretary of social and rehabilitation
30 services in locating absent parents *or their assets* and shall on request
31 supply the secretary of social and rehabilitation services with available
32 information about *an absent parent or the absent parent's assets including*
33 *but not limited to* the location, employment status, income, date of birth
34 and social security number of ~~an~~ *the* absent parent ~~including~~ or any in-
35 formation concerning medical or health insurance coverage for depend-
36 ents.

37 (b) *All federal and state agencies conducting activities under title IV-*
38 *D shall have access to any system used by this state or any political sub-*
39 *division to locate an individual for purposes relating to motor vehicles or*
40 *law enforcement, including but not limited to the national law enforce-*
41 *ment telecommunications system (NLETS) and the national crime infor-*
42 *mation center (NCIC). For purposes of this section, the title IV-D agency*
43 *shall be considered a law enforcement agency.*

all information leading to the location of an individual that is contained in

delete

such a

1 (c) *The secretary of social and rehabilitation services or the secreta-*
2 *ry's designee shall have access pursuant to K.S.A. 79-3234 and amend-*
3 *ments thereto to information in the records of the department of revenue*
4 *concerning any person who has or may have a duty of support in a title*
5 *IV-D case. The secretary of social and rehabilitation services or the se-*
6 *cretary's designee may use the information in an appropriate administra-*
7 *tive or judicial proceeding to establish, modify, or enforce a support ob-*
8 *ligation in the title IV-D case or may disclose the information to another*
9 *title IV-D agency for use in any administrative or judicial proceeding to*
10 *establish, modify or enforce a support obligation in the title IV-D case.*
11 *Except to the extent that disclosure of information is authorized by this*
12 *subsection, any person receiving information pursuant to this subsection*
13 *shall be subject to the provisions of subsections (b) and (d) of K.S.A. 79-*
14 *3234 and amendments thereto.*

15 (b) (d) Information received by the secretary of social and rehabili-
16 tation services under this section shall be available upon request to per-
17 sons authorized to receive such information in accordance with rules and
18 regulations duly adopted by the secretary of social and rehabilitation serv-
19 ices.

20 *Except as otherwise provided in this section, any person receiving such*
21 *information shall be subject to the provisions of K.S.A. 39-759 and amend-*
22 *ments thereto.*

5-14

23 (e) Any person or entity providing access to information pursuant to
24 this section, including but not limited to access by automated processes,
25 shall not be liable to any person for good faith actions in providing the
26 access or information.

27 (f) For purposes of this section, the secretary may enter into an agree-
28 ment with any agency or official to permit the secretary and the secre-
29 tary's designees access to information. Such an agreement shall not be
30 construed to be a contract for the performance of support enforcement
31 services pursuant to K.S.A. 75-5365 and amendments thereto.

5-15

32 Sec. 74. K.S.A. 39-759 is hereby amended to read as follows: 39-759.
33 (a) ~~Any~~ With respect to information obtained by the secretary under
34 K.S.A. 39-758 or section 4 and amendments thereto, any person who
35 willfully requests, obtains or seeks to obtain ~~any confidential~~ information
36 available under ~~K.S.A. 39-758~~ under false pretenses or who willfully com-
37 municates or seeks to communicate such information to any person ex-
38 cept in accordance with the provisions of this act and rules and regulations
39 adopted pursuant thereto any law permitting such disclosure shall be
40 guilty of a class B nonperson misdemeanor.

41 (b) Effective October 1, 1997, the secretary shall safeguard, to the
42 extent required by title IV-D, any confidential information handled by
43 the secretary. Unauthorized use or disclosure of information relating to

1 proceedings or actions to establish paternity or to establish or enforce a
2 support obligation is prohibited, except that nothing in this provision shall
3 prevent the secretary or the secretary's designees from using or disclosing
4 information, or authorizing use or disclosure of information, as needed in
5 the administration of the IV-D program or as authorized by title IV-D.

6 The release of information concerning the location of one party to an-
7 other party against whom a protective order with respect to the former
8 party has been entered is prohibited. The release of information concern-
9 ing the location of one party to another party is prohibited if the secretary
10 has reason to believe that the release of such information may result in
11 physical or emotional harm to the former party. For purposes of this
12 subsection, "has reason to believe" means that the former party has
13 claimed good cause for refusing to cooperate in IV-D activities, so long
14 as the claim is pending or has been approved.

If the offender is an officer or employee of the state or a political subdivision of the state, such officer or employee shall be dismissed from office. Any violation of this subsection by a IV-D contractor or an agent of a IV-D contractor shall be grounds for termination of the IV-D contract unless the IV-D contractor terminates the contractor's relationship with any individual offender. The provisions of this subsection shall be a complete defense in any civil action concerning such dismissal, termination of the IV-D contract or termination of a contractor's relationship with an individual offender.

14 Sec. 83. This act shall take effect and be in force from and after its
15 publication in the statute book *[and publication in the Kansas register*
16 *of a proclamation issued by the governor which states that this act*
17 *shall take effect upon the publication of such proclamation]*. [resolution adopted by the state finance council
[resolution

#6

Hello, my name is Linda Jesseph. I am a custodial parent, ACES member, and a resident of Sedgwick County Kansas. ACES is an acronym for Association for Children for the Enforcement of Support. I am a pro-opponent for Kansas Senate Bill 140. This bill will authorize the location of obligated parents through employment.

For those who think this is a conflict concerning privacy, consider the privacy of the children whose custodial parent must reveal all to SRS when applying for food stamps, medical cards, baby-sitting, and/or other supplements to survive.

While my children's father drove a corvette, your tax dollars helped provide food stamps so my children could eat. While he worked as a contractor for the Defense Industry earning a six figure income, your tax dollars helped pay for welfare baby-sitting so I could work a minimum wage job.

After eight years of frustration by the Child Support Agencies to locate my children's father, SRS submitted his name to the Nation's Top Ten Most Wanted for failure to pay child support. A short time later he was located and put on a withholding order. Following is a quotation from a letter Child Support Enforcement sent in reference to locating my children's absent parent:

"Mr. Jesseph moves frequently (five states in the last year) and adopts several aliases. It is impossible for this agency, which must rely on civil remedies, to establish jurisdiction."

If Senate Bill 140 was in place, in 1988, to help locate my children's father every time he changed jobs, my children would have never needed your and other resident's tax dollars to survive. On a positive note. A Texas law provides for employer verification. In 1995, this law was used to again secure support for my daughter.

For the sake of the thousands of Kansas children that are owed millions of dollars in unpaid child support, I ask you to review and consider the tax payer who pays for the lack of support and for the children who go with out. Then consider the non-custodial parent who lives a life granting him/her all the privileges without the consequences.

It is sad day when it takes a law to make some parents accountable. But, we as parents, tax payers, and concerned citizens have an obligation to this states most precious resource: our children.

The January 1997, issue of Child Support Report printed an article titled, "Fathers Say Why They Don't Pay," Fourteen percent don't pay child support because they have no control over the spending of the child support. Thirteen percent are in new relationships and do not want the child/ren. While this may seem to be a small percentage, no child deserves to be financially abandoned by either parent.

House Judiciary
Attachment 6
3/27/97

Senate Bill 140 does not intend to take privacy away from parents, but it does intend to make obligated parents financially accountable for their children.

A January 1992 U.S. General Accounting Report concluded that 36% of all child support cases are Interstate cases. Cases that involve one or more states. 34% of Interstate custodial parents report never receiving ANY child support.

The New Federal Welfare Reform Law in Personal Responsibility and Work Opportunities Reconciliation Act of 1996, Section 5 provides for many child support provisions: PRA Section 313 provides for the New Hire Directory to be located with the Central Order registry. This allows for the Child Support or IV-D agency to obtain information concerning the employment of obligated parents across state lines; Interstate cases.

In closing, please consider the children when you vote. Not the parents who refuse to be accountable and are allowed to break the law.

Thank you.

Linda Jesseph
1117 Compton
Wichita, KS 67212
316 945-3443



SEP 15 1988

STATE OF KANSAS

MIKE HAYDEN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

REPLY TO
WICHITA, SRS
3244 EAST DOUGLAS / P.O. BOX 1620
WICHITA, KANSAS 67201-1620

DOCKING STATE OFFICE BUILDING
TOPEKA, KANSAS 66612-1570

September 14, 1988

The Honorable Dan Glickman
401 North Market
Wichita, Kansas 67202

Re: Linda Jesseph

Dear Congressman Glickman:

After having reviewed this agency's attempts to locate Rodney Jesseph, I sympathize with Ms. Jesseph's frustration. Mr. Jesseph moves frequently (five states in the last year) and adopts several aliases. It is impossible for this agency, which must rely on civil remedies, to establish jurisdiction over Mr. Jesseph long enough to initiate proceedings to another state.

Unfortunately, it appears Mr. Jesseph has assumed the behavior of a fugitive making it unlikely that collection of child support through normal channels is possible. We have entered his name in the Federal Tax Offset program and periodically check for a new locate for him.

The only other remedy possible may be through the judicial system pursuing criminal non-support. I suggest Ms. Jesseph contact the local prosecuting attorney's office or the Federal court system to pursue this information.

We will continue to locate Mr. Jesseph although he usually has moved on by the time our various data bases are updated. We would cooperate, of course, with any agency working on Ms. Jesseph's behalf.

Sincerely,

A handwritten signature in cursive script that reads "Linda S. Sorrell".

Linda S. Sorrell
Chief, Child Support Enforcement
Wichita/Winfield Area Office

LSS:ch

c.c. Court Trustee
Case file
Correspondence file
Linda Jesseph

6-3

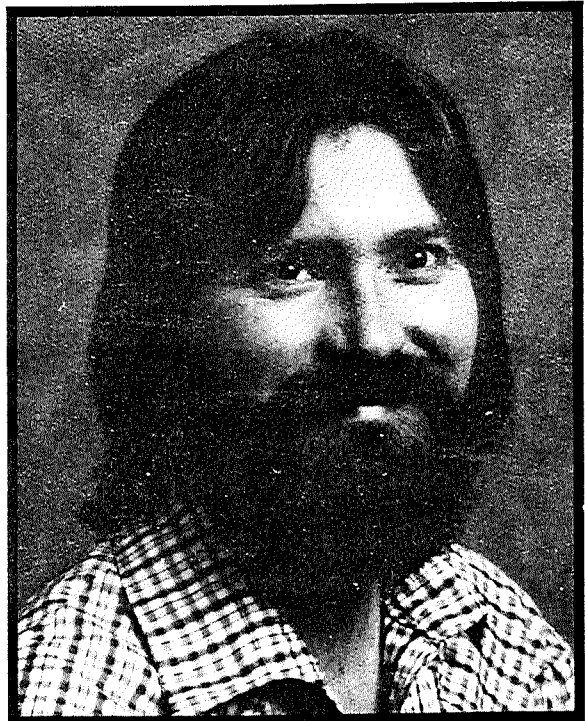
WANTED

FAILURE TO PAY CHILD SUPPORT RODNEY C. JESSEPH

Arrearage Amount: \$58,500
(2 cases)
DOB: 11/11/51 SSN: 514-56-8747
Height: 5' 11" Weight: 170
Eyes: Brown Hair: Brown
Race: White
Identifiable Features: "LOVE" tattoo on
left shoulder

Occupation: Tool designer
Last Known Address:
7080 Ellis Road
Weatherford, Texas
Children: Three, ages 7, 9 and 16

Mr. Jesseph has ignored paying child support to his two families. He had two children by one marriage and one child by the other. He is a highly paid self-employed tool designer with a CAD/CAM certificate. He has been located many times but each time has moved to escape his obligation.



Call With Information
Kansas Department of Social and
Rehabilitation Services
Wichita Child Support Enforcement Agency

(316) 291-2100

June 1992

6-4

New Federal Laws - Welfare Reform - Child Support Laws

You Can Share This Information With Community Groups, Public and State Officials, Legislators

New Federal Welfare Reform Law in the (PRA) Personal Responsibility and Work Opportunities Reconciliation Act of 1996, Section 5 include many child support provisions:

- All employers to report new hires via W-4 forms to state child support agencies. New hire records are matched with a central child support order registry, if a match occurs, the employer is notified to deduct support via payroll deduction.

- The suspension of driver's licenses and professional licenses of those who fail to meet child support obligations.

- Administrative processes for ordering genetic testing to establish paternity, subpoenaing income information, seizing property and obtaining lump sum payments

- Central payment processing

States legislatures will have to pass state laws implementing the new federal law provisions not already part of their state's laws. Specific sections of PRA concerning child support are listed below.

Income withholding changes:

PRA Section 312, 314, non-IV-D orders issued or modified before 10/1/96 are subject to standard income withholding procedures. If an arrearage occurs, states must have a process for income withholding to be done administratively (without a new court hearing even if the case originates from a private divorce or paternity action). It does not change mandatory income withholding if 30 day default.

PRA Section 325 requires states to have administrative process to increase monthly support payments on arrears, to change the payee to the appropriate government entity when the family is receiving public assistance (TANF) or having payments processed through the new state Central Payment Registry.

Money collected from income withholdings must be processed through the Central Payment Registry on IV-D and non-IV-D cases.

On IV-D cases when there is a match with the order registry and New Hire registry, an income withholding order must be sent to the employer within 2 days. This may be done via E-Mail. States may have laws that allow an income withholding to begin without advanced notice to the non-payor if previously notified about income withholding law. The non-payor must be sent a notice that the income withholding has begun.

Statewide Jurisdiction required for child support orders:

PRA SECTION 325, all paternity and support proceedings must be able to exert statewide jurisdiction over the parties and transfer the case between local jurisdictions

ACES RECOMMENDS - State laws which set up statewide IV-D systems under State Taxation Departments or State Attorney General.

Employers required to report new hires to state child support agencies:

NEW LAW: PRA SECTION 313 requires each state to establish an automated State Directory of New Hires. States which do not now have such a directory must establish one which meets federal qualifications by October 1, 1997. States which already have a directory, but it does not meet all federal requirements, have until October 1, 1998 to put a qualified system in place.

Employers and labor organizations must report the name, address and social security number of each newly hired employee to the state in which the employee works within 20 days of the date that employee is hired. (Special provisions are made for multi-states employers.)

this may be done on a W-4 form or its

equivalent. Employers may send the information by mail, electronically, or magnetically. The state must enter the information in the New Hire Directory within 5 days of receipt.

By May 1, 1998, social security numbers from the New Hire Directory will be matched against social security numbers in the IV-D cases in the State Registry of Child Support Case Orders. If a match is made, information will be provided to the IV-D agency which, within 2 business days of receiving the information, is to issue an income withholding order to the employer.

Within 3 business days of receipt, an abstract of the information entered into the state's New Hire Directory will periodically furnish the federal New Hire Directory with wage and unemployment compensation information from the state. In that way, obligated parents and information about their employment can be obtained across state lines.

MOST IMPORTANT ISSUE IS THAT THE STATE PLACES NEW HIRE REGISTRY, CENTRAL ORDER REGISTRY AND CENTRAL PAYMENT REGISTRY IN THE SAME GOVERNMENT AGENCY, THE IV-D AGENCY!!

ACES RECOMMENDS: The sooner this system is in place and the easier it is for employers to work with, the more child support will be collected. With this in mind:

- States which have not yet enacted new hire reporting laws will have to do so. States which have laws which do not meet federal requirements will have to amend those laws. ~~This should be done as soon as possible.~~ The biggest changes for most states will be to make their systems mandatory (not voluntary) and have them cover all employers.

- States will have to choose the agency which will operate the New Hire Directory. To date, most states have used either the IV-D agency or the State Employment Security Agency (SESA). Employers seem more comfortable with the SESA model but it is more efficient to have the IV-D agency run the Directory of New Hires. This reduces the need for different agencies to interface their systems and makes the Directory eligible for IV-D funding.

- Employers should be required to report new hire information as quickly as possible. The federal time frame (20 days) is a maximum. Reporting within 2 or 3 days hire is preferable.

- To facilitate matching of new hire information with existing child support orders, all child support orders issued in the state should be deemed IV-D orders. Otherwise, non-IV-D cases will not be matched in this new system since a matching process with cases in the Registry of Orders is only required in IV-D cases. Eventually, these non-IV-D families will apply for services but the case will have arrears and likely be harder to handle. Moreover, federal funding can be maximized if the case is a IV-D case since the cost of enforcement will be a legitimate IV-D expense.

- Implementing the matching process should begin as soon as possible. Once the infrastructure is in place, there is no need to wait until May 1998.

- Given the amount of information and the number of governmental and non-governmental actors involved, strict privacy protections need to be put in place in the New Hire system.

One key question is how long to retain information on employees for whom there is no immediate child support match. The IV-D agency may want to retain all infor-

mation for future use. While those concerned about the creation of huge, irrelevant data banks will want the information destroyed immediately. ACES suggests deleting data after 30 days.

State Central Case (Order) Registry must be set up:

PRA SECTION 311 requires each state to establish a State Registry of Child Support Orders. The registry must contain records on all IV-D cases and all other orders established or modified in the state after October 1, 1998.

States must send abstracts to and match data with the Federal Case Registry

The State Registry will contain uniform data elements such as each parent's name, social security number, date of birth and case number. The State Registry records will also indicate the amount of current support, arrears, interest, fees, or penalties owed; the amounts collected and how they were distributed; birth date(s) for the children owed support; and whether any liens are in place. The agency responsible for the State Registry will be responsible for keeping the records in IV-D cases up to date.

The State Registry may be one entity or it may be created by linking local case registries through an automated network **ACES SUGGESTS ONE ENTITY!**

MOST IMPORTANT ISSUE IS THAT THE STATE PLACES NEW HIRE REGISTRY, CENTRAL ORDER REGISTRY AND CENTRAL PAYMENT REGISTRY IN THE SAME GOVERNMENT AGENCY, THE IV-D AGENCY!!!

Abstracts of information contained in the State Registry will be sent to and entered into the Federal Case Registry of Child Support Orders. In addition, information in each State Registry will be shared with the Federal Parent Locate Service (FPLS), IV-A and Medicaid agencies in the state and in other states, and with other state agencies and interstate information networks involved in child support enforcement.

ACES RECOMMENDS: In light of documented problems states have had in setting up and running centralized, computerized systems states should:

- Include all child support orders - not just IV-D orders and new orders - in the central registry. The federal law sets a minimum for what must be contained in the Registry of Child Support Orders but there is no reason for a state to limit itself. Ultimately, the State Registry will be more useful to parents in interstate cases if everyone's order is in it. A State Registry containing all orders will also be better for employers who are administering income withholding as they will only have to deal with one entity in each state.

- Make all orders, once issued, IV-D orders. By making all orders IV-D orders, the state will be able to obtain federal funding to enter and update the records for each child support order. Moreover, since the new law requires updating of information only for IV-D orders, unless all orders are IV-D orders, no one will be responsible for updating the other orders. As a result, those orders inadequate/incorrect information and be less useful in tracking down parents in both in-state and interstate cases.

- Create one central State Registry, not try to link up local registries. Independently developed local registries may not be easily linked together. The computer interface issues are enormous. In addition, local registries will not provide uniform quality control, can easily result in duplicate cases, and will cost more to operate over time as new techno-

logical advances will have to be bought and paid for several times over, not just once.

Central Payment Registry required to be established

SECTION 312 PRA requires states, by October 1, 1998, to have in place a centralized Child Support Payment and Disbursement Unit (Central Payment Registry). This unit must handle collection and disbursement for all IV-D cases and for all other cases in which, on or after January 1, 1994, the state issued an initial child support order which is being enforced through income withholding. The unit is required to make maximum use of technology to accept, identify and disburse support payments.

In addition, the unit must make timely response to request from parents about the payment status of their case. When payment of current support is made and there is sufficient evidence of who the payee is, the payment is to be disbursed within 2 business days. Arrears may be held for a longer period of time if they are in dispute.

The PRA allows states to opt for a more localized, computer linked system if the Secretary of HHS determines that such system "will not cost more nor take more time to establish or operate than a centralized system". Even if the state operates such a decentralized system, however, employers must be given one and only one location to which collected support is to be sent.

ACES SUGGESTS ONE CENTRAL PAYMENT REGISTRY WITHIN THE IV-D AGENCY

Enforcement unit must also have sufficient staff to monitor all IV-D cases and enforce payment in those cases. The legislation plans on a strong interface between this unit and the New Hire Directory and plans that the unit will use automated enforcement techniques for cases which go into arrears.

ACES RECOMMENDS:

- **MOST IMPORTANT ISSUE IS THAT THE STATE PLACES NEW HIRE REGISTRY, CENTRAL ORDER REGISTRY AND CENTRAL PAYMENT REGISTRY IN THE SAME GOVERNMENT AGENCY, THE IV-D AGENCY!!**

- Avoid the option of linking up separate entities to create the Collection and Disbursement Unit. This will be expensive in the short run and even more so in the long run as every new technological advance will have to be replicated by each entity for the system to remain as technologically advanced as required by the new law. Moreover, since only one location can be designated as the place for employers to send payments, that location will have to disburse the payments to the other entities making it highly inefficient and unlikely to be able to meet the federal time frame for disbursing payment.

- Develop the system in consultation with large and small employers so that the Collection and Disbursement system is compatible with, and sensitive to, the needs of employers.

- As the system is being implemented, provide written and oral assistance to employer to employers so that any problems can be worked out early on.

- Develop a 24 hour-a-day, seven day-a-week voice response system (with written back up) so that parents needed information about the payment status of their case can obtain it by phone at any time.

Federal Case (order) Registry and National Directory of New Hires

(Continued on Page 14)

3/27/97

Hi, my name is Jaclyn Jesseph. I am 14 years old. My father left when I was 18 months old. We went for 8 years without child support. Let me tell you. It SUCKED. My mom worked so much just to give me and my brother clothes, food, and a place to live. My mom did not have the time or money to let my brother play little league or sign me up for gymnastics. Please pass this Bill so other kids don't go through what me and my brother went through. Thank you.

House Judiciary
Attachment 1
3/27/97

PROPONANT TESTIMONY

SB 140

MARCH 27, 1997

*“ In this contemporary world it is a hard lonely struggle,
this business of putting children first. ”*

Sylvia Hewlett

THE ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT, INC.
JOHNSON COUNTY KANSAS CHAPTER
MICHELLE STALEY COORDINATOR
913-888-0943

House Judiciary
Attachment 8
3/27/97

Testimony in Support of Child Support Legislation
Senate Bill 140
March 27, 1997

Michelle Staley – Johnson County Chapter Coordinator,
The Association for Children for Enforcement of Support, Inc.
ACES Members: Phyllis Young, Nancy Davis, Phyllis Woolard, Karen Miller

Chairman and Members of the Committee:

As the elected representatives of the people of Kansas you have a responsibility not only to those who voted for you but also to the children of Kansas, those with no vote or voice. You have the awesome opportunity at this time to make a positive change in the existing system to enable better collection of child support in Kansas and give the children some semblance of a quality life, give them back their childhood.

The non-payment of court ordered child support is a crime against our youth, it is a crime that has become socially acceptable in today's society. In Kansas we have approximately 275,000 youth owed close to \$300 million in unpaid child support. Johnson County alone has approximately \$30 million owed to the children. Kansas has a 21% collection rate with the national collection rate being only 18.2%. Child support payments are on the average less than your normal car payment, we are not talking about a king's ransom, we are speaking of food, weather appropriate clothing, shoes and shelter. Few, if any, custodial parents have enough money left over from the child support to indulge in luxuries, as custodial parents are often accused of. The kids may be treated to a pizza or a trip to McDonalds.

The time has come to get tough on those who willfully and knowingly fail to support their children. Their sense of responsibility and morality is lost; they use many excuses as to why they do not pay the court ordered child support. President Clinton has done what he can do to force these people into doing the right thing now it is your turn to make it virtually impossible for non-payers to escape their responsibility. This is not a negative or unconstitutional approach to enforcement and collection, habitual non-payers and "job hoppers" have made this type of action necessary.

Senate Bill 140 has the potential to be of great benefit to the children of Kansas by streamlining the current procedures and making information on the non-custodial parent more readily available to those establishing and enforcing the child support orders.

A small portion of the welfare reform mandates coming down from Washington to aid in the enforcement and collection of child support are the use of W-4 New Hire Reporting and Administrative Process. My Bachelors thesis was on this subject therefore I have done extensive research on these procedures.

To make this and future Federal mandates work as they are meant to Automated Computer Tracking must be in place. The Family Support Act of 1988 dictated that an

automated tracking system be in place in each state by October 1, 1996. If this criterion were met the Federal Government would pay 90% of the cost of implementation. Due to a lack of state compliance the deadline has been extended to October 1, 1997. It is my understanding that the cost of this tracking system in Kansas will be approximately \$30 million. Yet I am hearing that our legislators would rather lose close to \$140 million in penalties and federal monies to avoid putting this system in place. Even though this expenditure would directly and in a positive manner affect the children by raising the collection rate.

PRA, (Personal Responsibility and Work Opportunities Reconciliation Act), Section 313 requires each state to establish an automated State Directory of New Hires, which meets or exceeds federal mandates, by October 1, 1997. The rationale behind this statute is to expedite the locating aspect of an employer of those non-payors who tend to go from job to job on a frequent basis. An effective locate strategy rests on proactive monitoring and early intervention in cases to determine address, employer, income and assets of the parent. Currently, complaints from the custodial parent about missed or late payments activates the locate system. The number of cases and the mobility of society require that any change in circumstances activate the system.

Statistics show that a job hopper, on the average, will stay at a job for 6 to 9 months. Under the current system in Kansas it takes the agencies that long to locate an employer, this information is usually supplied by the custodial parent, and issue an income withholding order. Income withholding has proven to be the most successful of the enforcement procedures for collecting child support in a timely manner. By utilizing the W-4 New Hire Reporting an employer or labor organization must report the name, address and social security number of each newly hired person to the state within at least 20 days of hiring. This will expedite not only the issuance of an income withholding order but also the locate information to serve the absent parent with paternity and support suits.

Currently about half of the states have already adopted the New Hire Reporting. W-4 reporting on newly hired employees has proven to be an effective mechanism in Washington. The State of Washington was a pilot project and collected approximately \$2 million dollars in child support in the first year of the program.

Recommendation: New Hire Reporting must be mandatory with reporting to be done within 7 days of the non-payor being hired. The Child Support Division of SRS must operate the New Hire Directory to eliminate fragmentation and the need for other agencies to interface their systems. This procedure also makes the Directory eligible for IV-D funding from the federal government. To facilitate matching of new hire information with existing child support orders, all child support orders issued in the state should be deemed IV-D orders. Otherwise, non-IV-D cases will not be matched in this new system since a matching process is only required in IV-D cases. Eventually, the non-IV-D families will apply for services and the cases will have very high arrearages which will make the case more difficult to process. Moreover, federal funding can be

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page 3 to follow
by e-mail
(page 3 was never received)
Judiciary Sec.
5/3/97

#9

March 27, 1997

Testimony in Support of SB 140 (Child Support Enforcement)

My name is Susan Clemons. I was divorced in 1991. As part of the divorce agreement, the father of my child was court-ordered to pay \$292.00 per month child support. This went fine until 1994 when my ex-husband moved to California. Right after he moved to California he stopped paying the court-ordered child support. At that time, I was working 40 hours per week at \$8.50 per hour. My day care expense for my child was \$280.00 per month. I used the child support check to pay for my child's day care expense.

Now I was in a dilemma, I could no longer afford day care without the child support check. My alternative was to quit my job and go on welfare, which I did not want to do. I was very lucky however, I had my child in day care at the YWCA. They had a sponsorship program that helped to pay for my day care expense.

My dilemma did not end there, it was just the very beginning. I ended up having to quit my job anyway because I became very ill with kidney failure and was placed on dialysis. I still was not receiving any of the court-ordered child support which would have greatly eased the stress and worry I had in trying to make ends meet and dealing with my illness. I turned to the state asking for help in locating my ex-husband to collect the court-ordered child support. He was located, but claimed he was unemployed. There was no way to verify if this was true or not.

Finally my ex-husband moved back to Kansas. Because of the amount of case loads that the enforcement workers have, I found it necessary to call my case worker on a weekly basis to make sure that my file was always being reviewed. I was also able to obtain a lawyer on pro bono basis. With her help, we requested the previous year tax records. I was shocked to have learned that he earned \$36,000 the previous year yet he had been claiming that he was unemployed.

Once again, even though he lived in Kansas, I could not find where he was employed. It took another six months and the threat of jail to find out exactly where he was employed. I then started receiving child support payments as he check was garnished. I also received back child support from his income tax return. All of this was done with the help of the child support office and not with the voluntary cooperation of the father of my child.

That was ten months ago and all has been going well. However, my ex-husband moved from Kansas to Arkansas just over a month ago. I know where he lives and his phone number, but not where he is employed. I did receive a child support check for March but he has not contacted MAXIMUS, the child support enforcement division, as to where he is employed, which he is required to do. Once again he has not fulfilled his obligation to keep the child support office updated on his employment and so it will cost the tax payers money to find his employment again. If the new hire law was in effect, this step could be avoided.

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Testimony in Support of SB 140 (Child Support Enforcement)

This is my story, but with a few modifications this could be the story of many custodial parents who are fighting to receive the court-ordered child support check their children are entitled to and have a right to.

I feel it is important to mention that I used to think that parents who did not receive child support were not utilizing the system for help. After all, there were so many laws that if there was a court-order then the state would enforce it. I quickly learned how wrong that assumption is. I learned about the case load of each worker, the rights of the father of my child, and the restrictions of what the worker could do. I learned that if you do not have money for a lawyer, it will take a long time to collect your court-ordered child support, possibly never collecting.

During the two years that I did not receive child support, I asked the state child support enforcement office why they could not request the federal child support enforcement office to check the social security records to find out where the father of my child was working. I was informed that it was against the Right to Privacy Act. I became very frustrated. Once again the father of my child, who knowingly was violating a court-order, was afforded his rights while my child's rights were disregarded.

My question is what is Privacy? When a single custodial parent is not receiving court-ordered child support and seeks help from Social Rehabilitation Services (SRS), that individual is forced to give up their privacy. Why should the irresponsible absent parent who is willingly violating a court-order be afforded the right to privacy while the responsible single custodial parent is not afforded the same rights? CHILD SUPPORT IS NOT ABOUT THE RIGHTS OF THE PARENTS, BUT THE RIGHTS OF THE CHILD OR CHILDREN THAT ARE INVOLVED. Why should the quality of a child's life be put on hold while the child support office is trying to find where the noncustodial parent is working? It is time that as adults we regard and protect the rights of our children.

Senate Bill 140 will help cut down on the amount of time that is required to track those delinquent parents who are not paying child support. This will save valuable time for the child support enforcement workers who can then spend more time collecting child support rather than just trying to locate the delinquent parent. Requiring employers to provide information on new employees will greatly help in the fight to enforce and collect child support, help in promoting self-sufficiency among single parents, and enhance the quality of life for children. I ask that you support Senate Bill 140.

Respectfully Submitted,

Susan

Susan Clemons

#10

My Name is Jim Dolenz. I live at 405 N. Chautauqua, Wichita. I am employed in the aircraft industry. I would like to thank the House Judiciary Committee and the other people in Topeka for this opportunity to present my views on Senate Bill 140. After reading this bill, in which I am particularly interested, I have a little deeper appreciation of the job done here in Topeka by you people, trying to stay abreast of several bills at a time. After reading just one in some detail, I can see that you put in a lot of hard work. As you might imagine, since I'm speaking against passage of this bill, there may be quite a sharp difference of opinion between me and some legislators and other government officials.

Although different parts of government may have a temporary or permanent need to cooperate, we know that the governments of the State of Kansas and the United States are divided into branches in order to provide checks and balances of one branch against the other two, in order to keep any one branch from dominating. SB 140, however, in calling for such a high level of cooperation and interaction among state agencies, different states of the United States and even some foreign countries provides a mechanism for tracing an individual, their money and property virtually anywhere in the U. S.. This presents an opportunity that some, even in government, may not be able to resist. The location of the money is documented. The temptation to just seize it may be too strong for some. The approximately \$30M in federal funds associated with the passage of SB 140 very closely represents, in my opinion, opening the door to extortion of the institutions, the citizens and the employers of the State of Kansas. This bill carries of penalty of 3 times the contested amount plus attorney's fees for noncompliance, and provisions to too easily attach assets of those delinquent in child support payments, all available simply for the taking, yet only a token \$500 fine for a company who terminates an employee as a result of an action under SB 140.

It surely is not the intent of the legislature to steal other peoples money. This bill is born out of a desire to correct the problem of unpaid child support. The motivation for this bill is good. Children are not receiving benefits to which they are entitled. As legislators you are motivated and able to make a change to benefit children. It must be frustrating to have knowledge of children suffering on one hand and, one the other, not be able to collect support owed them. There must be a fair balance between the rights of children and the rights of those who owe support. To require employers, financial institutions, utilities, and other government agencies to provide information of a personal nature without first showing just cause to, and obtaining the concurrence of, a neutral third party tribunal appears to be a clear invasion of privacy and circumvention of due process. Any legal due process by which an individual is required to involuntarily surrender personal property or cash should be presided over by a sitting judge, not an SRS surrogate. The hearing should preferably be by jury and, should be required to be in a court open to the public.

There are, I'm sure, some good compassionate people at the SRS who are devoted to making the lives of children easier and who do a good job day in and day out with little recognition and low pay. It is also evident that Secretary Chronister is working hard to

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make improvements and correct problems when she finds them. But the SRS is being assigned a job, I think, inappropriate to its function. The SRS should be a social agency and should not be asked to be a secondary type of court system for cases involving dependent children. Social workers everywhere, we are told, struggle under large case loads and are forced to take shortcuts to just keep up. Being forced to streamline a process by an overwhelming case load tends to erode the fidelity of services provided, whether they occur in the intake process or the appeal process. The present appeals process and SB 140 allows the presiding officer to close to the public, any part of a hearing, based on an alleged need to protect the privacy rights of a minor. People that I know have told me they feel that this confidentiality has been misused to secretly suppress evidence that would hurt the state's case or to restrict other party's representatives from speaking. The whole process from beginning to end is misplaced in the Department of Social and Rehabilitation Services. Under this bill, the Department is allowed to act as accuser, summons server, arrester, prosecutor, jury, judge, and enforcer, as well as an appellate. For generations, our form of government has recognized the wisdom of separating these functions. To me, it seems, it would be very difficult for an officer of the SRS to encourage and motivate employees on one hand, and, on the other, be an impartial judge of the validity of complaints brought from either inside or outside the Department. The due process retained in the powers of the SRS under this bill is a token due process at best. Considering, as sufficient notice, the mailing of a notice of impending action to the last known address of a person whose assets are sought can hardly be considered a serious attempt at notification.

A really serious effort to provide monetary support to the children entitled to it should focus on increasing the desire and the ability of the responsible party to pay. SB 140 contains several punitive measures which are likely to have the opposite effect. The token \$500 fine against an employer who terminates an employee for having an action brought under SB 140 amounts to permission to terminate the employee, without cause, for a small fee. This will surely erode the individual's ability, and likely their willingness to accept responsibility for their child support obligation. The fine for terminating an employee solely for having an action brought under SB 140 should be truly punitive, in order to preserve the ability to pay the obligation, perhaps a multiple of annual income. An individual's desire or ability to fulfill a child support obligation must not be compromised. Seizing a someone's vehicle will not help them get to work to earn money to pay child support. Denying a license to practice in the State of Kansas will not help earn money to pay debts owed to children. Restricting a hunting or fishing license will be counterproductive if accompanied by an increase in grocery expenditures. This bill, SB 140, contains overly strict triggers for the activation of asset seizure procedures. One, and sometimes two months of arrearages is enough for the state to begin issuing orders of attachment of assets. Consider for a moment, the situation in Winfield, where the Crayola factory will be closed. Some folks are very likely to be unemployed. They will most likely not be able to afford a lawyer to modify their child support order. I would expect that they then may fall sufficiently behind in support payments to attract the attention of the State of Kansas. Seizure of any of their assets at that point will impact their job search. According to this bill, as I read it, the state will be required to attach

their assets anyway. SB 140 should not be passed because it attempts to write into law, at the coercion of the federal government, invasions of privacy, circumvention of due process at best, and substitutes a social agency as a surrogate for the judiciary.

Secretary Chronister deserves credit for her sweeping attempts at improvement at the SRS. What problems exist are most likely ones she inherited. I don't believe that she has had time to yet adequately address the most serious problems. And there are some serious problems, I believe, at the SRS. The SRS, through which SB 140 would be enforced, has been in continual non-compliance with an out of court settlement arising out of a case filed in 1989, as reported by the legislative post audit committee, and has a dismal, sometimes fatal, record in regard to care of children in Kansas. In addition, it has been found by the legislative post audit committee that an unacceptable number of records at the SRS were incomplete or inaccurate. It is doubtful that the SRS has rigorous enough procedures to oversee a fair and accurate asset seizure function.

SB 140 generally exempts individuals and government from liabilities incurred while acting according to its provisions. Power must not be assumed without accepting responsibility. As citizens, we are all held responsible for our actions. It must be the same in government, if government is to remain accountable to those whom it serves. Government and government workers must accept the responsibility to put right inequities which may have been caused by their actions. More importantly, they must make decisions the positive effects of which they would be proud to take credit.

Despite my opposition to this bill, there are several points, upon which I believe there is agreement. I believe that an individual has an obligation to support his children and if that obligation has been ordered in the form of a support payment by a court it becomes an enforceable legal obligation. I believe we agree that if an individual becomes habitually delinquent, he should be the subject of some type of enforcement action and if persistently delinquent, agencies of the government have a right to and even an obligation to seize assets in order to satisfy the obligation of child support. This bill assumes incorrectly, that the amount of a payment automatically needs to be adjusted every three years, without consideration for any other circumstances. An individual with whom, for example, children stay for part or all of the school year, who continues to pay support is contributing indirectly to the reduction of child rearing expenses. We must return to reviewing the circumstances of each case separately and admit that similar income levels and family size do not equate to equal income requirements.

I'm sure that the authors of this bill have our children's best interests at heart. Our children are our future. No reasonable person wants to see them deprived, abused or emotionally scarred. I am sure there is also a considerable amount of both frustration at the current situation as well as plenty of urgency that something must be done immediately. This bill, although long, overly simplifies, through gross assumptions, the very complex interaction of human relations with legal obligations arising out of paternity. Good, compassionate, lawmakers have worked hard to draft this bill, in the interest of providing a better life for the children of Kansas. I am sure they are quite

capable of drafting a much better, effective, enforceable law which will be seen as fair by all parties and at the same time provide for a much higher rate of success in collection child support. The legislators of the State of Kansas know best how to legislate on behalf of Kansas children. This is a fact the federal government could acknowledge by making federal funds available without requiring states to pass bad laws. There is approximately \$30M dollars at stake. The federal government is using availability of federal funds to circumvent State's rights. To me, this is a clear indication that the federal government's interest is, not in the welfare of children, but in control, power, and access to the money and property of the people of the State of Kansas.

This bill, if passed, will actually destroy the ability and desire of those who owe child support to pay it. It will do so through invasion of privacy, counter productive seizures and circumvention of due process, by an agency, the SRS, that has yet to demonstrate that in can live up to the rigorous standards required by such immense and far reaching authority.

It is the right of the State of Kansas to conduct it affairs as it sees fit. The federal government must quit using federal dollars as a means of circumventing State's rights. The \$30M at stake can be raised exclusively in Kansas by a tax of about \$20 per individual. I would rather have my State taxes raised, than be subject to yet another federal mandate. Please do all you can to defeat Senate Bill 140. Thank you for this opportunity to make my views known.

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**Written Statement of Mark Forsyth
addressing the issue of SB-140**

I have traveled over 2 hours to get to this hearing today, I have been reading the paper and have been trying to get information as best I can and it seems to me that nobody likes this bill but still it keeps going. I came here as a Kansan with one vote, one voice, I cannot make the threats as Rochelle Chronister does, I cannot wine and dine officials swaying their opinion as lobbyist do, what I can do is exercise the rights given to me by the Constitution and Bill of Rights and I will do so until light has been shed upon SB-140 that exposes it for what it truly is, HOGWASH. I have brought with me today something I hope will show you some first hand experience with the SRS and perhaps then you will be able to see that this bill is insanity in it's truest form.

In October of 1996 the SRS sent me a notice that said they intended on intercepting my income tax refund, should I get one. I felt that there was an error and I followed the instructions on the papers and was shocked to find that the SRS showed me behind to the tune of \$638.75. I knew this was wrong and I challenged their figures, well you just can't walk in there and show them a problem you have to follow their procedure. I was granted a telephone hearing and at that hearing I presented the court record of payment as well as a chart showing the individual dates that the child support was due. In December 1996 there had been 30 months that I owed support and that amount totaled 6322.00, using the court records I had paid 6254.77 and when you subtract one from another you get 67.23 of which was the actual amount I was behind. I felt convinced that the hearing officer would find in my favor because the SRS representatives changed the amount that they felt I was behind three times during the hearing finally settling on 240.00. I received the determination from the SRS and believe it or not the hearing officer stated I was behind 569.99 and upheld their right to take my tax refund. I appealed this finding and as of yet I have not heard anything, October to March is 5 months and if the SRS cannot make a determination on one case in 5 months and during this time they continued to over withdraw, take my tax refund, and even went to court to increase my child support what makes you think they could do better with more power. The SRS brings forth figure's that stagger the imagination, I brought proof that shows the SRS may not be able to provide accurate figures but will present them as accurate even in a court of law.

Lets say you had passed that bill and the SRS had taken my licensee to drive and that would cost me my job, and they had attached my property and even seized some of it. When they finally get around to finding out that they are in error, the damage is done. They cannot handle the power they have now, giving them more will cost this state far more than 29 million dollars. There is a reason they have to go through the courts at this point in time, it is because many of their workers in the field are either ill equipped or not capable of performing the job, and the courts are the only safeguard that the state has now. Another is that the constitution requires a separation of powers and privacy of citizens forbids many of the measures that are in this bill. They say this is all in the name of children, this sounds very noble but don't you believe it for a minute. They want access that the Constitution forbids them to have so they make it expensive for you to say no. I spoke with a person named John in Sec. Chronisters office and he and I spoke for quite a lengthy time I laid out the very events that I have for you and he stated that there are remedies in the court for any administrative actions.

I have a job and every time I question something the SRS does I receive a notice in the mail that they are taking me to court. Right in the middle of the appeal process I told

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3/27/97

**Written Statement of Mark Forsyth
addressing the issue of SB-140**

you about, they knew that they had over collected and they asked the court to increase my child support. They provided the court with a worksheet of my income and determined an amount that they felt they were allowed to. When we went to court the judge found that their figures were inflated by over three hundred dollars a month and their worksheet was not correct. They did not get what they wanted that day and were told to file a journal entry to adjust the child support to my current income that has been over two months ago and since this entry will cost them money they have not filed it yet. Believe me when I tell you this agency has individuals in it that are vindictive and take things to extreme. In the legal profession they refer to the Social Rehabilitation Services as the big two headed gorilla and it does anything they want to.

There is no explanation you can give that would give drug dealers, sex offenders, murderers, thieves more rights than those who the SRS says are deadbeats. Giving the SRS access to banking records, law enforcement agencies, allowing them to order medical testing, giving them the power to seize wages without a court order simply makes them too powerful provides them with access that the constitution forbids. According to them I am a deadbeat dad, using Rochelle Chronister's words you could not print what she thinks of me. I have written to every person I could think of trying to correct their error but I reach a dead end in every attempt. Their rules state that I have to go through their process before I can take it to court, when I get to court I am sure a judge will see the mistake and force them to return the money but all this time I am without.

The Constitutions of the United States and Kansas forbid passage of this measure, I have read quotes in paper from Senators that state it gives the SRS Gestapo like power, that it is Constitutional Pornography, and still this measure is still alive. It seems popular to rally around the cause of getting money for children, but members of this committee don't fall for the disguise, the SRS currently has access to the very information that they want to establish on their data base they just don't want restricted use. They can place liens on property, they can withhold wages they can get judgments with the current system, however they do want to be constrained by a little old thing called the Constitution.

They say that if you do not pass this bill you will cost the State 29 million dollars that works out to about 11.68 per person in the State of Kansas. Countless thousands have died in defense of the Constitution, Billions of dollars have been spent in the same pursuit, are you willing to throw all that away for 29 million dollars. I find it ironic that many years ago on the day before Good Friday a man sold his beliefs and his soul for 30 pieces of silver, although this is on a different level is this committee willing to sell it's beliefs and it's constitutional soul for 29 million on the same day, I guess you call that inflation.

I believe if you pass this measure and you feed this monster that the State of Kansas will lose much more than it gains. I have provided proof positive they can make mistakes, that their agency needs to look inside itself to fix serious problems, please I beg of you, do not allow this measure to go any further.

Take the medical testing for instance if Jane Doe names you or a person you know as the father of a child they can order you to undergo medical testing to determine if it is true or not. They can invade your privacy force you to give up your constitutional rights

**Written Statement of Mark Forsyth
addressing the issue of SB-140**

and there is not one thing you can do about it if you pass this bill. NO SINGLE AGENCY HAS THAT RIGHT!!!!

If the shoe was on the other foot and the SRS wanted you to pass a bill that would require everyone in the state to send their tax returns to them for processing would you do so, I don't think so. I believe that the Statutes of the State of Kansas forbid the SRS from acting in a judicial manner and that the powers they are seeking cannot be carried out by them. Passing this legislation on, will end in a multitude of lawsuits against the SRS and end up costing this state far more than the bill would save in federal funding.

I know that if the Gov. of this State signs this bill I will have lost all trust in government. The Constitution will no longer be the instrument that guides our leaders it will be the almighty dollar. We the People still means something to me but passage of this measure will strike that down like a tent is folded after a circus.

Mark Forsyth
21155 Victory Road
Stark, Kansas 66775

IOLA SRS OFFICE
P.O. BOX 670
IOLA, KS 66749-0670

CHILD SUPPORT ENFORCEMENT UNIT
IOLA SRS OFFICE
P.O. BOX 670
IOLA, KS 66749-0670
PHONE 3163652164

OCTOBER, 1996

** CONTACT ADDRESS ABOVE **

SSN: 514-70-4361

MR AND/OR MS MARK FORSYTH
RR#1 BOX 72
STARK, KS 66775

200
850

THE AGENCY IDENTIFIED ABOVE HAS DETERMINED THAT YOU OWE PAST-DUE CHILD AND/OR SPOUSAL SUPPORT. OUR RECORDS SHOW THAT YOU OWE AT LEAST THE AMOUNT SHOWN BELOW, AND THIS AMOUNT WILL BE REFERRED TO THE INTERNAL REVENUE SERVICE(IRS) FOR COLLECTION. ANY FEDERAL INCOME TAX REFUND TO WHICH YOU MAY BE ENTITLED MAY BE RETAINED IN FULL OR PARTIAL SATISFACTION OF THIS OBLIGATION.

IF THE AMOUNT OF THIS PAST-DUE SUPPORT OBLIGATION IS \$1,000 OR MORE AND OVER TWO MONTHS OLD IT WILL BE REPORTED TO CONSUMER REPORTING AGENCIES.

YOU HAVE A RIGHT TO CONTEST OUR DETERMINATION THAT THIS AMOUNT OF PAST-DUE SUPPORT IS DUE. YOU MAY REQUEST AN ADMINISTRATIVE REVIEW BY CONTACTING US NOT LATER THAN NOVEMBER 30, 1996 AT THE ADDRESS OR PHONE NUMBER LISTED ABOVE. IF YOUR SUPPORT ORDER WAS NOT ISSUED IN OUR STATE, WE CAN CONDUCT THE REVIEW; OR, IF YOU WOULD PREFER THAT AN ADMINISTRATIVE REVIEW BE CONDUCTED IN THE STATE WHICH ISSUED THE ORDER, WE WILL CONTACT THAT STATE WITHIN 10 DAYS AFTER WE RECEIVE YOUR REQUEST. YOU WILL BE NOTIFIED OF THE TIME AND PLACE OF YOUR ADMINISTRATIVE REVIEW BY THE STATE WHICH ISSUED THE ORDER. ALL REQUEST FOR ADMINISTRATIVE REVIEW MUST BE MADE BY CONTACTING THE AGENCY IDENTIFIED ABOVE.

IF YOU ARE MARRIED, FILING A JOINT INCOME TAX RETURN, AND YOU INCURRED THIS DEBT SEPARATELY FROM YOUR SPOUSE, WHO HAS NO LEGAL RESPONSIBILITY FOR THE DEBT AND WHO HAS INCOME AND WITHHOLDING AND/OR ESTIMATED TAX PAYMENTS, HE OR SHE MAY BE ENTITLED TO RECEIVE HIS OR HER PORTION OF THE JOINT REFUND.

IF YOUR SPOUSE MEETS THE CRITERIA STATED ABOVE, HE OR SHE MAY RECEIVE HIS OR HER PORTION OF THE JOINT REFUND BY FILING A FORM 8379, INJURED SPOUSE CLAIM AND ALLOCATION. FORM 8379 SHOULD BE ATTACHED TO THE TOP OF THE FORM 1040 OR 1040A WHEN YOU FILE, OR BE FILED ACCORDING TO OTHER INSTRUCTIONS AS INDICATED ON THE FORM 8379

SSN	CASE NUMBER	LOCAL ID	PAST DUE AMOUNT CLAIMED
514-70-4361	743190	763	\$787.00 / ADC /
			\$0.00

I, Pauline Jones, CSE Collection Officer, state that the attached calculation of arrears is accurate to the best of my knowledge based upon court payment records.

Pauline Jones
Pauline Jones

Signed and sworn before me on this 12th day of December 1996.

My commission expires on: March 10, 1998

Susie Ellis
Notary Public



January				350	2225	0
February					175 ⁰⁰	175
March				*176	0	351
April						527
May						703
June						879
July			135 ⁰⁰			1055
August	350	0				1231
September						1407
October					50	1532
November					176	1532
December					88	1620
TOTALS	1750	0	1885 ⁰⁰	2460	2724	1620 ⁰⁰

	Due	1996 Paid	Balance	Due	19 Paid	Balance
January	176	88	1708			
February		0	1884			
March		243 ⁷⁶				
April		243 ⁷⁶				
May		243 ⁷⁶				
June		243 ⁷⁶				
July		FDSD 636 ⁹⁴ 365 ⁶⁴				
August		243 ⁷⁶				
September		243 ⁷⁶				
October		243 ⁷⁶				
November		243 ⁷⁶				
December		121 ⁸⁵	569 ⁷⁹			
TOTALS	2112					

AP: Mark D Forsyth
 AR: Lou R Ellis
 CASE #: 743189-01

ORDER NUMBER: 94D38C
 COURT: Dee Sho Ctry No
 DATE OF ACTION: 8-23-94

* JE 94D38C DATED 9-19-95

(*) Per JE dated 2-12-96

	Amount Owed	Amount Paid		
August 1994	\$350.00	125		
September 1994	\$350.00	350		
October 1994	\$350.00	1885		
November 1994	\$350.00	175		
December 1994	\$350.00	50		
January 1995	\$350.00	88		
February 1995	\$350.00	88		
March 1995	\$176.00	88		
April 1995	\$176.00	88		
May 1995	\$176.00	121.88		
June 1995	\$176.00	121.88		
July 1995	\$176.00	121.88		
August 1995	\$176.00	121.88		
September 1995	\$176.00	121.88		
October 1995	\$176.00	121.88		
November 1995	\$176.00	121.88		
December 1995	\$176.00	121.88		
January 1996	\$176.00	121.88		
February 1996	\$176.00	636.41		
March 1996	\$176.00	121.88		
April 1996	\$176.00	121.88		
May 1996	\$176.00	121.88		
June 1996	\$176.00	121.88		
July 1996	\$176.00	121.88		
August 1996	\$176.00	121.88		
September 1996	\$176.00	121.88		
October 1996	\$176.00	121.88		
November 1996	\$176.00	121.88		
December 1996	\$176.00	121.88		
		121.88		
		121.88		
		121.88		
Totals	\$6,322.00	6254.77		-67.23

	Amount Owed	Amount Paid	Amount over or under paid
Totals	\$6,322.00	\$6,254.77	-67.23
January 1997	\$176.00	\$121.88	
February 1997	\$176.00	\$121.88	
		\$121.88	
		\$121.88	
Totals	\$6,498.53	\$6,742.29	243.76

As of Today's date March 27th the SRS has
over collected
311.52

CASE NUMBER: 94D 000300

PAYEE: CSE REC.

FILE DATE: 02/03/94

IN THE MATTER OF THE MARRIAGE OF FORSYTH LORI ROANN
AND FORSYTH MARK DAVID

FINANCIAL DETAIL

FROM 01-01-01 to 02/27/97

DATE	TRANS CHK # DKT FEE	J/R	SRS	NONSRS	TRUSTEE	BOND	OTHER	ENOR	TOTAL
03/14/94 RECEIPT	18343	PAYOR=> FORSYTH MARK DAVID		125.00	REMARK=> SUPP#2164				125.00
01/04/95 RECEIPT	28374	PAYOR=> FORSYTH MARK DAVID		350.00	REMARK=> C SUPP CASH				350.00
01/31/95 RECEIPT	29366	PAYOR=> FORSYTH MARK DAVID		1885.00	REMARK=> CSUPPORT #150123				1885.00
02/06/95 RECEIPT	29653	PAYOR=> FORSYTH MARK DAVID		175.00	REMARK=> SUPPORT CASH				175.00
10/24/95 RECEIPT	40194	PAYOR=> FORSYTH MARK DAVID		50.00	REMARK=> SUPP#1086				50.00
11/06/95 RECEIPT	40753	PAYOR=> FORSYTH MARK DAVID		88.00	REMARK=> SUPP#1091				88.00
11/21/95 RECEIPT	41375	PAYOR=> FORSYTH MARK DAVID		88.00	REMARK=> SUPP#1068				88.00
12/01/95 RECEIPT	41740	PAYOR=> FORSYTH MARK DAVID		88.00	REMARK=> SUPP#1073				88.00
01/11/96 RECEIPT	43416	PAYOR=> FORSYTH MARK DAVID		88.00	REMARK=> SUPP#1126				88.00
03/12/96 RECEIPT	46082	PAYOR=> NEO CO TREAS OFFICE		121.88	REMARK=> SUPP#6316				121.88
03/27/96 RECEIPT	46704	PAYOR=> NO CO DIST CRT		121.88	REMARK=> SUPP#6336				121.88
04/10/96 RECEIPT	47361	PAYOR=> NEO CO TREAS OFFICE		121.88	REMARK=> SUPP#6358				121.88
04/23/96 RECEIPT	47982	PAYOR=> NO CO TREAS OFFICE		121.88	REMARK=> SUPP#6374				121.88
05/07/96 RECEIPT	48573	PAYOR=> NEO CO TREAS OFFICE		121.88	REMARK=> SUPP#1556				121.88

CASE NUMBER: 94D 000380
FILE DATE: 02/03/94

PAYEE: CSE REC.

IN THE MATTER OF THE MARRIAGE OF FORSYTH LORI ROANN
AND FORSYTH MARK DAVID

FINANCIAL DETAIL
FROM 01-01-01 to 02/27/97

DATE	TRANS CHK #	DKT FEE	J/R	SRS	NONSRS	TRUSTEE	BOND	OTHER	EWOR	TOTAL
05/21/96 RECEIPT	49185	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6457					121.88
		.00		121.88						
06/03/96 RECEIPT	49727	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6479					121.88
		.00		121.88						
06/18/96 RECEIPT	50442	PAYOR=)	NEO CO TREAS OFFICE	REMARK=)	SUPP#6502					121.88
		.00		121.88						
07/02/96 RECEIPT	51094	PAYOR=)	NEOSHO CO TREAS OFFICE	REMARK=)	SUPP#6554					121.88
		.00		121.88						
07/16/96 EWOR	51711	PAYOR=)	FORSYTH MARK DAVID	REMARK=)	FED. INCPT 7-8-96			PAYEE: IOLA SRS	636.41	636.41
		.00								
07/17/96 RECEIPT	51767	PAYOR=)	NO CO. TRES.	REMARK=)	SUPP 6570					121.88
		.00		121.88						
07/30/96 RECEIPT	52282	PAYOR=)	NEOSHO COUNTY	REMARK=)	SUPP#6641					121.88
		.00		121.88						
08/13/96 RECEIPT	52910	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6660					121.88
		.00		121.88						
08/27/96 RECEIPT	53481	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6676					121.88
		.00		121.88						
09/10/96 RECEIPT	54151	PAYOR=)	NEO CO TREAS OFFICE	REMARK=)	SUPP#6749					121.88
		.00		121.88						
09/24/96 RECEIPT	54764	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6765					121.88
		.00		121.88						
10/09/96 RECEIPT	55423	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6787					121.88
		.00		121.88						
10/22/96 RECEIPT	55973	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6807					121.88
		.00		121.88						
11/07/96 RECEIPT	56648	PAYOR=)	NO CO TREAS OFFICE	REMARK=)	SUPP#6875					121.88
		.00		121.88						

CASE NUMBER: 94D 000380
FILE DATE: 02/03/94

PAYEE: CSE REC.

IN THE MATTER OF THE MARRIAGE OF FORSYTH LORI ROANN
AND FORSYTH MARK DAVID

FINANCIAL DETAIL
FROM 01-01-01 to 02/27/97

DATE	TRANS CHK #	DKT FEE	J/R	SRS	NONSRS	TRUSTEE	BOND	OTHER	EWOR	TOTAL
11/20/96 RECEIPT	57145	PAYOR=> NO CO TREAS OFFICE		121.88		REMARK=> SUPP#6892				121.88
		.00								
12/03/96 RECEIPT	57676	PAYOR=> NO CO TREAS OFFICE		121.88		REMARK=> SUPP#6912				121.88
		.00								
12/17/96 RECEIPT	58339	PAYOR=> NO CO TREAS OFFICE		121.88		REMARK=> SUPP#6978				121.88
		.00								
12/31/96 RECEIPT	58823	PAYOR=> NO CO TREAS OFFICE		121.88		REMARK=> SUPP#7001				121.88
		.00								
01/14/97 RECEIPT	59475	PAYOR=> NEO CO TREAS		121.88		REMARK=> SUPP#7020				121.88
		.00								
01/28/97 RECEIPT	60008	PAYOR=> NEO CO TREAS OFFICE		121.88		REMARK=> SUPP#7091				121.88
		.00								
02/11/97 RECEIPT	60724	PAYOR=> NO CO TREAS OFFICE		121.88		REMARK=> SUPP#7110				121.88
		.00								
02/19/97 RECEIPT	61006	PAYOR=> FORSYTH MARK			.00	REMARK=> POST MOTION DIVORCE		PDM 20.00		20.00
		.00								
02/25/97 RECEIPT	61270	PAYOR=> NO CO TREAS OFFICE		121.88		REMARK=> SUPP#7128				121.88
		.00								

END OF SELECTION



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

Child Support Enforcement
1500 West 7th
P.O. Box 708
Chanute, Kansas 66720

November 13, 1996

Mark D. Forsyth
Rt. 1, Box 72
Stark, Kansas 66775

RE: Past Due Child Support
CASE NO: 743189-01

Dear Mr. Forsyth:

Per your request, I have enclosed a copy of the calculations of Arrears regarding your child support case and the form to fill out for the Fair Hearing. Please mail the Fair Hearing Request to the Administrative Appeal Hearings Office, 2ND Floor, 610 W. 10th Street, Topeka, Kansas 66612.

If you have any other questions, please feel free to contact me.

Sincerely,

Polly Jones
CSE Collection Officer
316-431-5000

Enclosure

PJ:ak



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

December 2, 1996

REPLY TO: Administrative Hearings
610 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1616
Telephone (913) 296-2433

RE: Request for Fair Hearing
Dated December 2, 1996
Appeal No. 97P0124 CSE

Mark Forsyth
21155 Victory Rd
Stark, Kansas 66775

O.D. Sperry, Director
Chanute SRS Office
Box 708
Chanute, KS 66720


Dear Mr. Forsyth and Mr. Sperry:

Pursuant to K.S.A. 77-511, this letter acknowledges the receipt of a request for fair hearing. Advance notice will be given of any prehearing or hearing scheduled for this appeal. Stephen E. Good is the Presiding Officer assigned to this case.

SRS personnel will need to complete an agency summary as required by K.A.R. 30-7-75. The original and one copy of the summary are to be returned to this office by December 17, 1996.

If special accommodations are necessary, please advise the Presiding Officer as soon as possible.

Sincerely,


Carol L. Foreman
Chief Presiding Officer
Administrative Hearings Section

CLF:jd
cc: CSE, 300 SW Oakley, Biddle Bldg., Topeka, KS; Richard Shaw, SRS Attorney,
Chanute Area SRS Office, Chanute, KS



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

Child Support Enforcement
1500 West 7th
P.O. Box 708
Chanute, KS 66720

December 12, 1996

Mark D. Forsyth
2115 Victory Road
Stark, KS 66775

RE: Exhibits for Fair Hearing
Appeal No. 97P0124 CSE

Dear Mr. Frosyth:

Pursuant to KS CSE Manual 4420.292, all evidence to substantiate the agency regarding the Fair Hearing are to be sent to you prior to the Fair Hearing. Enclosed please note Exhibits 1 through 9, which will be discussed at your Fair Hearing.

Sincerely,

A handwritten signature in cursive script that reads "Polly Jones".

Polly Jones
CSE Collection Officer

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
OF KANSAS
NOTICE OF INITIAL ORDER

Topeka, Kansas
January 27, 1997

TO: Mark Forsyth
O. D. Sperry
Ainka Kweli
Pauline Jones
SRS Legal Division
Rochelle Chronister

Appellant
Director, Chanute SRS Office
CSE Attorney, Chanute SRS Office
CSE Collection Officer, Chanute SRS
Agency Head

The Presiding Officer has carefully reviewed the record concerning the appeal of Mark Forsyth. The decision of the respondent is affirmed.

Attached is the Initial Order of the Presiding Officer setting out the findings of fact and reasons for the initial order pursuant to K.S.A. 77-526.

Pursuant to K.S.A. 77-527, either party may appeal from this initial order by filing a petition for review with the State Appeals Committee. A petition for review must be filed within 15 days from the date this initial order was mailed. Failure to timely request a review by the State Appeals Committee may preclude further judicial review. If neither party requests a review by the State Appeals Committee, then pursuant to K.S.A. 77-530, this initial order becomes final and binding on both parties on the 30th day following its mailing. The petition for review shall be mailed or personally delivered to: State Appeals Committee, Administrative Hearings Section, 610 SW 10th Avenue, Floor 2, Topeka, Kansas 66612-1616.

RE: FORSYTH, Mark
Appeal No. 97P0124 CSE
Chanute (Neosho County)

INITIAL ORDER

Statement of Case

Mark Forsyth appeals from the agency's action of certifying his name for federal debt set off collection procedures.

This matter comes before the SRS Administrative Hearings Section for de novo review. Testifying for the respondent at the January 21, 1997 hearing was Pauline Jones. Testifying for the appellant was Mark Forsyth.

Findings of Fact

1. Mark Forsyth is the father of Deena Forsyth (dob 9/22/83) and of Nathan Forsyth (dob 10/17/90). These children and their mother, Lori, began receiving Aid to Families with Dependent Children (AFDC) in February 1994.

2. In August 1994 Mr. Forsyth and Lori Forsyth were divorced. He was ordered to pay child support of \$350 per month. This amount was later modified in April 1995 to \$176.00 per month.

3. As of December 12, 1996 the amount of the unpaid child support under the divorce judgement totaled \$569.99.

4. SRS proposes to intercept Mr. Forsyth's federal income tax refund and apply it against the balance due on the child support judgment.

Conclusions of Law

1. Section 4420.211 of the Kansas Child Support Enforcement Manual, which is based upon 42 U.S.C. § 664 and 45 C.F.R. § 303.72, provides:

ADC and ADC-FC Criteria

The support obligation must have been established under a court order and must have been assigned to the State.

The amount of past-due support must not be less than \$150. Note: The total amount of assigned arrearages may be certified, not just the amount owed to agency for reimbursement.

The amount owed must have been delinquent for three months or longer. The requirement that past-due support must be at least three months in arrears is met if the past-due support will be three months overdue as of the first of January following submittal.

The delinquency is for support of a child or for support and alimony of a child and parent with whom the child is living.



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

February 4, 1997

REPLY TO: Administrative Hearings
610 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1616
Telephone (913) 296-2433

RE: FORSYTHE, Mark
Appeal No. 97P0124 CSE

Pauline Jones, CSE Collection Officer
Chanute SRS Office
Box 708
Chanute, KS 66720

Dear Ms. Jones:

This is to advise you that the appellant in the above-mentioned case has requested a review of the Presiding Officer's Initial Order by the State Appeals Committee. If you wish to respond to this request, please do so by February 19, 1997.

Sincerely,

A handwritten signature in cursive script that reads "John Mendoza".

John Mendoza
Administrative Hearings Section

JM:sw

Attachment

cc: Mark Forsythe, 21155 Victory Rd., Stark, KS 66775

IN THE DISTRICT COURT OF NEOSHO COUNTY, KANSAS
SITTING AT CHANUTE

LORI R. (FORSYTH) ELLIS,

Plaintiff,

vs.

Case No: 94 D 38 CH

MARK D. FORSYTH,

Defendant.

CHILD SUPPORT WORKSHEET OF: (name)

A.	<u>INCOME COMPUTATION - WAGE EARNER</u>	<u>PETITIONER</u>	<u>RESPONDENT</u>
1.	Domestic Gross Income (Insert on Line C.1. below)	*823	1322
B.	<u>INCOME COMPUTATION - SELF-EMPLOYED</u>		
1.	Self-employment Gross Income		
2.	Reasonable Business Expenses	(-)	
3.	Domestic Gross Income (insert on Line C.1. below)		
C.	<u>ADJUSTMENTS TO DOMESTIC GROSS INCOME</u>		
1.	Domestic Gross Income		
2.	Court-Ordered Child Support Pd.	(-)	
3.	Court-Ordered Maintenance Pd.	(-)	
4.	Court-Ordered Maintenance Rcd.	(+)	
D.	<u>COMPUTATION OF CHILD SUPPORT</u>		
1.	Child Support Income	*823	+ 1322
2.	Proportionate Share of Combined Income (Each parent's income divided by combined income)	39%	= 2145
3.	Basic Child Support Obligation (Using combined income from Line D.1., find amount for each child and enter total for all children)		- 61%
Age of Children	0-6	7-15	6-18
Number Per Age	1	1	
Total Amount	217	252	= 469

*Cost of Living Differential Adjustment? Yes No

**Multiple Family Adjustment? Yes No

* Imputed minimum wage

2 child guideline

Anticipated health insurance credit given to Defendant on page 2.

DISTRICT COURT OF Neosho COUNTY, KANSAS

Neosho County Judicial Center, P.O. Box 889, Chanute, KS. 66720
Address and Location of Court

LORI R. FORSYTH (ELLIS)

Plaintiff/Petitioner

FILED

vs.

MARK D. FORSYTH

MAR 11

9 46 AM '96

Defendant/Respondent

Neosho County, P.O. Box 138, Erie, Kansas 66733

Present Employer or Payor name and address

CLERK OF DISTRICT COURT
NEOSHO, KANSAS

BY _____ Case No. 94 D 38 CE
Division _____

EMPLOYER ANSWER

If the debtor named in the Income Withholding Order is your employee: Fill in the date you received the Income Withholding Order: February 15, 1996, and read the Notice to Employer and Employer Instructions form carefully. It tells you about due dates, combining payments that go to one office, and the rights and responsibilities of you and your employee. When you fill out this Answer, please type or print.

If the debtor is not your employee: Check this box: and fill in Part I only. Then date and sign at the end. Please return this form immediately to the Clerk of the District Court or District Court Trustee.

Date employment ended: _____, 19____

You only fill out and send in an Answer when you begin withholding under this Order or when the court specifically orders you to file a new Answer.

PART I. Employer Information: Mailing address of bookkeeping or payroll department:

Edna Hartzell, Payroll Clerk
Neosho County Clerk
Po Box 138
Erie, KS 66733

Phone number (316) 244-3817

PART II. Pay Period: Check here if employee's income changes pay period to pay period. Hourly pay \$6.28

What is the employee's normal pay period? (check one)

- Weekly
- Every 2 weeks
- Twice a month
- Monthly
- Other _____

Normal payroll dates each Month: _____

PART III. Normal Amount to Withhold:

(1) Total support per month (total shown in No. 2 of Income Withholding Order) \$264.00

(2) To calculate how much support to withhold from each pay check and send to the court, divide the amount on line (1) by the appropriate number below:

Pay Period	Divide by	Pay Period	Divide by
Weekly	4.33	Twice a Month	2
Every 2 weeks	2.166	Monthly or other	1

Normal support to send in each pay period \$121.88

(3) Employer fee for pay period — You may, but are not required, to charge a fee in any amount up to \$5 per withholding, but not more than \$10 per month. \$ -0-

(4) Total normal withholding for each pay period (line 2) plus line (3) \$121.88

PART IV. Limit on Withholding: Federal law limits the total amount that can be deducted from net earnings. The calculation in the next column tells you the withholding limit for one pay check.

- (5) Gross earnings for pay period \$502.40
- (6) Deductions:
 - (a) Federal income tax -47.00
 - (b) State income tax -13.00
 - (c) Soc. Sec. (or self employment or R. R. Ret.) -36.15
 - (d) Medicare -7.28
 - (e) Other deduction (Bankruptcy or IRS levy) _____
- (7) Disposable earnings (subtract (6)(a) through (e) from (5) above) \$403.97
- (8) Percentage given in Paragraph 3 of the Income Withholding Order (if none marked, use 50%). If you have more than one Income Withholding Order for this employee, use the highest percentage marked on any of them 50 %
- (9) Consumer Credit Protection Act limit (the most that can legally be withheld): Multiply line (8) times line (7) \$201.99

If this is the only Income Withholding Order for this employee, you withhold the amount on line (4) unless line (9) is smaller. If you cannot withhold the amount on line (4) because line (9) is smaller, withhold the amount on line (9). Keep your fee (if any) and send the rest to the Court. (You are not required to try to make up the shortage out of future pay checks.)

If this employee has more than one Income Withholding Order, the total normal withholding amount (including fees) for all the orders cannot go over the amount on line (9).

If the total is less than or equal to the amount on line (9), withhold and send money to the court for each withholding order, just as you normally would. (See the Notice to Employer form about combining payments for different orders from the same county)

If the total is more than the amount on line (9), use the Multiple Income Withholding Orders Worksheet on the reverse side of the Notice to Employer form.

Date Answer prepared 3-8-96

X Edna Hartzell
Signature of person completing this form

11-20

#12

March 27, 1997

My name is Sherry Smith, I oppose SB 140. This is a gross invasion of privacy and the federal government's attempt to make the State of Kansas a party to it. Under the premise of catching "deadbeat dads" the "new hires directory" will include anyone, and with a trade policy that encourages manufacturing plants to move out of this country and the IRS doing its best to run self-employed people out of business, it won't be long until most everyone is on the list. The federal government is surely anxious to track us all. Besides trying to control our access to health-care services, that is what Hilliary Clinton's healthcare plan would have done. Dossiers are being kept on our children under the premise of tracking their academic progress. The 911 system that has been implemented in many counties records who lives in a house, not who owns it. I have been told that is not a secure data base. The federal government's FINCEN data base, (financial crimes enforcement network), purportedly allows law enforcement officers to pull up information on an individual in 5 minutes. As computers get more sophisticated, who is the master & who is the servant? It's looking more like socialism every day, and it is being done incrementally.

One doesn't have to read very far into this bill to be horrified. On page 8, the definition of "State", "...includes any jurisdiction declared a foreign reciprocating country by the United States secretary of state and any foreign jurisdiction that has established procedures for issuance and enforcement of child support orders which are substantially similar to the procedures of this state. ...". "'Tribunal' means any court, administrative agency or quasi-judicial entity authorized to establish, modify or enforce support orders or determine parentage." That doesn't sound like "due process" to me. And the agency overseeing this would be SRS, an entity that should be abolished, not given more power. This bill is also too long, and it is written in doublespeak, one must continually reference the statutes to see what would be changed, more reasons why it should not be considered.

It is time for state legislatures to take the offensive to the usurpation of their power by the federal government. Our federal system of government was set up for the House of Representatives to be accountable to the people, and the Senate to be the representative of the States. The 17th Amendment did not change that. "The Will Of The States" process is a safe, constitutional answer to restoring the balance of power between the state and federal government. You received a copy earlier this week, we have more if you need them.

Please vote no on SB 140.

House Judiciary
Attachment 12
3/27/97

13

TESTIMONY AGAINST SB140

3/27/97

Members of the House Judiciary Committee:

I am Roger Mundy, chairman of the Kansas Tenth Amendment Society dedicated to the proper Constitutional powers of the States and therefore, the State government's sole reason for existence, the protection of the rights of the people. Time constrains me to only touching upon some major points about this monstrous bill.

WHY DOES THE FEDERAL GOVERNMENT "MANDATE" STATES ENACT BILLS LIKE SB140?

I. GENERALLY:

To obtain (in this case purchase) State complicity in the usurpation of the Constitutionally reserved powers of the States due to established State dependence upon federal funding, avoiding State Constitutional opposition.

A. LONG TERM GOAL:

The termination of the greatest threat to its unconstitutional powers - State Constitutional powers and State Constitutional enforcement, through:

1. The gradual erosion of State jurisdiction leading to its termination.
2. Alienation of popular support for State government, necessary for its survival and a restoration of its Constitutional powers.
3. The color of Constitutionality.

II. SPECIFICALLY:

A. STATE COMPLICITY IN SURVEILLANCE OF THE PEOPLE

SB140 is not an effort to stop the 'crime wave' of 'dead-beat dads'. This is just the current 'feel-good' rationale to justify State complicity in the total surveillance of the people, useful in obtaining the destruction of Constitutional State power (see I. above), which is indispensable to obtaining tyranny in the U.S. Federal surveillance is largely an accomplished fact, complete State complicity is not.

OTHER CURRENT PROPOSALS TO OBTAIN THE SAME EFFECT & THEIR RATIONALES

1. Federal Health Care (see "Deptment..." Document) - Uninsured Americans
2. Worker National ID's - Illegal immigrants taking American jobs.
3. School to Work Program - Lifetime employment training for Americans.

B. STATE COMPLICITY IN CONSTITUTIONAL VIOLATIONS

SB140 involves Kansas in a host of Constitutional violations, such as:

1. Constitutional trial - authorizing illegal "tribunals".
2. State Jurisdiction - surrendering State police powers.
3. Division of Powers - surrendering State judicial powers.

C. STATE COMPLICITY IN CONSTITUTIONAL TREASON

SB140 allows foreign jurisdictions to obtain Kansan's property without proper trial. This is "Invasion - ...incursion of an army for...plunder". The army is provided by our own government. This "betrays the state into the hands of a foreign power", by surrendering the State's jurisdiction. It is "adherence to the enemy", by recognizing the allegations of foreign jurisdictions without proper trial. It is "rendering him aid and comfort" by seizing his plunder for him. (All definitions from BLACK'S LAW).

CONCLUSION

It is the legal responsibility of the States (as principles in the Constitutional compact) to compel the federal government (as agent) to comply with its Constitutional limitations. End complicity. Start by dropping SB140. Compel Constitutional compliance of the federal government. **This can be done.** It simply must be done, and no one else can do so except the State legislatures.

The Kansas Tenth Amendment Society has produced a dynamic program of State Actions that will provide for proper Constitutional compliance of both the State and federal governments. Central to this effort is the **WILL OF THE STATE** Process, which is based upon a guaranteed Constitutional power of the States, arguably the greatest power in the Constitution. A thumbnail summary of the **WILL OF THE STATE** is provided for you. The other measures in the above mentioned program inter-lock to provide for a protective wall of legislation around the State during the process of Constitutional restoration. These will also be made available to the Legislature.

I urge you to kill SB140 and work to restore the State's Constitutional powers. Thank you for your kind attention.

House Judiciary
Attachment 13
3/27/97

THE WILL OF THE STATE: RESTORING FEDERALISM - SENATE ACCOUNTABILITY

The WILL OF THE STATE Process is Constitutional, safe, and more powerful than any other proposal to restore "balance" in the federal-state relationship. Its power has existed as long as the Constitution but has been unexercised for 80 years.

Fully one half of the Constitutional duties of the State legislature go unfulfilled every session - the control of its agents in the federal government, arguably their most important political duty. If necessary, the legislative session should be lengthened to accomplish the tremendous task of reasserting Federalism into the American political system.

Standing committees must be formed to accomplish the long work of undoing the many violations of the Constitution committed by agents that have long been held unaccountable. The WILL OF THE STATE Process is the political process necessary for this great task, and must be backed by procedural and criminal sanctions, as noted below.

THE WILL OF THE STATE PROCESS:

THE WILL OF THE STATE SUMMONS TO APPEAR:

At least once each year, the state should summon its Union agents, its Senators, to appear before the legislature assembled, with fanfare, and media to present these ambassadors with their orders:

The WILL OF THE STATE DOCUMENT:

A Clause by clause copy of US Constitution, with inserts of "State Position" statements following each clause selected by the state legislature, noting the state position upon the performance of the federal government in regards to that clause or series of clauses (perhaps "Compliance"/"Not in Compliance"). This is an official legislative position, and need not agree with Court opinion. (The Court has final say over specific cases before its bar, not over the Constitution in general and operates upon the assumption of the constitutionality of legislative acts until litigation raises such issues on a per case basis.)

* The State could cite its position upon infractions and remedies.

* Specific actions that the State has determined that its US Senators will perform could be designated as: "WILL OF THE STATE ORDERS"

(i.e. to introduce bills, move for commissions, etc., and directions on how to vote as an agent of the state).

* Open hearings should be held in the preparation of the WILL OF THE STATE DOCUMENT for public input into its formation.

NOTE: It is essential that the State legislature prohibit itself from attempting to attain largess with abuses of the process (i.e. by continuing abuse of certain infamous clauses like "interstate commerce", "necessary and proper", "general welfare" clause, etc. On the other hand, the State should not overly limit exercising its Constitutional power over its agents. Such abuse in the first case or under-use in the second could destroy the powerful reforming potential of the WILL OF THE STATE Process.

The WILL OF THE STATE AMENDMENTS:

Used to Amend the WILL OF THE STATE DOCUMENT, quoting only those clauses effected by changes in STATE POSITIONS or WILL OF THE STATE ORDERS.

WILL OF THE STATE ENFORCEMENT MECHANISMS:

The WILL OF THE STATE SUMMONS OF ACCOUNTABILITY:

Commanding its agent(s) to appear before the State legislature at any time, whether Congress is in session or not (a proper exercise both of the law of principle & agent, and of the guaranteed state right of consent to denial of its equal suffrage in the Senate), requiring its agents to give an accounting of their compliance with the WILL OF THE STATE DOCUMENT.

* Meant to be used when agent is perceived to not be in compliance, affording agents the opportunity to confront accusations of non-compliance.

The WILL OF THE STATE VOTE OF CONFIDENCE/NO-CONFIDENCE:

Process following appearance of agent before legislature to give accounting.

The WILL OF THE STATE RECALL ELECTION:

Replacement of agent(s).

The WILL OF THE STATE Criminal Sanctions:

Refusal to appear when Summoned - Felony crime, with possible fines and imprisonment of up to six years.

THE WILL OF THE STATE PROCESS: CONSTITUTIONAL AND LEGAL BASIS

I. Article V. of the US Constitution: Amending processes of the Constitution limited by 3 conditions (two expired in 1808).

* Last condition is still in effect:

"...Amendments to this Constitution...shall be valid to all Intents and Purposes...Provided that...**no state, without its consent, shall be deprived of its equal suffrage in the Senate.**"

II. Unamended Original Intent meaning of "state" in Article V.:

* Elected representatives of body-politic of state, the state legislature.

III. Unamended Original Intent meaning of state suffrage in the Senate:

- * Suffrage (the right to vote) executed by ambassadors of State legislature, US Senators, accountable to the State legislature for their votes.
 - US Senator was considered a "somewhat hollow honor", as Senator was under control of state legislature, for first half-century of US history.
 - US Senators are NOT officers of the United States according to the US Senate, itself:
 - Determined in a Judicial ruling: Senate Constitutionally acting in judiciary capacity over impeachments in first & only impeachment attempt of a Senator.
 - Impeachment attempt established US Senator default status:

Senators are ambassadors/agents of state legislatures.
(now chosen by popular election).

IV. Law of Principle & Agent

- * Only the principle (State Legislatures) in a contract (US Constitution) can correct violations of contract by its agents (US Senators).
- * Supreme Court Justice Ginsburg: Federal government is AGENT of states.
- * Constitution divides federal AGENCY into two parts & the 10th Amendment reiterates:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or the people."

- One power reserved to the respective States is the power of State Legislatures over its two agents in the Senate;
- One power reserved to the people is the power over their agents in the House of Representatives.
- * Article V. specifically states "in the Senate" (rather than "Congress" or "House of Representatives") which is a specific guarantee of a right and power of State Legislatures (principles) over US Senators (agents), creating a duty of State Legislatures to control the State's US Senators.

V. The 17th Amendment changed ONLY the mode of election of US Senators (ambassadors of state legislatures to the federal union of the States).

"The Senate of the United States shall be composed of two Senators from each State, **elected by the people thereof**, for six years; and each Senator shall have one vote. ..."

(which Amended Art.I, Sec.3 of the US Constitution):

"...chosen by the Legislature thereof..."

No other aspect of the relationship between a State Legislature and that State's US Senators can be construed to have been changed by the 17th Amendment, including the power of State Legislatures over US Senators.

The two major arguments against this position are fundamentally flawed. (These are addressed on the following page.)

FLAWED ARGUMENT A:

- A. The "ratification" of the 17th Amendment was an Article V. "consent" by the State Legislatures to a denial of their own "equal suffrage in the Senate" and therefore the State Legislatures have surrendered their power over US Senators.
1. Denying any State its equal suffrage in the Senate by Amendment (whether unanimous or otherwise) violates the provision on the face of it.
 2. Ending all State suffrage in the Senate by Amendment violates the assumptions and implications of the provision.
 - a. ASSUMPTIONS
 - * Specifically, State suffrage in the Senate exists.
 - * Specifically, the Senate exists and ending State suffrage in the Senate ends the Senate.
 - * Generally, Amending the United States Constitution assumes that the Union of the States exists and ending State suffrage in the Senate ends the Union (hence the necessity of this one limitation to the amending power).
 - b. IMPLICATIONS
 - * Consent implies the ability to choose at any time, even in the future and ending State suffrage denies ability to exercise consent.
 - * Equal suffrage in the Senate cannot mean no suffrage in the Senate, just as "equal justice before the law" cannot mean "no justice before the law."
 3. Even when it is assumed that "ratification" is a form of "consent" intended by Article V:

If the right of equal suffrage in the Senate was intended to be ended by the 17th Amendment then the 17th Amendment itself is null and void because:

 - a. When the 17th Amendment was proposed it called for ratification by three-fourths of the state legislatures not by all of the States and therefore would have denied some States equal suffrage in the Senate without their consent, in violation of Article V.
 - b. The 17th Amendment was not ratified by all of the States and therefore would have denied some States equal suffrage in the Senate without their consent, in violation of Article V.

NOTE: If the right to equal suffrage in the Senate was intended to be ended by 17th Amendment, then all Acts of Congress since its ratification (1913) are also null and void, because since that time Congress has been illegally constituted (with two Houses of Representatives).

FLAWED ARGUMENT B:

- B. The 17th Amendment was not an exercise of Article V. "consent" and the right guaranteed to the States in Article V still exists, but the State Legislatures surrendered their power over the US Senate to the people.
1. By what mechanism can the people (as the body-politic of the State) exercise their Article V. right of "consent"? It is a legal maxim that they would have to do so under "due process of law". Under the US Constitution, in order to exercise any governmental power "due process" requires that the people must do so through a Republican form of government - establishing a Constitution for their State, electing people to be Representatives of their wishes regarding the exercise of this "consent", and then have this organization exercise this choice. The people have already done this and the organization that they can exercise "consent" through is called the State Legislature. In a word, the State Legislature is the only "due process" mechanism that the people have to exercise this "consent".
- VI. The power of the state legislature over its two US Senators is unchanged, but simply has not been exercised for over 80 years.
- * Ample time has been given to a "politico" role for Senators, with dismal results.
 - * The principle must reinstitute accountability of its agents to itself.
 - * The Supreme Court has stated that the states must use the "political process" to redress its grievances with the federal government, not rely on the Court. The WILL OF THE STATE Process is such a political process.
- VII. The state legislature as principle over its agents can:
- (1) Instruct its agents on what to introduce and how to vote;
 - (2) Compel its agents to give an accounting of their compliance;
 - (3) Remove and temporarily replace its agents, pending official replacement by popular election.

by Melanie K. Fields

DEPARTMENT OF JUSTICE

Department of Justice (DOJ) validates in writing what Americans have been saying for years

"Whether a journalist, politician or a businessman is in fact on a payroll of the KGB or not, whether he helps to spread communism willingly, by ignorance or for profit, whether he is caught and punished or at large and happy - is absolutely immaterial for the cause of SUBVERSION. What matters is the final vector of History, the sum of our individual actions, decisions, statements, our compromise with our consciousness. This is where every one of us is accountable to the future and God."

- Alex Kosachov, Russian emigre poet.

Yes, indeed the 10th Amendment is alive and well, and something the Federal Government fears, which it is taking great pains to circumnavigate. Certainly it is under attack: indirect attack through federal strategy to sidestep it, which, in reality, points to the power of the 10th. If the 10th was not a formidable obstacle, then elaborate efforts to avoid its restrictions would be unnecessary.

We are most grateful to the Department of Justice (DOJ) for validating in writing what Americans have been saying for years and on Department of Justice letterhead too! The subject of our glee is a memorandum reproduced at the National Archives, dated March 5, 1993.

During the days of the that illegal Clinton Health Care Task Force, this memo was written from the Justice Department as what you might call a legal opinion. This particular DOJ memo deals with constitutional questions asked by the Task Force, including "the ability of the federal government to place conditions on federal funds and aid, and the authority of the Federal Government to regulate economic activity."

Though it specifically pertains to health care legislation it reveals the fed's strategy to empower themselves to control as much as possible without getting into constitutional trouble. It's safe to say the fed has broadly applied the strategy set forth in the memo. It doesn't just apply to Clinton's Health Care Plan, and the fed didn't just dream up this strategy in this administration. Their goal is and has been to avoid

Their goal is and has been to avoid constitutional challenge while acquiring as much undelegated power as possible. The bulk of this article consists mainly of direct quotes from the DOJ memo.

constitutional challenge while acquiring as much undelegated power as possible. The bulk of this article consists mainly of direct quotes from the DOJ memo.

Remember, that this memo was written in answer to questions asked by the Task Force. The quotes speak for themselves.

Federal Strategy #1:

Be sure that potentially trouble-

some elements of legislation are strategically placed within the body of legislation, so as to avoid constitutional challenge.

"In ruling in constitutional challenges to various federal legislative schemes, the federal courts often analyze the entire scheme and take into account in differing ways its various aspects rather than focusing exclusively on the narrow part of the scheme actually under legal attack."

"Consequently" says DOJ, "it is difficult to try to advise you whether a particular mechanism would survive constitutional challenge unless we know the precise place of that mechanism within the overall legislative scheme. This factor makes it harder for you in trying to craft a legislative scheme while avoiding possible constitutional problems."

Federal Strategy #2:

Avoid all appearance of ordering states. Don't directly attack the 10th amendment, find ways to impose on the states through the back door.

"Federal health care legislation would definitely encounter constitutional difficulty under the Tenth Amendment if it directly orders the states to take certain action...the Tenth Amendment does not permit the Federal Government to 'command...state governments to implement legislation enacted by Congress.'"

The suggested solution was to abstain from requiring that states "exercise regulatory authority over private employers and employees," but would be successful if it regulated "the activities of the states with regard to their relations with their employees. Thus, general federal health regulation could be applied to the states as employers."

"There are two ways to avoid the Tenth Amendment limitation on compelling states to implement federal legislation. First, requirements that would otherwise violate the Tenth Amendment may be imposed as conditions of federal funding. The Supreme Court has squarely held that the Federal Government may utilize the device of attaching conditions to federal funding as a means of imposing requirements that are otherwise beyond the Federal Government's constitutional authority."

"The other technique to avoid Tenth Amendment limitations is to 'offer States the choice of regulating [private] activity according to federal standards or having state law preempted by federal regulation.' (New York v. U.S., 112 S. Ct 2408, 2424 1992) This is the technique widely used in the environmental area..." "Thus, the Federal Government can utilize the states in various cooperative federalism schemes, but likely cannot simply order the states to use their sovereign power in specified ways."

Putting it another way might sound like this; "State governments are independent, although subordinated sovereignties... The states may be encouraged, bribed or threatened into entering joint federal state programs of various sorts, from unemployment insurance to Medicaid: but they may not be commanded directly..."

Would you agree that the above is a fair representation of what the Department of Justice just said? Sallyanne Payton, law professor from the University of Michigan certainly thinks so. She wrote the above quote while serving on the Clinton Health Care Task Force. The memorandum is marked "Do Not Quote or Release for Any Purpose." Why not Sally? Sallyanne even says to "See the DOJ memorandum for a fuller elaboration." Could it be that Sallyanne Payton embodies dominant thinking on Capitol Hill?

The federal government knows fully the limitations of the 10th Amendment. If the Fed had even a small amount of integrity (a character trait they have decided through the Department of Labor that needs to be developed in children and subsequently rated via electronic portfolio for transfer to future employers) they would legislate according to the limitations of the 10th. Navigating around the 10th would not occur because loyalty to the constitution and faithfulness to their oath of



One of President Clinton's goals was to enact a complete federal take-over of the healthcare system.

office would prohibit any such action.

Likewise, if states possessed even a minute loyalty to the constitution (instead of being ruled by greed and cowardice) then allowing themselves to be coerced by the fed would not occur.

Strategy #3:

Entrap Americans into participating in "Federal Schemes," by calling coercion voluntary. Again, referring directly to medical practice, but having broader application:

"There are two ways of protecting a system against constitutional vulnerability...Doctors could be offered strong incentives to come 'voluntarily' within the system, but not be faced with an absolute requirement — thus preserving some opportunity for doctors to practice, and patients to obtain care outside the system while guaranteeing that the vast bulk of medical transactions occur within the system."

"Problems...could be lessened if the system were one in which participation...can be described as voluntary."

Strategy #4:

Control the universe of choices by offering as many controlled choices as

possible, but be sure there is a limited escape hatch that will ensure survival if constitutional challenge occurs.

"Where all or virtually all medical services were required to be provided within the government regulated system, a very limited 'escape hatch' would not necessarily carry the day. But if there is some reality to the escape opportunity, we believe it would contribute substantially to a legal defense of the system...medical treatment outside the restrictions...would be allowed if it met some criteria...It must be recognized that any such escape hatch might become very difficult to control."

"Requiring all doctors [schools?] to operate within a federal...system may or may not raise constitutional problems, depending on what the 'system' is... The courts have uniformly sustained federal price controls against constitutional challenge, even though they force providers of goods and services to conform to the federal limitations or go out of business. These precedents should sustain a federal health care scheme that forces doctors to operate within a federal system..."

"A...difficult issue is raised if an individual willing to forego reimburse-

ment of the fee is unable to choose his
er own physician. In this context, we
sume that the physician meets all
applicable legal requirements — so that
the only issue is the individual's personal
preference for a particular doctor."

Strategy #5:

Limit personal choices; regulate
the standards by which a professional
may practice.

"Doctors would have to be given an
opportunity to get on the list [HMOs]
upon meeting a reasonable set of
requirements (which could include
charging reasonable fees); and would
also have to be provided some kind
of due process to challenge determina-
tions that they do not qualify for
inclusion on the list."

"These difficulties are reduced in
a system that utilizes private entities...
The supreme Court has allowed private
entities to become very heavily involved
in federal regulatory schemes without
becoming governmental actors subject
to due process restrictions."

The supporting court ruling reads:
"Private school is not a state actor
subject to due process restrictions
in making personnel decisions, even
though nearly all the students were
state-funded, and school was subject
to extensive state regulation in connec-
tion with such funding."

"Federal legislation that restricts
individuals' ability to select their own
physicians [school etc?] will invite
attack on the ground that it interferes
with a constitutional right of privacy...
Clearly, the Federal Government (or a
health care cooperative operating under
federal legislation) can limit the ser-
vices for which it will reimburse the
patient. But a more difficult issue is
raised if an individual willing to forego
reimbursement of the fee is unable
to choose his or her own physician
[school]. In this context, we assume that
the physician [teacher] meets all applic-
able legal requirements — including
whatever fee limits might be set by
the legislation — so that the only
issue is the individual's personal prefer-
ence for a particular doctor."

Strategy #6:

Gain control by imposing spending
limits, but don't call it that.

"You also asked about the authority
of the Federal Government to impose
spending limits on health care coopera-
tives established in the states or regions.
If the question is whether the Federal

Government can stop a state from
spending its own revenues, the answer
appears to be 'no.' However, the Govern-
ment can achieve the same objective by
creative use of restrictions on receiving
federal grants or benefits; i.e., federal
funds could be reduced or eliminated if
states spend beyond a specific amount.
If the question is the power of the
Federal Government to limit spending
by a private health care cooperative,
the answer is likely that it can so regu-
late, although, as noted above, there
may be limits on the Government's
ability to stop individuals from obtaining
and paying for health care that is
medically necessary."

Strategy #7:

Pervert the "Appointment Clause"
in Article II of the constitution, and help
the President become a dictator.

"You have also raised the issue
concerning the type of command there
should be over a federal entity estab-
lished to govern a federal health care
system. [National Education Goals
Panel?] Although this would appear to
be largely a policy call, note that the
Department of Justice has over the
years been an active advocate of pre-
serving the maximum amount of control

for the President. Numerous proble-
for the Presidency arise when admini-
trative agencies are headed by officers
given independence from the Chief
Executive. Serious thought should be
given before any agency is created
whose officers are not freely appointed
by the President (with Senate approval,
of course) and freely removable by him
as well."

Need we say more?

*Melanie K. Fields is a researcher/freelance
writer. If you would like a copy of
the DOJ document send \$3.00 to:*

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Although this is in
reference to Hillary
Clinton's Healthcare
Task Force, it is
applicable in all
Federal mandate
situations.

14
OPPOSITION TO SB 140

This bill is an abortion of our countries' constitution. It is a violation of the 5th, and 14th ammendments of due process, and privacy of the 4th ammendment. I am appalled that anyone would author such a trashing of our GOD given constitution. THE senate has done a great dis-service to our citizens and tax payers by authoring and passing this new Schiendlers List. THIS is ORWELLIAN in scope and needs defeated by a smart house.

JOSEPH LEDBETTER / VETERAN , AND FATHER
TOPEKA , KANSAS

House Judiciary
Attachment 14
3/27/97