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Miami, Florida; April 24th, Los An-
egles, California); and we are
working with the ABA Meetings
Department and the Legal Tech-
nology Advisory Council (LTAC)
on the expanded exhibits at the San
Francisco Annual Meeting includ-
ing a “consultants corner” where
attendees can sign up for free con-
sultations with the “experts.”

Respectfully submitted,

RONALD E. HAYDANEK
Chairman
Section of
Economics of Law Practice

February, 1987

REPORT OF THE
SECTION OF FAMILY LAW

RECOMMENDATION*

BE IT RESOLVED, That the American Bar Association supports
efforts to ensure adequate and fair child support awards and to
improve the enforcement of child support orders.

The Association recommends the following:
(a) Development of effective and efficient procedures for en-
forcement of child and spousal support orders, including the use of
income withholding from a wide range of sources of income and
other procedures required by the Child Support Enforcement Amend-
ments of 1984 and including having support payments become judg-
ments as they fall due, not subject to retroactive modification.
(b) Development of innovative techniques for collection from
self-employed delinquent obligors.
(c) Broad availability of child support remedies, including in-
terstate support enforcement remedies, to clients of private attorneys
and pro se litigants, as well as to individuals seeking services
through public child support agencies.
(d) Broad participation by a variety of legal groups in the for-
rmulation of child support policies, statutes, procedures and guide-
lines, including private attorneys, public agency and legal services
attorneys, judges, and state and local bar groups.
(e) Formulation of child support guidelines, required by the Child
Support Enforcement Amendments of 1984, which provide for ade-
quate levels of support and similar treatment of similarly situated
parties. Child support guidelines should be used as a rebuttable
presumption for the establishment of child support award levels.
Judges and hearing officers should have discretion to deviate from
the guidelines when their application would be unjust, provided
that either written findings or specific findings on the record are
made justifying the deviation. Guidelines should be used by judges
and hearing officers to review the adequacy of support levels ne-
gotiated by parents.

Child support guidelines should be formulated by a representative
group including members of the legislative, judicial and executive
branches, a range of attorneys, child support enforcement adminis-
trators, and advocates for the interests of custodial and non-custodial

*The recommendation was approved. See page 24.
parents. Guidelines should be reevaluated and updated periodically.

Formulation of guidelines should address: definition of income; handling of expenses for child care, education, medical and dental care (ordinary and extraordinary) and health insurance; special needs for children (such as handicapping conditions); age of children; treatment of second families; voluntary reduction of income, joint and split custody cases; and other recurrent problems in the establishment of support awards. States should also provide for regular updating of child support awards, by periodic reapplication of guidelines or by other means.

(f) Development of speedy procedures for establishing and enforcing support awards. When administrative and quasi-judicial officers are used for these functions it is essential that adequate protection be afforded the due process rights of all affected persons and parties, including the custodial parent, the non-custodial parent and the state. Particular concern should be addressed to providing all affected persons notice and an opportunity to be heard. Hearing officers should be well-trained and adequately paid.

(g) Improvement of child support enforcement services available from public child support enforcement agencies through adequate funding, training opportunities for staff, improved management, shortened waits for services, rapid disbursements of funds collected, improved information for recipients of services, and attention to ethical concerns for lawyers providing these services.

(h) Improvement of interstate support enforcement through: 1) adoption by states of an effective procedure for interstate income withholding, an example of which is the Model Interstate Income Withholding Act; 2) adoption by states of the 1968 Revised Uniform Reciprocal Enforcement of Support Act; 3) development of new and innovative approaches to handling interstate child support cases; 4) prompt and efficient handling of all interstate support cases; 5) clear definitions of, and reorganizations of, authority and responsibility for handling interstate cases so that there are not overlapping and conflicting responsibilities among public child support agencies (IV-D agencies), prosecutors offices and the court system; and 6) improvement in state cooperation in enforcing orders in interstate cases.

(i) Consideration of special problems involved in the establishment and enforcement of support obligations involving adolescent parents.

REPORT

Introduction

The Association has for many years, through its Family Law Section, maintained an active interest in the enforcement of child support obligations and the functioning of the publicly funded child support enforcement programs mandated by
uated and updated periodically. Address: definition of income; education, medical and dental and health insurance; special expiring conditions; age of child; voluntary reduction of income; or recurrent problems in the case; should also provide for regulations by periodic reappraisal of procedures for establishing and en- casements or quasi-judicial offi- cers. It is essential that adequate rights of all affected persons 1. The non-custodial parent should be addressed to providing an opportunity to be heard. Hearing is adequately paid.

ert enforcement services available to agencies through allocations for staff, improved services, rapid disbursements of arrears for recipients of services, or lawyers providing these services.

Support enforcement through: 1) a procedure for interstate income; 2) the Model Interstate Income Act 3) of the 1968 Revised Uniform Act; 4) development of new interstate child support cases; 5) all interstate support cases; 6) provisions of authority and responsibilities so that there are not overlaps among public child support offices and the court system; 7) in enforcing orders in problems involved in the establishment of obligations involving adolescent

in the enforcement of child support obligations and the functioning of the publicly funded child support enforcement programs mandated by

Title IV-D of the Social Security Act. Since 1983 the Association has sponsored a Child Support Project through its Young Lawyers Division, National Legal Resource Center for Child Advocacy and Protection.

Noncompliance with support orders and inadequate support awards are numerous social problems which significantly contribute to the poverty of children in households headed by single parents. In 1983 over $3.0 billion due under existing support orders was not paid by support obligors. Estimates are that raising support awards to adequate levels based on existing guidelines would result in an increase in support awards by $15 billion annually.

In August 1984 Congress passed the Child Support Enforcement Amendments of 1983 which mandated states to adopt certain child support enforcement remedies and to promulgate guidelines for the establishment of support award levels. States were also mandated to establish state child support commissions to explore the problems of child support more generally in each state. Most have now made their reports.

States are now in the process of implementing the new federal requirements and the proposals recommended by their state child support commissions and other sources. Many states are amending or adopting new child support

3Public Law 98-278, codified at scattered sections of 42 U.S.C. §651 et seq.
a broad definition of types of income subject to withholding. For example, Illinois defines income subject to withholding as "earnings or other entitlements to money without regard to source." 3

Historically, another problem area has been that some states do not treat child support arrears as judgments when they accumulate and allow arrears to be reduced retroactively, with the result that custodial parents are uncertain of their entitlement to support, further hearings are required before enforcement action may be commenced and support orders from those states are not entitled to full faith and credit by other states. 4

The ABA recommends that states enact legislation establishing that child and spousal support arrears become judgments as they fall due and are not retroactively modifiable. Such a requirement has recently been enacted into federal law by the Omnibus Reconciliation Act of 1986. 5 States should be able to provide that support arrears are not retroactively modifiable while still permitting the support obligation to end by operation of law on the happening of certain events such as the death or emancipation of the child or a voluntary agreement permanently to transfer custody to the other parent.

Development of Techniques for Collection from Self-Employed Delinquent Obligors

One recurrent problem is collection of support from self-employed obligors who are able to conceal assets or whose assets are difficult to reach in collection attempts. The Association recommends that state legislatures and state and local child support agencies develop new techniques for collection from these obligors. These may include management and administrative efforts such as development of special units or teams which focus on self-employed persons and develop expertise in locating their assets and in the legal techniques which may be used to collect against a variety of non-wage assets. These techniques may also include new legal remedies such as creating an automatic lien for all unpaid child support payments against all real property owned by the obligor in that state or county following registration of a child support order. 6

Availability of New Child Support Remedies to Clients of Private Attorneys and Pro Se Litigants

While the Child Support Enforcement Amendments of 1984 mandate a number of new child support remedies, they are, in general, only required to be made available through the state's IV-D agencies. Thus such remedies as interstate income withholding or state income tax refund intercepts will not be available to clients of private attorneys or to pro se litigants unless the states choose to extend the availability of these remedies. Because these are effective remedies, the Association recommends that they be made available to all support obligees whether represented by private attorneys or by pro se litigants. 7

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4A summary of state law on the subject may be found in D. Dodson and S. Green De La Garza, Retroactive Modification of Child Support Arrears (1986).
obligers who are able to conceal assets or whose assets are difficult to reach in collection attempts. The Association recommends that state legislatures and state and local child support agencies develop new techniques for collection from these obligors. These may include management and administrative efforts such as development of special units or teams which focus on self-employed persons and develop expertise in locating their assets and in the legal techniques which may be used to collect against a variety of non-wage assets. These techniques may also include new legal remedies such as creating an automatic lien for all unpaid child support payments against all real property owned by the obligor in that state or county following registration of a child support order.\(^6\)

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While the Child Support Enforcement Amendments of 1984 mandate a number of new child support remedies, they are, in general, only required to be made available through the state’s IV-D agencies. Thus such remedies as interstate income withholding or state income tax refund intercepts will not be available to clients of private attorneys or pro se litigants unless the states choose to extend the availability of these remedies. Because these are effective remedies, the Association recommends that they be made available to all support obligees whether represented by a public agency or a private attorney or appearing pro se. In addition to the desirability of making these remedies broadly available, it is also desirable to allow those who are able to do so to pay private counsel or to represent themselves without burdening the public system. This should in no way detract from the quality of service provided by the public agencies.

Participation of Legal Groups in Formulation of Child Support Policies, Laws, and Guidelines

The Section of Family Law recommends that policymakers consult with a variety of legal groups, as well as others, in formulating child support policies, statutes, procedures and guidelines. Laws which are passed affect not only persons served by public child support agencies but also those represented by private counsel, not only the well-to-do, but, also, the poor. They should be fair to all these groups and attempt to meet the needs of all of them. Therefore, the Association recommends that policymakers consult in advance, with private, public agency and legal services attorneys; with judges; and with organized representatives of each, such as state bar family law committees and prosecutors’ and judges’ associations. This will assist in identifying practical and procedural problems as well as in identifying the substantive concerns of various kinds of clients.

Formulation of Child Support Guidelines

The Section of Family Law supports the adoption by states of child support guidelines which suggest dollar amounts of child support to be paid based on such factors as parents’ incomes, number and ages of children. Studies have shown both a pattern of highly disparate support awards in similar situations and a pattern of very low support awards throughout the country, which are, on average, less than half the average expenditures for a child, not counting child care costs.\(^9\) As a result of extremely low awards, an undue burden of support falls on the custodial parent, whose income is usually lower, or on the public if the custodial parent cannot meet the child’s minimal needs. Establishment of such guidelines by October 1, 1987, is required by the Child Support Enforcement Amendments of 1984.\(^10\)

As a basic principle, child support guidelines should provide for similar treatment for similarly situated parties and should insure adequate support for children, insofar as this is possible within the means of the family. This will generally mean appropriate support, considering the standard(s) of living of the parents, not merely support which is minimally adequate to meet the child’s subsistence needs. Of course, in some families, parental income is insufficient for meeting the parents’ basic needs and supporting the child and public assistance will continue to be required. In other families, guidelines may be insufficient to provide the


\(^9\)42 U.S.C. §667
standard of living warranted by family income and thus should not be considered a maximum.

The Section of Family Law recommends that child support guidelines be used as a rebuttable presumptions for establishing the level of support to be awarded. While most awards should be expected to fall within the guidelines, judges and hearing officers should have discretion to deviate from the guidelines when their application would be unjust. However, specific findings should be required when a deviation is made. These should be either written findings or oral findings made on the record.

Guidelines should also be used by judges in reviewing the adequacy of award levels negotiated by parents. However, this review of negotiated settlements should allow parties latitude in making arrangements which result in beneficial tax consequences for all concerned, and thus there should be no requirement that agreements or findings include a specific statement of a dollar for dollar trade-off of one form of payment for another, such as child support for alimony.

A variety of perspectives and kinds of expertise will lead to the formulation of fairer and more generally applicable guidelines and for that reason guidelines should be formulated by a representative group, as specified in the recommendation. Any guidelines which are formulated are based on a specific body of statistical data and a number of assumptions about how that data should be treated and analyzed. All guidelines should be periodically reviewed and updated, based on more recent statistical information and based on a careful examination of how the guidelines work in practice and whether the underlying assumptions continue to seem fair and appropriate.

When guidelines are formulated, there are a number of specific issues which should be addressed. One of the most important of these is the definition of income to which the guideline will then be applied. Drafters should determine whether the guideline will be based on gross or net income; if net income is chosen, a careful definition of net income should be drafted clearly specifying what items are to be deducted. It should also be noted that parties often attempt to conceal or minimize income in this context and care should be taken to address the proper definition of gross income as well as to require documentary verification of income (e.g., tax returns, pay stubs). Guidelines should address how to define income from self-employment; a closely-held corporation—e.g., should business income include some items that would be deductible for tax purposes but which do not represent a cash expenditure. The guidelines should specify how to treat benefits in lieu of income—company provided cars, housing, insurance, entertainment, deferred compensation plans and the like. The definition should specify how to treat income from seasonal employment and from the range of public benefits, including social security, unemployment, worker compensation, SSI and AFDC benefits. It should also address how to treat income from a new spouse, if it is to be considered at all.

In addition to an adequate definition of income, guidelines should address a number of other recurrent child support issues. Some expenses for children are large and are not uniform among families and...
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In addition to an adequate definition of income, guidelines should address a number of other recurrent child support issues. Some expenses for children are large and are not uniform among families and guidelines should address how these costs will be apportioned between parents. These items include child care, private or post-secondary education, medical and dental care (ordinary and extraordinary), health insurance and special expenses caused by a child’s special needs such as a handicapping condition.

Guidelines should also offer direction to decision-makers on how to handle varying ages of children and additional expenses for second families. Treatment of voluntary reductions in income should be addressed; treatment may vary according to the reason for the reduction (e.g., desire for less stress, caretaking of a child of a subsequent marriage). With the increasing numbers of cases in which there is an award of either joint legal or joint physical custody of children, guidelines should specify what effect such awards have on child support levels. Care should be taken to insure that a lower income parent who has physical custody for a substantial period of time receives adequate support to provide for the child(ren).

With the passage of time, the adequacy of support awards is quickly eroded by inflation and the increasing needs of children with increasing age. Therefore it is important that states provide for regular updating of child support awards. This may be done through a regular procedure for providing cost of living increases, as is available in Minnesota,\textsuperscript{11} or by periodic recalculation of guidelines or by other means. However it is done, periodic updating of award should be routine and simple.

\textsuperscript{11}Minn. Stat. §518.641

\textbf{Speedy procedures for establishing and enforcing support awards}

Delays in obtaining child support awards and in support enforcement proceedings have a serious effect on family income and on public assistance burdens. Speedy, effective and fair procedures are necessary in a well run child support system. The Child Support Enforcement Amendments of 1984 require that states establish expedited processes for child support cases. Whether a state meets this requirement through the use of judicial, quasi-judicial or administrative decision-makers, it is important that adequate due process protections be provided to all interested persons and parties. In addition, it is important that hearing officers be well-trained and adequately paid.

At a very minimum, adequate due process protection means that notice of and an opportunity to be heard at any proceeding for the establishment or enforcement of a support award should be provided to the custodial parent, the non-custodial parent, and the state (when support rights have been assigned to the state). Because of historical failures in this area, particular care should be taken to notify the custodial parent of all proceedings affecting her or his rights.

As a general matter, affected persons should have the following rights in expedited proceedings:

\begin{itemize}
  \item [a.] The right to receive notice of all proceedings and the opportunity to appear.
  \item [b.] The right to subpoena documents, physical evidence and witnesses.
  \item [c.] The right to have the other party submit a financial affidavit detailing income and assets.
\end{itemize}
d. The right to be represented by counsel. (No recommendation is made with respect to appointment of counsel for indigents.)

e. The right to an impartial hearing officer, preferably one who is an attorney.

f. The right to have all witnesses sworn under oath.

g. The right to cross-examine witnesses and present evidence.

h. The right to have the burden of proof as specified in the statutory and case law of the state apply.

i. The right to a record of the proceedings, if appeal is possible.

j. The right to a copy of the decision and order.

Improvement of Child Support Services to the Public

The Section of Family Law encourages state policymakers and officials to direct attention to the improvement of child support enforcement services available through public child support agencies and to take note of recent innovations in the field. At the most basic level, adequate funding should be provided to these agencies and adequate training provided to their staffs. Agencies should analyze their case flow and intake and make sure custodial parents are not subjected to lengthy waits or repeated visits to the agency in order to have their cases opened and ensure that once a case is opened it is handled promptly. Whether or not a support order has been established, failure to collect promptly may mean, as a practical matter, failure to collect at all. Agencies need adequate tracking and monitoring systems, computerized, if possible, to insure that when payments are made, they are promptly disbursed to the custodial parent. Agencies should make note of innovative techniques for accomplishing this task, such as the use of banks or other financial institutions. Public education about support rights and the availability of free or low cost child support enforcement services should be improved. Finally, careful attention should be paid to insure that ethical requirements for attorneys working in public child support enforcement agencies are strictly adhered to. Particular attention should be directed to avoiding improper conflicts of interest in legal representation between the agency and the service recipient.

Improvement of Interstate Support Enforcement

The problems of establishing and enforcing a child support obligation are often especially difficult when the parents reside in different states. Obstacles include an inability to locate the obligor, a lack of priority afforded interstate cases, problems and delays in the handling of interstate collections, and a lack of communication and cooperation between “initiating” and “responding” states.

The Section of Family Law encourages states to improve interstate support enforcement. Adoption by states of an effective procedure for interstate income withholding will greatly enhance interstate support collections by providing for enforcement of an existing order without the necessity of bringing a new support action. One effective interstate income withholding procedure is the Model Interstate Income Withholding...
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One effective interstate income withholding procedure is the Model Interstate Income Withholding Act. Pursuant to its provisions, an order of State 1 is entered in State 2 for purposes of enforcement by income withholding only; filing of the order does not confer jurisdiction upon State 2 to modify the order in any way.

The Section of Family Law also supports the adoption by states of the 1968 Revised Uniform Reciprocal Enforcement of Support Act (URESRA). Originally approved in 1950, URESA has undergone several amendments. The 1968 Act is the most recent version and authorizes responding states to collect arrears, establish paternity, and register foreign support orders for enforcement.

States need to develop innovative approaches to handling interstate child support cases, as well as to effectively use existing laws and procedures to enforce interstate cases. The Association also recommends improved cooperation between states in the handling of interstate cases. States should handle interstate cases with the same priority as local cases. Sufficient staff and appropriate training on interstate cases need to be provided. Responsibilities among IV-D agencies, prosecutor's offices and the court system need to be clearly defined. Paternity establishment should be vigorously pursued. Responding states are encouraged to provide initiating states with assistance in locating a missing obligor rather than to return documents when an obligor cannot be found at the address originally provided. Responding states should also monitor interstate cases on a timely basis, and take appropriate enforcement action. All states involved with an interstate case should be encouraged to promptly communicate any change in case status.

Special Problems with Adolescent Parents

Special problems arise when the parents of a child are themselves minors. Careful attention needs to be paid by agencies to these cases. On the one hand, the opportunity to establish paternity of the child should not be lost simply because the father is presently unable to support the child. On the other hand, care must be taken to insure that the rights of the minor father are adequately protected during the paternity determination process. For example, states may elect to provide for appointed counsel for these young men or to require the assistance of a guardian ad litem.

Respectfully submitted,

Beverly Anne Groner, Chair

February, 1987