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Child Support: An Annotated Legal Bibliography

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**CHILD SUPPORT: AN ANNOTATED
LEGAL BIBLIOGRAPHY
1988 SUPPLEMENT**

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Child Support Project
National Legal Resource Center
for Child Advocacy and Protection
American Bar Association

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INTRODUCTION

The American Bar Association's Child Support Project is pleased to present this update to Child Support: An Annotated Bibliography, which was published in February 1984. The Child Support Project is a part of the National Legal Resource Center for Child Advocacy and Protection, which is under the auspices of the ABA's Young Lawyers Division. This update was funded through a contract with the Office of Child Support Enforcement of the U.S. Department of Health and Human Services. Its purpose is to annotate law-related books and articles dealing with child support issues that have been published since November 1983.

Since the publication of the original annotated bibliography, the child support field has undergone far-reaching changes. The legislative impetus behind the current era of child support reform was Congress' passage of the Child Support Enforcement Amendments of 1984 (CSEA of 1984), P.L. 98-378, 42 U.S.C. §§ 651-667 (West Supp. 1987).

Additionally, the U.S. Department of Health and Human Services' Office of Child Support Enforcement (OCSE) promulgated significant regulations instituting the CSEA of 1984. 45 C.F.R. §§ 301-307 (1987). The CSEA of 1984 have brought universal recognition within the child support community to such concepts as income withholding, state income tax refund offset, support guidelines and expedited process.

Most states had to enact substantial legislation to comply with the CSEA of 1984. While the CSEA altered the traditional ways of establishing and enforcing support orders, many commentators have developed innovative approaches beyond the CSEA of 1984. For instance, automatic income withholding regardless of arrearage has been adopted by several states. Section I of this supplement looks at the articles and books that analyze current laws and offer insights into possible improvements in the system. Several articles examine closely the IV-A/IV-D (welfare/child support) nexus and the consequences of support reform on the AFDC recipient. They include a discussion of the tension that may exist between mandatory assignment of support rights by AFDC recipients to the state and the best interests of the children of the recipients. Surprisingly, we found nothing written about the interfacing of IV-E (foster care) with IV-D (child support).

Since about half of all households headed by single parents do not have child support orders upon which to rely, establishment of the legal obligation still is of paramount concern. Without establishment, discussions about enforcement and modification are superfluous. Section II reviews the recent literature written about the establishment of the

support duty of absent parents, particularly focusing on the obligation of a stepparent and of a deceased absent parent's estate to provide child support. The use of long-arm statutes, which generally allow quicker and easier establishment of a support obligation than through the use of interstate channels, is also reviewed.

As of October 1, 1987, the CSEA of 1984 directed all states to implement support guidelines. In terms of dollar figures, the universal use of guidelines may be the most significant factor in alleviating the improvitization of the custodial parent. Figures often cited find that while more stringent enforcement may lead to a \$3 billion increase in support collections, fully-followed guidelines based on realistic assessments of the economic effects of family separation may yield an increase of at least \$10 billion. Clearly, the importance of the formulas and the different philosophies behind guideline crafting cannot be underestimated. Some states emphasize the obligor's income; others take into account as a variable the obligee's income as well. Still other states add child-rearing costs as a variable in the support equation. Several articles in Section II review guideline models and various state adaptations of them.

Section III reviews writings on paternity establishment. In paternity cases, the biggest change over the past several years probably is not related to federal legislation; rather, it is the expanding role of blood and tissue testing in paternity determination. Human leukocyte antigen (HLA) tests have become an invaluable tool in the paternity trial as well as a catalyst to pre-trial settlement. HLA tests can exclude up to 95% of wrongfully accused fathers. In most states, HLA tests may be used as inclusionary evidence of the likelihood of paternity if the results indicate paternity probability to be above a certain percentage. Blood and tissue tests have become the great screener in paternity cases. Today in many instances, only when the tests are inconclusive will the possibility surface of an expensive, prolonged paternity trial.

Protecting both the rights of putative fathers and the interests of children in search of their fathers has raised some constitutional issues discussed in several articles in Section III. Specifically, the degree of due process constitutionally required to be accorded to the putative father and his possible right to appointed counsel if he is indigent pose unresolved questions that are reviewed in this section. The passage of the CSEA of 1984, which require states to have paternity statutes of limitations of at least 18 years' duration, made obsolete many of the discussions over the constitutionally-acceptable demarcation of the length of a

paternity statute of limitations. Nevertheless, this supplement contains a few pre-CSEA of 1984 articles theorizing about the constitutionality of certain states' statutes of limitations. Section III also contains articles addressing teenage parents and child support enforcement; adolescent pregnancy is a subject of increasing national concern.

Section IV covers modification of support awards. Pending before Congress at the time of this writing are proposals to make periodic review of child support cases mandatory. Since support awards may last 18 years or longer, periodic review would lead to a tremendous expenditure of resources to deal with modifications. At the same time, periodic review would lead to a more accurate, fair reflection of the parties' changing circumstances. Mandatory review also raises other issues: What factors should be considered when an order is reviewed? Should any variance in those factors lead to modification or should only substantial changes trigger modification? Several authors look at these and other modification issues, including retroactive modification. In 1986 Congress passed a law requiring states, as a condition for continued receipt of AFDC monies, to provide that support installments vest as they fall due, and are therefore judgments entitled to full faith and credit. 42 U.S.C. § 666 (a)(9)(1987). States are still hurriedly complying by passing legislation prohibiting retroactive modification of arrearages.

Section V explores articles on enforcement. The CSEA of 1984's biggest impact so far may be on enforcement of support orders, especially through income withholding. Income withholding, to be triggered no later than when the obligor falls behind 30 days' amount of support, has proved a useful, albeit sometimes controversial, enforcement tool. While employers and obligors may object to its usually-involuntary nature, and custodial parents may see delays and imperfections in the speedy implementation of the remedy, income withholding has nevertheless become the foundation of the child support enforcement scheme. Mandatory income withholding assures constant and consistent support payments for obligees to a degree previously unattainable. A host of articles survey the states' responses to the institution of income withholding and the problems that have arisen carrying out this massive program.

The traditional "stick" in the enforcement scheme, contempt of court, is still alive and well. Right to counsel and due process questions have also aroused the attention of several writers in the context of contempt.

Meanwhile, other enforcement remedies proliferate. The interception of state and federal income tax refunds has produced a favorable collection return rate compared to the administrative cost investment. Myriad articles look at the procedures involved in tax refund interception and whether those procedures pass constitutionality tests regarding notice and opportunity to contest.

Traditional post-judgment remedies, such as garnishment and attachment, are also mentioned in Section V, as well as newer child support concepts such as credit bureau reporting and bond-posting.

It once was easy for the obligor to escape a support duty by crossing a state line. Since the adoption by all states within the past several decades of variations of the Uniform Reciprocal Enforcement of Support Act (URESA), many recalcitrant out-of-state obligors have had to account for their delinquencies. The CSEA of 1984 scheme also includes the use of the IV-D system for interstate referrals. URESA petitions and interstate IV-D transmittals give a practitioner dealing with an interstate case at least two avenues through which to pursue an absent parent. Each option, though, has its drawbacks. Delay, low priority, evidence production, logistics and costs hinder the effectiveness of these interstate conduits. As one can imagine, the only thing more complicated than interstate enforcement is international enforcement. This bibliography in Section VI lists several articles dealing with interstate, and international, issues.

While the CSEA of 1984 serve as the centerpiece of the reforms in the child support field, equally important revisions in tax law deserve notice. Tax reform in 1984 and 1986 changed the way practitioners treat child support and alimony for tax purposes. Several authors look at the implications behind the expungement of the "Lester" rule, and the winners and losers under the reforms. Their articles are found in Section VII.

While Congress has tinkered with bankruptcy laws during the past few years, it has kept the principle of nondischargeability of child and spousal support. The workings of this exception to discharge are examined by several authors in Section VIII.

Section IX deals with alternatives to the traditional judicial system. The CSEA of 1984's requirement that states implement expedited processes to ensure speedy handling of cases has caused a stir in the legal community and a rush by states to amend their practices to allow for the inclusion of quasi-judicial or administrative process in support cases.

Section X provides a listing of some training materials available to the practitioner who may want access to state-specific procedures and laws in the support area.

Finally, this supplement recognizes a growing body of literature describing the effects of inadequate child support on custodial parents, the vast majority of whom are women. The resulting feminization of poverty through widespread disintegration of the family unit is a phenomenon that clearly calls out for rectification. The economic disparity between custodial parents and noncustodial parents is a significant dynamic in the infrastructure of American society, affecting millions of children, and warranting a special section in the supplement to review the surge of material on the subject.

The appendices list materials available from the National Child Support Enforcement Reference Center, which is operated by OCSE in Washington, D.C. Also, the appendices list federal legislation, hearings and reports. We have included an appendix that gives brief descriptions of U.S. Supreme Court cases since 1984 that touch on child support.

This supplement is to be read in tandem with the original bibliography published in 1984. It updates and does not replace the original with materials published between November 1983 and September 1987. The search for material focused on books and periodicals addressed to law-trained audiences. The only cases included are those U.S. Supreme Court decisions listed in Appendix C.

The bulk of the research and annotations was done by Virginia Sablan, Sharon Green-de la Garza, and Susan Angell. Joyce Moore and Elizabeth Saunders provided invaluable service making order out of what could have been chaos. Frank Adamson and Phil Sharman of OCSE helpfully advised us.

Additional copies of this supplement, as well as the original bibliography, may be ordered through OCSE's National Child Support Enforcement Reference Center, 330 C Street, S.W., Room 2525, Washington, D.C. 20201.

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SECTION I - OVERVIEW OF CHILD SUPPORT

Child support issues have never been more hotly debated than during the past few years. Federal and state legislative reforms have altered the child support system, streamlining the establishment process and adding real clout to support enforcement through the nationwide emergence of income withholding.

This supplement begins with articles that look at the big picture. Where are we in the evolution of an effective, efficient and fair child support system? What trends exist nationwide?

One subtopic of the overview concerns post-minority children with educational and/or medical needs, and the extent to which their needs are met, and should be met, under law. Arguments for and against adult-child support underscore the debate over the nature of the support duty. Opinions abound over whether the child should be placed economically in the position he or she would have been if the parents had not separated. Commentators and courts make assumptions about a parent's obligation to provide post-high school education. This increasingly complicated area of responsibility may be a future topic for broad-scale legislative reform.

Next, the focus switches to the relationship between welfare (Aid to Families with Dependent Children (AFDC), Title IV-A of the Social Security Act, 42 U.S.C. §§ 601-615 (1987)) and child support (notably Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-658, 664, 666, 667, 671 (1987).) A recipient of welfare must assign support rights to the state, generating a complex triangular relationship that changes the traditional two-party framework. Paula Roberts, in several Clearinghouse Review articles, looks at the economic, social and ethical ramifications of the triangle. Also, Congress mandated that AFDC recipients must include all household children in their income calculation for the purpose of determining AFDC eligibility, whether or not the support was meant for other household children. The U.S. Supreme Court decided in the case of Bowen v. Gilliard, 107 S. Ct. 3008 (1987), that Congress was on firm constitutional ground when it so amended the AFDC laws in 1984.

The largest subsection in the supplement covers state-specific legislation and case law in the support field. The CSEA of 1984 sent officials in 54 jurisdictions scurrying to the legislative drawing boards to draft, and subsequently enact, legislation that complied with the Amendments' requirements. Articles detail these statutory revisions. Other writers review appellate court decisions, some of which greatly changed family law practice in that state.

The first section, as does most sections, concludes with several relevant American Law Report (ALR) citations on child support, as well a reference to any recent U.S. Supreme Court decisions dealing with an issue on point. In this section, Bowen v. Gilliard is listed, with reference to Appendix C, which includes descriptions of U.S. Supreme Court opinions on child support.

A. Analysis of Current Laws and Reform Proposals

Baker & Stuff, The Costs and Benefits of Child Support Enforcement, 34 Juv. & Fam. Ct. J. 41 (1983-84).

The authors argue that in considering the future of the child support enforcement program, it is important to remember that its benefit is not only measurable in terms of the collections made on AFDC cases that flow directly back to the federal and state coffers, but also in terms of the indirect cost avoidance that is realized in the non-AFDC portion of the program. The authors contend that while a hard look at the funding structure and level of funding is appropriate, it is most important that indirect benefits of welfare cost-avoidance be considered.

Barber, The Child Support Enforcement Act of 1984, 4 Fairshare 4 (Dec. 1984).

This article outlines some of the funding provisions of the CSEA of 1984 and identifies federal mandates for state legislation. Barber reviews income withholding and tax interception, among other topics.

Barber, Shouldn't Child Support Protect Family Life?, 6 Fairshare 4 (Apr. 1986).

Barber evaluates how California courts have treated the non-dischargeability of child support obligations. Using three California cases to support his claim, the author suggests that modern courts' trivialization of the child support obligation has reduced it to a mere debt, weakening respect for law. As a result, Barber says, the trivialization is a "more serious cancer in our society than even family abandonment."

Brown, ABA Family Law Section Mid-Year Meeting: Council Action, 6 Fairshare 3 (Feb. 1986).

This article discusses the highlights of the Council of the Family Law Section's mid-year meeting. Of interest to the child support advocate is the formation of a special committee to make recommendations on child support guidelines and expedited process. The following recommendations for the guidelines were adopted by the Council: that a cap be inserted on guidelines in "upper income" cases; that guidelines recognize the role that medical insurance plays as a child support cost; that modification of child support orders take into account trade-offs made in the separation agreement between the parties; and, that child support orders make provisions for how the guidelines should be applied, if at all, in joint custody situations.

Bryant, Ethics in the IV-D Practice: The Real World Problem of IV-D Lawyers, in 2 Improving Child Support Practice III-1 (1986).

This article examines ethical problems encountered by IV-D attorneys in their representation of recipients of IV-D services. The author argues that where there are potential conflicts between the government's interests and those of recipients of IV-D services, the lawyer must disclose those conflicts and resolve them in favor of the recipient.

Bush Institute for Child and Family Policy at the University of North Carolina, Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families (1985).

This report describes three studies designed to illuminate several aspects of the child support enforcement system and the absent father's ability to pay child support. The studies suggest that absent fathers are capable of paying much more child support than they currently pay. Those parents who have been actively pursued by child support enforcement officials continue to have frequent contacts with their children and the children's custodian, the study suggests.

Comment, In Support of Education: An Examination of the Parental Obligation to Provide Postsecondary Education in California, 18 Pac. L.J. 377 (1987).

The author examines the parental obligation to provide post-secondary education in California. Noting that the trend in child support awards has been toward including support for post-secondary education, he discusses at length two bills introduced in the state senate that would give the courts authority to continue child support beyond minority. The purpose of the legislation is to ameliorate the educational disadvantages caused by divorce. Although he believes the proposed legislation would survive constitutional challenge under the rational relationship test, he fears the statutory scheme in general would lead to much judicial speculation and disparate results, and in some instances, perpetuate existing social stratification. As a criteria for awarding post-minority education support, he advocates the approach used by other states, which is based on the child's capacity for academic achievement and the parents' financial ability to assist.

Digest - 1983 Decisions Affecting Juveniles - Child Support, 8 J. Juv. L. 198 (1984).

This article reviews 1983 litigation brought for the following purposes: 1) collection of delinquent child support (Utah); 2)

an increase in child support based on changed circumstances (Montana); 3) the support of an incapacitated adult child (Colorado); 4) support under URESA (Rhode Island and Minnesota); 5) enforcement of a foreign support judgment (Connecticut); 6) restitution for crime victims due to the loss of parental support (Nebraska); and, 7) reimbursement of child support by a state welfare department (Iowa and Minnesota).

Digest of Recent Legislation Affecting Juveniles, 9 J. Juv. L. 189 (1985).

This digest consists of a cumulative index of recent state and federal legislative revisions and enactments in the area of juvenile law since 1984 including revisions affecting paternity and support determinations. Legislative developments in the following states were identified: Alabama, Alaska, Arizona, Colorado, Georgia, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New York, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wyoming. (See 8 J. Juv. L. 498 (1983) for California's 1984 enactments.)

N. Ebb, Child Support Advocacy Manual: A Guide to Implementing P.L. 98-378, The 1984 Child Support Enforcement Amendments (1985).

This guide, published by the Children's Defense Fund, covers the major provisions of the CSEA of 1984 and is particularly useful for advocates at the state and local levels. The text consists of four major sections. Section 1 provides the background on P.L. 98-378. Section 2 covers the enforcement mechanisms, including: income withholding, intercepting federal and state income tax refunds, imposing liens, security or bond, and providing information on overdue support to credit agencies. Section 3 deals with services, fees and costs for specific client groups such as non-AFDC families, children in foster care and AFDC recipients. Section 4 covers other P.L. 98-378 mandates such as expedited processes, child support guidelines, inclusion of medical support in child support orders, efforts to establish paternity and state child support commissions. The guide also includes in its appendices the text of P.L. 98-378, selected child support resources, HHS projected effective dates for mandatory state practices, a sample IRS notice of a federal tax intercept and guideline worksheets.

Fox, Adult Children: Paying for the Disabled, 8 Fam. Adv. 15 (Summer 1985).

This article outlines the special procedural problems encountered by lawyers in cases where the issue centers on who should support

an adult disabled child. At the outset the author suggests that a lawyer handling such a case needs both a knowledge of the law regarding support obligations for the disabled child and sensitivity to the trauma endured by the parties involved.

Freed & Walker, Family Law in the Fifty States: An Overview, 24 Fam. L.Q. 331 (1986).

Section 11 of this overview discusses various developments in family law affecting child support issues. Through the use of charts and a roster consisting of all the states, the authors provide information on: 1) typical statutory criteria used to aid the court in determining the amount of child support; 2) recent developments resulting from case law on the standards for child support; 3) recent developments in the modification of support; 4) the use of long-arm statute in the enforcement of support orders; 5) state requirements for the enforcement of court-ordered maintenance and/or child support orders; and, 6) recent developments in URESA and RURESA.

Horan, Postminority Support for College Education - A Legally Enforceable Obligation in Divorce Proceedings?, 20 Fam. L.Q. 589 (1987).

This article considers whether post-minority college students should be an exception to the general rule of emancipation at the age of majority. Explaining the impact that the Twenty-sixth Amendment (which lowered the voting age to 18) had upon family law, the author then moves to her central inquiry, whether divorcing parties may enter into an enforceable agreement to finance their child's college education and whether a court has jurisdiction to compel such a support obligation in the absence of an agreement. She also reviews representative state court decisions and notes that states favoring extended support generally pass new enabling legislation. In the policy area, she presents the arguments for and against post-minority support, giving examples from case law. She concludes with a suggestion for legislative action to remedy the conflicting decisions that often result from interpreting statutory language written before 18 became the age of majority in most states, and offers a model statute entitled "The Uniform Support for Education Act."

Hornstein, Interrelated Roles in Child Support Enforcement, 36 Juv. & Fam. Ct. J. 111 (1985).

The principal character in the drama of child support enforcement, according to this article, is the judge. Besides establishing the communication network, listening to the story, and examining the facts, the judge must also make the final decision determining responsibility for the child's overall

financial and psychological needs. The author states that it is not clear how the CSEA of 1984, which curtail judicial options by mandating the use of certain requirements such as income withholding, will affect the role of the judge in the overall enforcement of child support orders. The author, however, stresses that it is the combined cooperation of each person in the child support enforcement network that will result in the enforcement of child support orders.

Improving Child Support Practice (Vols. I & II) (1986).

These two volumes, compiled by the American Bar Association's Child Support Project from papers presented at a national conference on child support, consist of materials on a number of current issues in child support practices, including: the CSEA of 1984; collecting from the self-employed; automatic escalation clauses; collecting from members of the military services; bankruptcy and child support; paternity establishment; locating absent parents and assets; the relationship between custody, support and visitation; interstate support enforcement; ethical issues in child support practice; representation of low-income clients; contempt; and, tax refund intercepts. Of particular interest are articles on child support guidelines, proposed or currently in use, together with several papers on the development and use of guidelines. (Many articles within this two-volume set are annotated throughout this supplement.)

King, Economists in Marital Contests: When the Court has to Make Dollars-and-Cents Decisions, 20 Trial 46 (1984).

In view of the diversity of laws among jurisdictions, the author does not attempt to address how specific legal questions can be resolved with the help of economic analysis; rather, King emphasizes developing general economic principles. The author, a professor in the Department of Economics at the University of Texas at Austin, espouses two views in the area of alimony and child support: first, that children should be regarded as marital assets rather than as financial liabilities; and second, that strong arguments can be made for spousal support by demonstrating the typical gross disparity in earning capacity between custodial and noncustodial parents and the significant contribution of the lesser earning spouse to the enhanced earning capacity of the mate.

Legal Rights of Children (R. Horowitz & H. Davidson ed. 1984).

This book, which includes contributions from a number of leading child advocates, addresses a broad number of issues that have arisen from the increased recognition and enforcement of children's rights. Among the topics discussed are child support

and the economic interests of children, the legal rights of adolescents, public benefit programs for children from family maltreatment, protection of children from exploitation, the juvenile justice system, children in institutional care and education rights.

H. Maggard & J. Smith, National Conference of State Legislatures' Children and Youth Program: Information Clearinghouse Reference List (National Conference of State Legislatures) (1985).

The NCSL Children and Youth Program Information Clearinghouse is a resource for legislators and legislative staff members who desire information on a spectrum of children and youth issues. This publication lists legislation, legislative reports and periodicals covering abuse and neglect, child care, child health, child support enforcement, child welfare, family and juvenile law, poverty and AFDC, and adolescent issues. The section on child support enforcement is further divided into the following categories: economic considerations, enforcement remedies, expedited processes, interstate and international enforcement, legislative activity overview, parent locator service, paternity and genetic testing, and standards for support awards.

Moore, Parents' Support Obligations to Their Adult Children, 19 Akron L. Rev. 183 (1985-86).

The author examines and evaluates several states' child support laws insofar as they impose an obligation on parents to provide financial assistance to their adult children. As a result of his review of the laws, the author notes that a majority of states have by legislation or court decision extended the duty of parents to support their children to encompass adult children who are incapacitated to the extent that they are unable to be self-supporting. A few jurisdictions, according to the author, have laws requiring parental support of post-minority age children who have not completed high school. The author notes further that statutes and appellate decisions in several states have authorized domestic relations courts to order divorced parents to help finance their post-minority children's college education.

National Conference of State Legislatures, Selected Exemplary State Child Support Laws (1984).

This guide to income withholding, state income tax refund intercept and expedited judicial and administrative procedures provides useful information for legislators in identifying exemplary laws as they contemplate changes in their state programs. The guide also includes copies of state laws in each of the identified areas.

National Institute for Child Support Enforcement, History and Fundamentals of Child Support Enforcement, Second Edition (1986).

This edition provides a comprehensive overview of the child support enforcement program, from a historical viewpoint dating back to 1975, and from a current functional viewpoint. Chapter 1 defines the child support enforcement problem today and the current status of the program from a sociological, economic and demographic perspective. Chapters 3 to 8 review the entire program processes from intake through enforcement, incorporating the requirements of the CSEA of 1984. A special section is devoted to enforcement of interstate cases. Chapter 9 discusses collection and distribution of child support, while the appendix contains a legislative history of child support enforcement since 1950.

1985 Survey of American Family Law, 11 Fam. L. Rep. (BNA) 3015 (May 7, 1985).

This survey reviews the many legislative changes in 1984 in the family law area. It supplies statutes and relevant case law in a state-by-state review of developments in divorce grounds, alimony and maintenance, joint custody, grandparent visitation, distribution of property, division of employment benefits, spousal interest in professional degrees and licenses, and cohabitant's rights.

Note, Child Support Enforcement: Balancing Increased Federal Involvement with Procedural Due Process, 19 Suffolk U.L. Rev. 687 (1985).

This note begins by examining the legislative history of federal and state efforts to facilitate child support contributions by parents dating back to the enactment of the Social Security Act of 1935. The author then considers the expansion of the tax intercept program under the CSEA of 1984 and the improved notification and hearing procedures mandated by the new federal initiative. The author concludes that a child support enforcement program incorporating federal involvement with due process protections will result in an improved, effective, and equitable enforcement program.

Note, Constitutional Implications of the Child Support Enforcement Amendments of 1984, 24 J. Fam. L. 301 (1985-86).

The authors of this note analyze the major provisions of the CSEA of 1984, including mandatory income withholding and the interception of income tax refunds. They review the effect of the CSEA of 1984 on case law precedent and the constitutional implications of the CSEA of 1984.

Note, Educational Support Obligation of Noncustodial Parents, 36 Rutgers L. Rev. 588 (1984).

The author examines the extent of the noncustodial parent's duty to provide a child with an education. He begins with a discussion of a parent's legal obligation to provide a college education and its evolution from both the common law definitions of necessities and the doctrines based on equitable principles. The author continues with a look at post-minority educational support obligations and their constitutionality. He asserts that children of split families are placed at an educational disadvantage compared to children of intact families. Intact families, the author says, support their children as long as their educational needs require it, regardless of age. In most jurisdictions, however, educational support for children of split families is required to continue only until a child reaches an age established by statute as a cut-off point for support. To minimize these disadvantages, the author argues that arbitrary age restrictions must be eliminated from child support obligations and all relevant statutes.

Note, The Parental Support Obligation in Oregon: Should the Majority Prevail?, 22 Willamette L.J. 571 (1986).

This note begins with the history of family support laws in Oregon. It next discusses the impact that the Oregon Supreme Court's interpretation of ORS 109.010 in Haxton v. Haxton, 299 Or. 616, 705 P.2d 721 (1985), may have on future domestic relations in that state. The author writes that the Haxton decision, which provided a cause of action for an incapacitated adult for support from his father, resulted in the rejection of the previously-established principle that ORS 109.010 merely set forth a duty of support, but lacked a legal enforcement mechanism. The author argues that the Haxton decision is illogical and represents a significant departure from the court's previous treatment of familial support obligations.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, A Guide for Designing and Implementing a Case Processing System for Child Support Enforcement (1986).

This guide provides state and local child support offices with methods for refining their case processing systems in light of the increased emphasis on the need for effective program operations as a result of the CSEA of 1984. It is organized into five chapters: case processing overview; planning and management considerations for achieving efficient and effective systems; elements which expedite case processing; and, elements of caseload management that enhance case processing productivity through office automation.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Kids, They're Worth Every Penny - Handbook on Child Support Enforcement (1985).

This handbook contains practical information for custodial parents interested in getting child support payments that are owed to them and their child. It includes information on: 1) how to apply for child support enforcement services and what they cost; 2) how to find the location of the absent parent; how to establish paternity, how to establish a support order; 3) how to enforce support orders; and, 4) how to collect payments in another state.

Pearson & Thoennes, Will This Divorced Woman Receive Child Support?, 25 Judges' J. 40 (1986).

This article describes the findings of a project that assessed the relative importance of couple-cooperation factors, socio-economic status of the pre-separated family, types of custody arrangement and paternal contact with children in explaining a variety of child support payment behaviors. The key behavioral influences found in the study were the presence of a child support award, the level of the award and paternal compliance with the child support award.

Polikoff, Non-AFDC Clients in the IV-D System, in 2 Improving Child Support Practice III-157 (1986).

Polikoff suggests ways that IV-D agencies can improve their services to non-AFDC clients, including prompt attention to client inquiries, more extensive use of enforcement procedures and greater disclosure of options available to the non-AFDC client.

Rice, Adult Children: Paying for College, 8 Fam. Adv. 14 (Summer 1985).

This article describes how various jurisdictions ensure parental support for post-minority expenses after a divorce or separation. The author suggests that the most viable means of securing a commitment to provide for a child's future education is through the use of equitable distribution principles. These provisions, according to the author, allow the court to use a number of factors and techniques to divide assets and liabilities so that if one parent assumes responsibility for a child under and over the age of majority, that parent should also be given a means of discharging the post-minority obligation.

Schneider, Moral Discourse and the Transformation of American Family Law, 83 Mich. L. Rev. 1803 (1985).

The author describes the changes that family law has undergone in the past few decades and hypothesizes about the forces behind these changes, including the law's tradition of not interfering in family affairs. The article explores the possible influence of these forces in the future.

Vivion, Getting Tough, 2 Compleat Law. 21(2) (1985).

This article provides a useful discussion of changes in the federal law resulting from the passage of the Domestic Relations Tax Reform Act and the CSEA of 1984. Among other changes, the Domestic Relations Tax Reform Act, which was part of the Deficit Reduction Act of 1984, modified the rules concerning who was entitled to claim dependent children for tax purposes when parents divorce. The CSEA of 1984, on the other hand, addressed three areas: how to obtain uniform guideline-based support awards; what to do with noncompliance; and, the degree of federal participation in the child support enforcement area. The author is careful to note, however, that one problem that is not obviated by the new laws is the untimely death of the obligor.

Wallerstein & Corbin, Father-Child Relationships After Divorce: Child Support and Educational Opportunity, 20 Fam. L.Q. 109 (1986).

This report is based on a ten-year longitudinal study of the responses of sixty, largely white, middle-class Northern California families in which there were 131 children between two and 18 years of age at the time of divorce or marital separation. The study began in 1971 with the purpose of: 1) examining the experiences and responses of children and adolescents at the decisive separation and during the immediate and long-term aftermath; 2) tracing the vicissitudes of the parent-child relationship over the same time period; 3) examining the experiences and responses of the parents; and finally, 4) determining factors affecting the post-divorce communication and relationship stability between the noncustodial father and his children. The findings of this study include insights into the visiting-father/child relationship, patterns of child support payment during the five years following divorce, and patterns of child support and visitation at the ten-year mark.

Women's Equal Rights and Legal Defense and Education Fund, Child Support in the 80's (1984).

This 15-minute audio cassette, produced by G. Allred, uses a question and answer format to present general information about the child support enforcement program in California.

B. The IV-D Program and AFDC Support Issues

The AFDC and SSI Programs: Developments During 1986, 20 Clearinghouse Rev. 1050 (Jan. 1987).

This general review includes sections on child support collection and distribution, focusing on the child support pass-through to AFDC recipients and implementation of the CSEA of 1984. AFDC recipients must assign their right to child or spousal support to the state. The first \$50 of current monthly support is disregarded as income and distributed to the AFDC recipient. The article briefly discusses litigation in this area, challenging, for example, the state agency's failure to distribute promptly the \$50 payment. It also reviews the mechanisms for child support collection, such as automatic wage withholding, which the states must implement under provisions of the CSEA of 1984.

Greenberg, AFDC and Child Support - \$50 Disregard and Sibling Deeming, in 2 Improving Child Support Practice IV-1 (1986).

The Deficit Reduction Act of 1984 introduced two concepts to the AFDC/support area - the \$50 disregard and sibling deeming. The \$50 disregard provision requires a state to forward the first \$50 of any child support payment received in a given month to the AFDC recipient to use as he or she pleases. The disregard is so named because it is not considered income for the purpose of AFDC grant determinations. The sibling deeming rule, codified at 45 C.F.R. § 206.10(a)(1)(vii), requires an AFDC applicant to include all household children in the application unit, even if some children are fully supported by an absent parent's support. The absent parent's support is "deemed" available for the entire household, whether actually true or not. (The U. S. Supreme Court upheld this rule in Bowen v. Gilliard, 55 U.S.L.W. 5079 (June 23, 1987).)

Harris, AFDC Stepparent Deeming and the Tax Intercept - Avoiding a Double Whammy, 19 Clearinghouse Rev. 470 (Aug./Sept. 1985).

The author notes that a stepparent's income is included when financially determining whether the assistance unit qualifies for AFDC. When the absent stepparent's tax refund is intercepted to pay support arrearages for other children, the amount may be counted as income to the assistance unit and result in a loss of AFDC for the stepchildren even though the household did not receive any benefits from the refund. Harris provides two alternatives under the stepparent deeming rule that allow for deductions from deemed income for support payments to nonhousehold children. First, the deduction may be taken for the month the refund is intercepted. Second, the deduction may be

prorated over the entire tax year. The method chosen, the author says, depends on the specific case. Advocates who note an underpayment of AFDC as a result of the recalculation under the deeming rule can apply for retroactive benefits, according to the author.

Johnson & Blong, The AFDC Child Support Cooperation Requirement, 20 Clearinghouse Rev. 1389 (Mar. 1987).

The article examines the effects of mandatory "cooperation" between an AFDC recipient and the state social services agency concerning support collection. The authors discuss problems encountered when the state agency uses the AFDC grant as leverage against the recipient to get information that may be obtrusive and sometimes beyond the scope intended under federal law, such as requiring polygraph tests of the recipient or demanding the filing of criminal nonsupport charges against the absent parent. The authors conclude that clearer guidelines are needed to define these often-strained relationships.

Mannix, Freedman & Best, The Good Cause Exception to the AFDC Child Support Cooperation Requirement, 21 Clearinghouse Rev. 339 (Aug./Sept. 1987).

The authors review the legitimate, allowable exceptions to mandatory cooperation by an AFDC recipient with the child support caseworker. The exception applies if the recipient fears physical or severe emotional harm by the absent parent as a result of cooperation, if the child for whom support is sought was conceived through incest or rape, or if there is a pending adoption proceeding or assistance by a pre-adoption private social agency, not exceeding three months. The article claims that many recipients are not told of the exception, and if they are, many are not provided with adequate ways to present their claims, either informally or in a hearing. The authors opine that advocates of recipients should become fully familiar with the exceptions and should share that familiarity with their clients.

Roberts, Attorney-Client Relationship and the IV-D System: Protection Against Inadvertent Disclosure of Damaging Information, 19 Clearinghouse Rev. 158 (June 1985).

The author discusses whether an attorney/client relationship exists between an assignor/AFDC recipient and an assignee/state IV-D agency attorney. The writer says there are several factors that may ultimately determine whether such a relationship exists, including whether there is any divergence of interest between the

assignor and assignee; whether the AFDC recipient was led to believe she or he had a client/attorney relationship with the IV-D attorney; whether any notice was given to the recipient by the attorney about the extent of their professional relationship; and, whether any action was actually undertaken on behalf of the recipient and not the state. The finding of an attorney/client relationship is the prerequisite to a finding of attorney/client privilege, which may be important if the recipient discloses to the IV-D attorney confidential information against the recipient's interests.

Roberts, In the Frying Pan and in the Fire: AFDC Custodial Parents and the IV-D System, 18 Clearinghouse Rev. 1407 (Apr. 1985).

Roberts looks at the legal implications of mandatory support assignment by AFDC recipients to the state under Title IV-A of the Social Security Act. She comments that states do not always represent the AFDC recipient's best interests in support cases and that reimbursement for the state's welfare expenditure is sometimes the only concern of the state. The author argues that contract and assignment principles should be applied, that AFDC assignment is a partial assignment for collection purposes only to recapture state AFDC expenditures and that AFDC recipients should have the remaining right to pursue independently any support action.

Roberts, Representing the Poor Client, in 2 Improving Child Support Practice IV-18 (1986).

Roberts reviews the way food stamp, AFDC and IV-D regulations affect the way an advocate of low-income client handles a paternity, custody, support or divorce matter. The author's article is replete with cases, statutes, books and articles on various phases of representation, such as a putative father's right to counsel and a pre-paid blood test in paternity cases, and the degree to which an AFDC recipient can rely on a IV-D attorney for assistance regarding visitation and custody.

Roberts & Allen, An AFDC Mother's Right to Counsel: Custody Issues in Proceedings Instigated by the IV-D Agency, 19 Clearinghouse Rev. 278 (July 1985).

This article examines whether AFDC recipients may obtain the services of IV-D attorneys who have begun support actions on their (and the state's) behalf when the absent parent countersues for custody. The authors note that New York has a statute permitting representation by the IV-D attorney in such circumstances. Alternatively, the authors suggest states pass

statutes that bifurcate the issues and prohibit the raising of extraneous issues in IV-D support cases. In the absence of a statute, Roberts and Allen recommend that state bar associations and IV-D attorneys develop a policy agreement as to how to handle these situations in a uniform and fair way.

Roberts & Lowry, Benefiting AFDC Children by Counting Social Security Dependents' Payments Toward Their Absent Parent's Support Obligations, 20 Clearinghouse Rev. 1526 (1987).

The authors consider the question whether social security benefits paid to a child because of the parent's disability can be credited toward the parent's support obligation. They contend that it is preferable to have the social security payments automatically credited to the support obligation because, among other reasons, it would eliminate the need for the court to hold modification hearings because of a child's receipt of social security benefits. To receive such an automatic credit, the authors offer advocacy strategies for changing the law in states that give the court discretion to allow such a credit. The authors offer additional advice for getting AFDC families the \$50 child support disregard created by DEFRA, once the automatic credit is obtained.

C. State-Specific Analysis and Reforms

Annual Survey of South Carolina Law (January 1 - December 31, 1985) - Domestic Law, 38 S.C.L. Rev. 118 (1986).

Part VI of the domestic law section analyzes Napier v. Kilgore, 284 S.C. 313, 326 S.E.2d 171 (1985), a South Carolina Supreme Court decision that held that child support obligations vest as they accrue and that the natural parent's arrearages are not automatically extinguished by a decree of adoption. The author notes that this decision reaffirms the importance of making prompt child support payments in South Carolina.

Colo. Comm'n. on Child Support, Summary of the Report of the Colorado Commission on Child Support and Proposed Guidelines, 15 Colo. Law. 666 (Apr. 1986).

The Commission proposed some major changes in the structure of the executive and judiciary branches of Colorado's government. Two of the recommendations were the establishment of a family court system and an administrative office of enforcement for support, custody and visitation cases.

Comment, Post Majority Educational Support: Is There an Equal Protection Violation?, 6 U. Haw. L. Rev. 225 (1984).

This article addresses the issue of whether post-secondary educational support of adult children by divorced parents withstands an equal protection challenge. The author points out that while Hawaii Rev. Stat. section 577-7 does not impose a legal obligation on a parent or guardian to send their adult children to school, Hawaii Rev. Stat. section 580-47 empowers a court to compel the parties to a divorce to provide for the post-secondary education of their adult children. The author argues that although this disparate statutory treatment of parents and children currently withstands the equal protection challenge, lingering questions remain due to the existence of the right to privacy provision in the Hawaii Constitution, which necessarily invokes the strict scrutiny standard.

Cook, Family Law: Surveying 15 Years of Change in Alabama, 36 Ala. L. Rev. 419 (1985).

In addition to surveying the past 15 years of judicial and legislative activity, the author examines the extent to which the national societal norms have affected family law in Alabama. In the child support area, the author discusses the long-established primary duty doctrine which imputes the primary duty of supporting the children to the father.

Faupel, Family Law - Child Support, 31 Wayne L. Rev. 615 (1985).

The author reviews the following child support cases: 1) Sayre v. Sayre, 129 Mich. App. 249, 341 N.W.2d 491 (1983), where the court invalidated modifications of support made by another court because the modifications were not based upon a showing of changed circumstances; 2) Dresser v. Dresser, 130 Mich. App. 130, 342 N.W.2d 545 (1983), which held that modification of a child support or alimony order is improper unless an evidentiary hearing is held by the court, a change of circumstances is shown, and findings in support of the court's decision are put on the record; and, 3) Metropolitan Life Insurance Co. v. Self, 129 Mich. App. 242, 341 N.W.2d 488 (1983), where the court affirmed the trial court's holding that an insurance policy which failed to name the son as beneficiary was intended to secure the father's obligation to provide support until his son graduated from high school.

Funderburg, Withholding Orders for Child Support: A Substantial Improvement, 46 Ala. Law. 72 (Mar. 1985).

This article details Alabama's Withholding Order for Child Support Act, which went into effect May 29, 1984. The Alabama law presaged the federal requirement of using one month's amount of support arrearage as the trigger for income withholding.

Graham, The Kentucky Law Survey - Domestic Relations, 73 Ky. L.J. 379 (1984-85).

The child support section of this survey describes the enactment of the CSEA of 1984, which require states to develop particular enforcement remedies in order to continue participating in federal AFDC programs, and the adoption of the Kentucky Administrative Process for Child Support Act, which creates the Cabinet for Human Resources (CHR) for administrative handling of child support establishment and enforcement. The survey also notes that the Kentucky legislature also adopted legislation to comply with the federal mandate for wage withholding procedures. The author ends with a discussion of Abbott v. Abbott, 673 S.W.2d 723 (Ky. Ct. App. 1983), which involves issues relating to support for a dependent adult child and the power of a foreign jurisdiction to modify a support order.

Greenberg, Garnishment: A Child Support Remedy, 49 Tex. B.J. 26 (Jan. 1986).

At the outset, the author notes that Texas' constitution forbids the use of garnishment except for court-ordered child support debts. The author suggests combining garnishment and involuntary

assignment of earnings in cases of significant arrearages to provide an initially large lump sum and a prolonged source of support in the appropriate case.

Jones, Child Support Enforcement Act of 1985, 22 Tenn. B.J. 19 (Jan./Feb. 1986).

The article provides a detailed look at the procedures and timeframes used for the establishment, enforcement and modification of support orders under the federal 1984 support laws and Tennessee's legislative response to them, enacted in the Child Support Enforcement Act of 1985.

Kastely, An Essay in Family Law: Property Division, Alimony, Child Support, and Child Custody, 6 U. Haw. L. Rev. 381 (1984).

Professor Kastely examines recent changes in Hawaii's family law dealing with division of property, alimony, child support, and child custody, and concludes with an analysis of their future implications.

King, Survey - Domestic Relations - Child Support, 18 Ind. L. Rev. 219 (1985).

The author notes that during the survey period the Indiana General Assembly codified existing case precedent that defined several criteria for emancipation and gave legal effect to the concept of "partial emancipation." The author also discusses the impact that Herron v. Herron, 457 N.E.2d 564 (Ind. Ct. App. 1984), has on a trial court's usage of support guidelines and its automatic annual adjustment of support orders based on those guidelines.

Koons, Texas' New Child Support Techniques: Tougher Than Federal Standards, 6 Fairshare 7 (Mar. 1986).

This article reviews significant developments in matrimonial law in Texas. The author reports that the Texas legislature adopted the model interstate income withholding act for enforcement of out-of-state child support orders. In addition, Texas law now requires that all new Texas support orders after September 1, 1985, contain income withholding orders regardless of delinquency unless the parties agree otherwise or the court "for good cause shown" rejects its application. This provision makes Texas collections procedure appreciably tougher than what federal standards mandate under the CSEA of 1984.

Kristal, Child Support Law Changes Become Effective July 1, 1986,
29 Advocate (Idaho B.J.) 15 (May 1986).

Deputy Attorney General Kristal explains several new provisions regarding child support that may change the way some Idaho practitioners handle support cases. Income withholding is now available in non-IV-D cases in Idaho. Also, attorneys from the Idaho Department of Health and Welfare instead of county prosecuting attorneys will represent out-of-state IV-D obligees. Non-IV-D URESA cases will be forwarded to the local prosecutor's office of the obligor's county. All support cases must be disposed of within 90 days pursuant to an order from the Idaho Supreme Court, notes Kristal.

Lefcourt & Reichler, Improved Support Enforcement for New York State, 59 N.Y. St. B.J. 36 (July 1987).

The authors explain recent changes in New York's child support laws. The article notes that 71 new hearing examiners have been hired to hear support cases, including noncontested paternity cases. Also, temporary support orders are mandatory upon application without the necessity of showing immediate need. Other recent changes include increasing the paternity statute of limitations to 21 years after the child is born, denying retroactive modification of a support order, and separating visitation interference issues from payment of support issues.

Lewis, Georgia's Domestic Relations Long-Arm Statute, Circa 1986,
23 Ga. St. B.J. 74 (Nov. 1986).

In 1983, the Georgia legislature enacted a long-arm statute that permits jurisdiction to be established over nonresident defendants in support, alimony and property division cases. This article examines how use of the statute has fared since 1983.

Lezin, Enforcing Child Support Orders, 6 Cal. Law. 34 (Oct. 1986).

Lezin discusses the futility practitioners often feel when attempting to enforce support orders on behalf of clients. She looks at various enforcement remedies available and proposals for strengthening some of them. For example, she notes great interest in proposed legislation that would mandate income withholding immediately when an order is entered if the obligee so requests. Also, the author mentions attempts to change the burden of proof in contempt cases so that the obligor must prove an inability to pay the ordered support instead of the obligee having to show the obligor's ability to pay. (Note: The U.S. Supreme Court has heard arguments on the permissibility of

burden-shifting if one interprets a contempt hearing as quasi-criminal in nature. Hicks v. Feiock, 180 Cal. App. 3d 649, 222 Cal. Rptr. 748 (Cal. Ct. App. 1986), cert. granted, 55 U.S.L.W. 3607 (March 9, 1987) (No. 86-787).)

Lurvey, California Addresses Pensions, "Simplifying" of Child Support, And More in 1983, 4 Fairshare 25 (Feb. 1984).

This update on California law identifies two cases involving child support issues: In Re Marriage of Shupe, 139 Cal. 3d 1026 (1983), where the court held that a pre-nuptial agreement entered into by a wife before remarriage did not bar her former husband from including consideration of the second husband's earnings for child support purposes; and, Einhorn v. Rehabilitation Institution, 141 Cal. 3d 1036 (1983), which held that section 206 of the California Civil Code, which provides that parents must support an adult child who is incompetent to take care of himself or herself, did not benefit third parties who provide goods and services unilaterally to the incompetent child.

McVey & Lerch, Arizona Family Law Decisions in 1985: An Overview, 6 Fairshare 8 (Mar. 1986).

This article briefly discusses the following child support cases: Heinz v. Heinz, 707 P.2d 969 (Ariz. 1986), where the Court of Appeals held that the superior court may not enter an order for assignment of a wife's wages in order to satisfy her husband's premarital child support obligation; and, Roszko v. Roszko, 705 P.2d 951 (Ariz. 1985), where the court of appeals held that an "escalator clause" that called for periodic increases in child support is valid and enforceable where the husband's potential increase was not the sole basis for child support, but rather was an addition to a set amount.

National Conference of State Legislatures, State Child Support Laws - Compliance with the 1984 Federal Amendments (1986).

This analysis informs states of their compliance with the CSEA of 1984. The information for each state is divided into two sections. The first section lists state laws that contain many or all of the features required by P.L. 98-378. These laws include both those enforcement tools requiring legislation and those that may be accomplished without legislation. The second section presents areas of law that may be reviewed for statutory changes, and includes only those mandatory practices requiring legislation.

1983-84 Survey of Developments in Alabama Law, Part 1 - Domestic Relations - Parent's Liability for Support of Adult, Disabled Child, 36 Ala. L. Rev. 389 (1985).

The author writes that the Alabama Supreme Court in Ex parte Brewington, 445 So.2d 294 (Ala. 1983), overruled in part Reynolds v. Reynolds, 274 Ala. 477, 149 So.2d 770 (1961), when it established that the term "children" in the Alabama child support statute applies to all dependent children, and not merely to minor children, thereby imposing a duty of support on parents who have dependent, disabled children beyond the age of majority.

1985 Tennessee Survey: Selected Developments in Tennessee Law - Developments in Domestic Relations, 53 Tenn. L. Rev. 373 (1986).

This survey discusses the following child support cases: Richmond v. Richmond, 690 S.W.2d 534 (Tenn. Ct. App. 1985), which held that in actions brought under the Uniform Reciprocal Enforcement of Support Act (URESA), a father may be held in contempt for failing to pay child support arrearages despite the fact that the concerned children had reached the age of majority; 2) State v. Harris, 696 S.W.2d 546 (Tenn. 1985), which involved the constitutionality and interpretation of the Tennessee statute making it a felony to leave the state without paying court-ordered child support; and, 3) Campanali v. Campanali, 695 S.W.2d 193 (Tenn. Ct. App. 1985), where the court found that in determining child support the foremost factors to be considered are the needs of the child and the financial position of each of the parents.

1986 Survey of Legislative Changes - Title 32 - Domestic Relations, 23 Idaho L. Rev. 151 (1986).

In compliance with the CSEA of 1984, the Idaho legislature enacted Chapter 12 to the Idaho Code, allowing for the mandatory income withholding for child support. This excerpt discusses the procedures involved in the use of this additional remedy.

Note, Congress Demands Stricter Child-Support Enforcement: Florida Requires Major Reforms to Comply, 10 Nova L.J. 1371 (1986).

This note provides a useful discussion of congressional efforts over the years to alleviate the child support enforcement problem. After a brief description of the history of child support responsibility and the early amendments to Titles IV-A and IV-D of the Social Security Act, the author goes into a detailed discussion of the provisions of the CSEA of 1984. The note concludes by identifying major problems with current Florida

law and making recommendations affecting Florida's compliance with Congress' mandate. Among the author's recommendations are: 1) the need for enactment of specific child support legislation in Florida; 2) the need to improve delivery of child support services; and, 3) the need to allocate more revenue to the Florida child support program.

Note, New Standards for Child Support Enforcement in Utah, 1986 Utah L. Rev. 591 (1986).

This note examines a series of laws enacted by the 1985 Utah legislature dealing with the problem of delinquent child support payments. Among the child support enforcement methods discussed are wage withholding, the state tax refund intercept program and credit reporting. The note concludes by identifying and suggesting ways to do away with loopholes that could prevent the collection procedures from functioning effectively. The author suggests, for example, that: 1) wage withholding provisions should be amended to eliminate any delay in a delinquency determination; 2) the obligor should be given the benefit of an expedited process during the enforcement proceedings so as to reduce some of the possible harsh effects of the new legislation; and, 3) the credit reporting and the wage withholding procedures should be combined to allow for prompt reporting of delinquency to the credit agencies.

Note, "To Pay or Not to Pay" is Less of an Option for Texas Support Obligors Under the New Involuntary Wage Assignment Provisions: Texas Family Code Annotated § 14.09(p),(q) (Vernon Pamphlet Supp. 1984), 15 Tex. Tech. L. Rev. 1003 (1984).

The author begins by briefly reviewing traditional methods of enforcing support obligations, including incarceration for contempt. The note outlines arguments for and against enactment of Tex. Fam. Code Ann. section 14.09 which provides for involuntary assignment of an obligor's earnings. The author next discusses the mechanics and procedural safeguards of the provision. He emphasizes that priority is given to wage assignments for collecting child support. Continuing with a look at the drawbacks of the section, he notes use of the assignment remedy is discretionary, not mandatory. The author concludes that involuntary wage assignment is an effective method of enforcing child support obligations in Texas.

Note, Towery v. Towery: Has the "Flexible" Child Support Rule Lost Its Stretch?, 39 Ark. L. Rev. 539 (1986).

This note attempts to reconcile three Arkansas cases involving parental support obligations for an emancipated child. The note begins by discussing Mathews v. Mathews, 245 Ark. 1, 430 S.W.2d

864 (1968), which recognized the general rule that parents are not required to furnish post-minority support but allowed exceptions in its application. The note next examines Towery v. Towery, 285 Ark. 113, 685 S.W.2d 155 (1985), an Arkansas Supreme Court decision that retreated from its previously flexible attitude by rigidly holding that parents have no legal duty to provide support for a child past minority. The author then discusses the effect that Bierman v. Bierman, 13 Ark. App. 271, 683 S.W.2d 241 (1985)(en banc), has on the status of the law regarding post-minority parental support obligations. The Bierman court affirmed the continuing vitality of the general rule cited by the Towery opinion, but at the same time recognized the equitable nature of child support disputes.

Nuovo, Child Support - Garnishment, 12 Vt. B.J. & L. Dig. 5 (Feb. 1986).

This article reviews Vermont's wage withholding law. The author states that up to 55% of an obligor's wages can be withheld for current support but only 25% of the wages can be garnished for support arrearages. The Vermont Consumer Protection Act governs the former limit and the Vermont Rules of Civil Procedure control the latter, according to the author.

Rucker, Legislative Developments in Family Law, 19 Ind. L. Rev. 191 (1986).

Section III of this review discusses the improvements and changes that the enactment of the CSEA of 1984 will have on the enforcement of child support in Indiana. The author writes that the new law, in conjunction with existing support enforcement mechanisms, should provide for more efficient enforcement of support orders.

Sampson, Withholdings from Earnings for Child Support: A Revolution in Enforcement, 46 Tex. B.J. 544 (June 1986).

Prof. Sampson reviews income withholding in Texas, which varies from most other states. In Texas, withholding begins when the support order is entered except if the parties agree otherwise or under extraordinary circumstances in non-AFDC cases. This way, the author comments, there is no need for state employees to monitor whether the obligor has fallen behind before implementing income withholding, as is the case in many states.

Sargent & Sundt, Annual Survey of Michigan Law: June 1, 1984 - May 31, 1985 - Family Law, 32 Wayne L. Rev. 626 (1986).

The paternity section of this survey focuses on the decision of the Michigan Court of Appeals in Faske v. Bonnano, 137 Mich. App. 202, 357 N.W.2d 860 (1984), which held that fraud and misrepresentation as to contraceptive protection was not a defense to a paternity action. During the same survey period, the Michigan Court of Appeals addressed two cases involving child support: Bland v. Bland, 136 Mich. App. 622, 358 N.W.2d 23 (1984), where the court of appeals held that the doctrines of estoppel and laches precluded the defendant from using the nonaccess defense where raising the defense was not timely made; and, Cochran v. Buffone, 137 Mich. App. 761, 359 N.W.2d 557 (1984), which held that the trial court erred in denying plaintiff's request for an evidentiary hearing on the paternity issue because without consent by both parties to the friend of the court's recommendation, or receipt into evidence of the recommendation, the trial court could not resolve a disagreement between the parties on the basis of that recommendation.

Sedgwick & Telstad, Family Law in the Minnesota Court of Appeals: A Review, 9 Hamline L. Rev. 387 (1986).

This article explores the reasons for the 47.5% reversal rate in family law cases brought before the Minnesota Court of Appeals between November 3, 1983, and January 7, 1986. The author writes that the high reversal rate is often due to a trial court's failure to make necessary findings or the absence of evidence of record to support the findings that were made. In order to reduce the reversal rate, the author suggests that family law attorneys pay more attention to statutory requirements so that trial courts can make the appropriate specific findings of fact that will support their conclusions of law.

Selected 1984 California Legislation - Domestic Relations, 16 Pac. L.J. 637 (1985).

This section of a general review of California legislation discusses certain changes in the community property laws governing the availability of marital property for debts brought about by the enactment of Chapter 1671 by the California legislature. This article notes that Chapter 1671 provides that a support obligation that arises before marriage is a prenuptial debt for the purposes of liability of marital property, and that separate property of the obligated spouse and the community property (except for the earnings of the nonobligated spouse) can be used to satisfy the support obligation. The article further notes that Chapter 1671 codifies the rule in Weinberg v. Weinberg, 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967),

by providing that when community property assets are applied to a premarital support obligation of one of the spouses, the community property is entitled to reimbursement to the extent that the amount of community property used is disproportionate to the amount of separate property of the obligated spouse that is available but not used to satisfy the obligation.

Seventh Annual Survey of Arkansas Law - Family Law, 7 U. Ark. Little Rock L.J. 229 (1984).

Part C on paternity examines two Arkansas Supreme Court cases: Thomas v. Easley, 277 Ark. 222, 640 S.W.2d 797 (1982), which held that appeals in bastardy proceedings must be made in thirty days; and McFadden v. Griffith, 278 Ark. 460, 647 S.W.2d 432 (1983), which held that the preponderance of the evidence is the burden of proof in bastardy proceedings.

Shub, Child Support: A Need for Change, 1 Barrister (Balto. City B.J.) 12 (Jan. 1984).

The author states that the child support system in Maryland is antiquated and is in a state of crisis. One of the solutions the author proposes is immediate income withholding in all cases.

Smith, Enforcement of Child Support Orders in Indiana, 31 Res Gestae (Ind. B.J.) 118 (Sept. 1987).

Smith reviews changes made in Indiana's income withholding statutes as a result of legislation that became effective September 1, 1985. The author takes the reader through the various steps of requesting, receiving, and enforcing income withholding orders. The writer provides sample pleadings throughout his article.

Solender, Annual Survey of Texas Law - Family Law: Parent and Child, 39 Sw. L.J. 43 (1985).

In part V of the Family Law section, which covers support issues, the survey discusses the following cases: 1) Blenkle v. Blenkle, 674 S.W.2d 501 (Tex. App. 1984), which involves the jurisdictional effect of the Soldiers' and Sailors' Civil Relief Act on a payor's attempt to make a special appearance to contest a prior default judgment regarding his support obligations; 2) Adams v. Stotts, 667 S.W.2d 798 (Tex. App. 1983), which deals with expenses considered in determining support for a child in a paternity action; and, 3) White v. Adock, 666 S.W.2d 222 (Tex. App. 1984), and Stofer v. Linville, 662 S.W.2d 783 (Tex. App.

1984), which both involve a request to modify the amount of child support ordered. Part V concludes with a summary of child support enforcement efforts made by the Texas Attorney General's office in compliance with the CSEA of 1984.

Solender, Family Law: Parent and Child, 38 Sw. L.J. 173 (1984).

This article discusses the legislative and judicial changes since the enactment in 1973 of Title 2 of the Family Code of Texas. Among the areas examined are the enactment of a Texas version of the UCCJA, the constitutional amendment allowing for the involuntary assignment of wages, the unconstitutionality of a two-year statute of limitations for paternity actions, changes in tort law relating to the wrongful death of children, conservatorship, support, parental rights termination and adoption.

Stern, Edlin & Perry, Annual Survey of Georgia Law (June 1, 1985 - May 31, 1986) - Domestic Relations, 38 Mercer L. Rev. 179 (1986).

In the area of paternity and legitimacy, this survey discusses the following cases: Department of Human Resources v. Carlton, 174 Ga. App. 30, 329 S.E.2d 181 (1985), and Evans v. State, 178 Ga. App. 1, 341 S.E. 865 (1986), which address the necessity of a prior adjudication of paternity in a child support action; Black v. Prince, 176 Ga. App. 465, 336 S.E.2d 318 (1985), which involve the need for the timely adjudication of paternity; and both Thompson v. Brown, 254 Ga. 191, 326 S.E.2d 733 (1985), and In Re White, 254 Ga. 678, 333 S.E.2d 588 (1985), which deal with the presumption of legitimacy of a child in a marriage. Section IV of the survey, which covers child support, identifies Martin v. Martin, 254 Ga. 376, 329 S.E.2d 503 (1985), and Feagin v. Feagin, 174 Ga. App. 474, 330 S.E.2d 410 (1985), as cases that address specific interpretation difficulties present in the support provisions of a settlement or separation agreement. Another support case discussed is: Haselden v. Haselden, 255 Ga. 366, 338 S.E.2d 257 (1986), which deals with the admissibility of evidence of attorney fees to a party incurring the fees in a child support action.

Survey - Developments in Idaho Case Law: 1983-1984 - Family Law: Custody and Child Support, 21 Idaho L. Rev. 431 (1985).

The family law section of the survey examines: 1) the factors a court should consider when determining child custody and support as enumerated in Shumway v. Shumway, 106 Idaho 415, 679 P.2d 1133 (1983); 2) the effect of an agreement executed pursuant to section 32-921 of the Idaho Code and other transmutation

agreements as discussed in Suchan v. Suchan, 106 Idaho 654, 682 P.2d 607 (1984); and, 3) the status of group term life insurance policies under Idaho's community property laws.

Survey - Domestic Relations, 37 Mercer L. Rev. 221 (1985).

This is a survey of recent Georgia appellate court decisions in the family law area including paternity, adoption, deprived child proceedings, custody disputes, enforcement of a duty to support and modification of the support obligation. In Jackson v. Jackson, 253 Ga. 576, 322 S.E.2d 725 (1984), the Georgia Supreme Court held that it was within the jury's province to decide the issue of paternity and that the jury is not bound by the HLA blood test results, which appellant argued was conclusive in determining paternity. In State v. Overstreet, 170 Ga. App. 635, 318 S.E.2d 65 (1984), the same court held that a spouse who receives child support can use all remedies to collect the full support. Thus one who obtained a contempt order to force compliance with a divorce decree was not precluded from filing an action under URESA.

Survey of Developments in Maryland Law: 1984-85 - Family Law, 45 Md. L. Rev. 784 (1986).

The support section of this survey discusses Sininger v. Sininger, 300 Md. 604, 479 A.2d 1354 (1984), where the court of appeals held that a parent with the requisite financial ability has a duty to support an adult child who becomes incapacitated after attaining majority, and Quarles v. Quarles, 62 Md. App. 394, 489 A.2d 559 (1985), where the court of special appeals refused to allow the modification of a support agreement containing language that the monthly payments of \$800 were both child support and alimony and that the amount could not be changed. This section also includes a discussion of the enactment of legislation by the general assembly to provide for more effective enforcement of child and spousal support orders. The paternity section examines the court of appeals decision in Frick v. Maldonado, 296 Md. 304, 462 A.2d 1206 (1983), where the court held that Maryland's two-year limitations period on paternity actions brought on behalf of illegitimate children was unconstitutional.

Survey of Developments in West Virginia Law: 1984 - Domestic Relations, 87 W. Va. L. Rev. 480 (1985).

During the survey period, three cases were identified as relating to alimony and child support issues: Molnar v. Molnar, 314 S.E.2d 73 (W. Va. 1984); Griialva v. Griialva, 310 S.E.2d 193 (W. Va. 1983); and, Hartley v. Unrvari, 318 S.E.2d 634 (W. Va. 1984). Of particular interest is the survey's analysis of

Hartley v. Unrvari, which held that a custodial parent may receive reimbursement for reasonable past child support expenditures from the noncustodial parent even though the divorce decree made no provisions for child support of any type. The survey notes, however, that the Harvey court qualified its holding by stating that once a party is aware of this right, and does not take steps to enforce it within a reasonable time and the other party has in good faith changed his position, the party seeking to enforce his or her right may be estopped and denied relief.

Survey: Women and California Law - Family Law, 14 Golden Gate U.L. Rev. 805 (1984).

The child support section of the California survey reports that the court in In re Marriage of Shupe, 139 Cal. App. 3d 1026, 189 Cal.Rptr. 288 (1983), upheld the constitutionality of California Civil Code section 5127.6, which creates a presumption that income of a custodial parent's spouse is available for the support of the custodial parent's child. In that case, the court construed Civil Code section 5127.6 to apply only to custodial families who have applied for or are receiving AFDC benefits.

Swisher, Annual Survey of Virginia Law - Domestic Relations, 20 U. Rich. L. Rev. 811 (1986).

Among the 1986 legislative changes relating to spousal and child support modifications are the inclusion in the Virginia Code of section 20-107.2, which adds the tax consequences to the parties as a factor in determining child support upon divorce, and section 20-108.1, which provides certain guidelines for the court in determining support. The survey also identifies other statutory changes involving the jurisdiction of the court in spousal and child support actions.

Wisconsin Legislative Council Staff, Special Committee on Custody Arrangements, Child Support in Wisconsin, Staff Brief 84-7 (Aug. 13, 1984).

This brief, written by Pam Shannon, a staff attorney for the Wisconsin Legislative Council, discusses the interrelationships among child custody determinations, child support awards and enforcement. The author begins with a description of "support" and a review of current law and administrative guidelines used in determining support payment awards. She next discusses the mechanisms by which support payments are made and collected. The author ends by reviewing relevant federal legislation on the subject.

D. Additional Resources

Bowen v. Gilliard, 107 S. Ct. 3008 (1987). (See Annotation in Appendix C.)

Annotation, Amount of Attorneys' Fees in Matters Involving Domestic Relations, 59 A.L.R. 3d 152 (1974 & Supp. 1987).

Annotation, Construction and Application of State Statutes Providing for Reciprocal Enforcement of Duty to Support Dependents, 42 A.L.R. 2d 768 (1955 & Supp. 1987).

Annotation, Education as Element in Allowance for Benefit of Child in Decree of Divorce or Separation, 56 A.L.R. 2d 1207 (1957 & Supp. 1987).

Annotation, Liability of Mother's Husband Not the Father of Her Illegitimate Child, for its Support, 90 A.L.R. 2d 583 (1963 & Supp. 1987).

Annotation, Liability of Parent for Support of Child Institutionalized By Juvenile Court, 59 A.L.R. 3d 636 (1974 & Supp. 1987).

Annotation, Parent's Obligation to Support Adult Child, 1 A.L.R. 2d 910 (1948 & Supp. 1987).

Annotation, Parent's Obligation to Support Unmarried Minor Child Who Refuses to Live with Parent, 98 A.L.R. 3d 334 (1980 & Supp. 1987).

Annotation, Postmajority Disability as Reviving Parental Duty to Support Child, 48 A.L.R. 4th 919 (1986 & Supp. 1987).

Annotation, Postsecondary Education as Within Nondivorced Parents' Child Support Obligation, 42 A.L.R. 4th 819 (1985 & Supp. 1987).

Annotation, Reimbursement: Requirement, Under 42 U.S.C.S. § 602(a)(28), That State Reimburse AFDC Recipient for Child Support Payments Collected on Recipient's Behalf, 70 A.L.R. Fed. 941 (1984 & Supp. 1987).

Annotation, Responsibility of Noncustodial Divorced Parent to Pay for, or Contribute to, Costs of Child's College Education, 99 A.L.R. 3d 322 (1980 & Supp. 1987).

Annotation, Statutory Change of Age of Majority as Affecting Pre-Existing Status or Rights, 75 A.L.R. 3d 228 (1977 & Supp. 1987).

Annotation, Stepparent's Postdivorce Duty of Support Stepchild, 44 A.L.R. 4th 520 (1986 & Supp. 1987).

Annotation, Validity, Construction, and Application of Statute Imposing Upon Stepparent Obligation to Support Child, 75 A.L.R. 3d 1129 (1977 & Supp. 1987).

Annotation, What Voluntary Acts of Child, Other Than Marriage or Entry into Military Service, Terminate Parent's Obligation to Support, 32 A.L.R. 3d 1055 (1970 & Supp. 1987).

Annotation, Who is "Dependent Child" within meaning of §§ 406(a) 407(a) and 408(a) of the Social Security Act (42 U.S.C.S. §§ 606(a), 607(a) and 608(a) Entitling Families to Aid for Dependent Children (AFDC), 23 A.L.R. Fed 232 (1975 & Supp. 1987).

SECTION II - ESTABLISHMENT OF SUPPORT OBLIGATION

In Section I writers examined the length of support duties in post-minority cases. In this section, authors investigate the breadth of support duties. The absent parent owes a support duty, as does ultimately the custodial parent. But what about the stepparent? Are there incidences in which the stepparent may be held liable for the support of a stepchild that he or she did not adopt? With the increase in the number of remarriages and failed remarriages, legal observers, scholars and judges have begun to grapple with the equity of imposing stepparent liability in certain cases. This emerging area of child support law yields for now fact-specific answers to the stepparent liability dilemma, with most commentators using equitable doctrines to produce fair and flexible results intended to be in the children's best interests.

The general subsection also includes articles covering location of absent parents and their assets, separation agreements and non-guideline factors for courts to consider in determining the amount of the support award.

The CSEA of 1984 required states to have support guidelines in place by October 1, 1987, although states were free to determine the degree to which the decision-maker is bound by the guidelines, as well as what formula is to be used in calculating the amount owing under the guidelines. Various theories have been propounded, and in subsection B several writers examine them for fairness and economy. Writers from around the country also review and comment on particular state guidelines. Attorneys dealing with child support issues have to be extremely familiar with a state's guidelines and any upward or downward adjustment criteria in order to serve fully their client's interests.

A. General

Arthur, Child Support Enforcement: Parental Agreements, 36 Juv. & Fam. Ct. J. 93 (1985).

Judge Arthur discusses child support and visitation agreements entered into by divorcing parents. She stresses that even though private parties may arrive at a mutually-agreed-upon amount of support, the court has the ultimate power to approve or disapprove the private agreement. The court determines, for example, whether the agreement reached complies with the appropriate laws and whether the child's right to support is of an adequate amount and properly allocated between the parents. The author notes that the form of payment, division of the amount between the parents, and even modification of agreements may be contracted between the parents so long as the amount of support which the court has determined is not reduced. Judge Arthur concludes that because the thrust of all support laws is to protect the child, the court, serving in this protective role in loco parentis, has legal authority that supersedes even that of the actual parents.

E. Beninger & J. Smith, Determining Child and Spousal Support (1986).

This manual offers information on current economic principles as they apply to support determination. It includes checklists, client worksheets, support calculation forms, economic data used by economists in support determination and step-by-step instructions for computing support amounts. Other topics covered are: the current status of support determination; basic tools for spousal and child support determination; tax considerations; and, modification of support.

Bruch, Developing Standards for Child Support and Payments: A Critique of Current Practice, in Improving Child Support Practice I-41 (1986).

Professor Bruch examines child support theories, discusses some child support issues raised by recent economic insights, and proposes a new application of existing theory that could significantly improve current practice. In order to make the proposed guidelines more equitable, Bruch suggests that: 1) better measures for determining child support rearing costs, including the costs associated with the employment of both parents outside the home, must be developed; 2) a principled allocation of these costs between the child's parent must be implemented; and, 3) means for incorporating anticipated changes in children's needs and parent's incomes in a less burdensome fashion must be created.

Cheifetz, When Must Stepparents Foot the Bill?, 8 Fam. Adv. 29 (Summer 1985).

The author examines the duty of a stepparent to support his or her spouse's children. No obligation exists under common law unless the stepparent voluntarily assumes it by providing support or adopts the children. The in loco parentis relationship created by voluntary contributions is self-imposed and terminates at will. Some states have enacted statutes which impose stepparent support duties only if the child would otherwise become a public charge. Courts have applied equitable estoppel and implied contract theories to hold a stepparent liable for the support of a stepchild. Equitable estoppel protects a child who would be irreparably harmed without the emotional and financial resources upon which he or she has long relied. A promise to care for the child and reliance by the other spouse are sufficient to create an implied contract for support, argues Cheifetz. The author concludes that increasing support obligations of stepparents diminishes the distinction between various family relationships. The same consequences flow from these relationships regardless of an individual's marital or parental status, theorizes Cheifetz.

Dodson, Horowitz, & Haynes, Finding the Missing Obligor, 5 Fairshare 3 (Apr. 1985).

This article focuses on the nature and use of state parent locator services and the federal parent locator service to track down absent parents for child support collection purposes.

Douglas, Factors in Determining Support, 36 Juv. & Fam. Ct. J. 27 (1985).

Judge Douglas writes that in determining child support orders, trial courts must consider the totality of the financial circumstances, concentrating on two chief factors: the needs of the child and the parents' ability to pay. The author states that while courts have not been uniform in basing the awards on both factors, the CSEA of 1984 should serve in equalizing decisions, particularly since the Amendments' requirements must be incorporated into the laws of all the states.

T. Espenshade, Investing in Children (1984).

Espenshade, of the Urban Institute, examines the child-related spending patterns of parents from various socioeconomic circumstances and the factors that lead to variances in those expenditures. The data include useful information to aid courts in setting child support award amounts and determining allowances for foster children.

Fisher, Consider These Clauses: To Stabilize Future Child Support Payments, 4 Fairshare 9 (Jan. 1984).

The author suggests that attorneys representing a non-custodial parent include in a settlement agreement, immediately after the unallocated maintenance-child support section of the agreement, language to stabilize future child support payments, with an eye on foreseeable contingencies and their tax consequences.

Foster & Freed, The Obligation of Surrogate Parents: Where Does the Buck Stop?, 36 Juv. & Fam. Ct. J. 97 (1985).

A discussion of the nature of the child support obligations of surrogate parents is the topic of this article. It begins with a look at the natural and legal duty of parents to contribute to their child's needs. The article then focuses on stepchildren and children of non-marital couples and their claims to support.

Gourvitz, The Stepparent's Obligation to Support a Spouse's Child, 3 Compleat Law. 41(3) (Winter 1986).

Using cases and statutes from several states involving the stepparent's obligation to support his or her stepchild, the author discusses the trend in the law to extend the responsibility for child support to persons who previously were not liable to pay support. According to the author, among the persons affected are: 1) the parent's new spouse with whom the children reside and because of whose income the parent can remove himself or herself from the job market and no longer claim a lack of resources; and, 2) the spouse of the noncustodial parent, who reduces many of the parent's expenses and contributes to the parent's income, freeing more money for child support.

Gourvitz, When Stepparents Must Support Spouse's Child, 3(5) Matrimonial Strategist 1 (June 1985).

Gourvitz, noting that 35 million Americans now live in stepfamilies, remarks that courts are increasingly imposing support liability on the stepparent. The stepparent is gradually becoming the back-up provider if the natural parent defaults, claims the author, especially if he or she has inherited the original child/natural parent relationship. Also, if a stepparent promises to provide support to a stepchild and the stepchild's custodial parent relies on the promise, an enforceable contract may have been formed, says Gourvitz.

Guerin, Separation Agreement Provisions on Support, in 1 Improving Child Support Practice I-310 (1986).

Guerin provides sample key clauses regarding child support that should be included or at least considered in separation agreements. He includes clauses addressing dependency tax exemptions, support payment specifics, medical and dental insurance and expenses, college expenses, life insurance, and future changes in circumstances.

Haynes, Locating Absent Parents and Their Assets, in 2 Improving Child Support Practice IV-71 (1986).

Haynes reviews the various tools available to locate hard-to-find absent parents and their assets. She suggests that careful client interviewing itself may be the most fruitful and time-saving method. When the obligee's information is insufficient, Haynes reviews commonly available sources of information and some that are solely available to IV-D agency workers. Many government agencies' files can be tapped for information through a IV-D request, Haynes says. The IRS may provide useful information, not only regarding the whereabouts of the absent parent, but also the location and type of income the absent parent claimed in preceding tax years.

Loeb, Grandparent's Liability for Child Support, 4(8) Matrimonial Strategist 1 (Sept. 1986).

Loeb discusses Wisconsin's recent statutory enactment that makes parents of a minor child liable for the support of that child's baby to the extent the minor parent is unable to meet the baby's needs. The author says that the legislation is intended to encourage parents to counsel their children about sexual behavior.

Mahoney, Support and Custody Aspects of the Stepparent-Child Relationship, 70 Cornell L. Rev. 38 (1984).

This article examines the support, custody, and visitation rights existing in the stepparent-child relationship. Common law imposes no support duty on a stepparent. Under the doctrine of in loco parentis, the stepparent may assume the duty by voluntarily contributing to the child's support. The stepparent may terminate the in loco parentis relationship at will, ending at the same time any financial responsibility for the child. Statutes addressing the issue impose a support obligation only if the child is receiving public assistance or is otherwise in need. To provide financial security for children, the author argues in favor of mandatory support obligations by stepparents. A stepparental support duty, imposed by statute or assumed under common law, generally ceases upon divorce, claims Mahoney. The author insists that members of a stepfamily develop complex

emotional and financial relationship with long-lasting consequences and that extending support obligations beyond the termination of a marriage will protect those relationships. She formulates a post-divorce law and lists the following factors courts should consider in awarding support: 1) the length of the marriage; 2) the financial arrangements during marriage; 3) the estimated needs of the stepchild after divorce; and, 4) the financial abilities of each spouse to support the stepchild.

Markoff, Stepfamily Law: Review and Proposals for Change, 18 Suffolk U.L. Rev. 701 (1984).

After a review of current stepfamily law, the author proposes that a stepchild's right to a share of the stepparent's estate under intestate succession and wrongful death statutes and to postdivorce stepparent support be determined by the actual relationship between stepparent and stepchild and the best interests of the child, rather than by rules based on stepfamily status. The author contends that this proposal allows courts to determine the rights and obligations of stepfamily members on the basis of their actual behavior rather than on the blind application of per se rules.

McGeorge School of Law, Interviewing for Court Diversion (1986).

This 25-minute videotape addresses interviewing techniques used in establishing paternity and support obligations. It is designed for use by state and local Child Support Enforcement agencies to educate paternity and support investigators and other legal professionals involved in resolving child support cases.

National Institute for Socioeconomic Research, Review of Literature and Statutory Provisions Relating to the Establishment and Updating of Child Support Awards (1984).

As the title indicates, this publication reviews literature, statutes, case law, and expert opinion relating to the development of models for establishing and updating child support awards standards. This review represents the first task in a project to develop one or more models for setting initial awards and subsequent modifications to reflect changes in parental income and the needs of children.

National Institute for Socioeconomic Research, Review of Selected State Practices in Establishing and Updating Child Support Awards (1984).

This report presents the results of a review of selected state practices in setting initial child support awards and subsequently modifying them to reflect changes in circumstances

of the obligor, custodial parent, and the children. The following state formulas are discussed: Delaware, Wisconsin, Washington, and Colorado.

Note, Child Support - Doctrine of Equitable Estoppel May Be Applied to Hold a Stepparent Liable for Child Support Payments. Miller v. Miller, 97 N.J. 154, 478 A.2d 351 (1984), 23 J. Fam. L. 445 (1984-5).

This note examines Miller v. Miller, which held that the doctrines of equitable estoppel and implied contract may be relied upon to impose a continuing obligation of child support on a stepparent. The note points out that in order to establish a continuing duty of support based on equitable estoppel, the Miller court found that the party asserting estoppel must prove that the stepparent made a representation of support to the parent or children and that the children relied on this representation to their financial detriment. In proving reliance, the note continues, the complaining party must show more than an emotional bond between the stepparent and the stepchildren.

Note, Domestic Relations - Child Support - Equitable Estoppel May Be Applied To Prevent Stepparent from Denying Obligation to Support Stepchildren After Divorcing Natural Parent - Miller v. Miller, 97 N.J. 154, 478 A.2d 351 (1984), 16 Seton Hall L. Rev. 127-49 (1986).

This note discusses the decision of the New Jersey Supreme Court in Miller v. Miller to apply, in appropriate situations, the doctrine of equitable estoppel in imposing a child support obligation on a stepparent after he or she has separated from or divorced the natural parent. The author argues that although the Miller court properly recognized support needs of a child after the divorce of his or her stepparent and natural parent, the decision leaves trial courts with scant guidelines for determining a stepparent's support obligation.

Note, Wiese v. Wiese: Support Obligations of Stepparents - The Utah Supreme Court Toppled by Estoppel, 12 J. Contemp. L. 305 (1987).

The author analyzes the equitable estoppel theory used by the Utah Supreme Court to decide Wiese v. Wiese, 699 P.2d 700 (1985), which held that a stepfather who has held himself out as the natural father may deny liability for child support unless the denial causes the child to lose support from his or her natural father. In Wiese, the appellant stepfather had signed the birth certificate although he was not the natural father and consented to a divorce decree naming him as the natural father. But

according to the court, the mother failed to prove she had relied on these actions to her detriment, thereby preventing her use of estoppel. The author argues that the severance of emotional ties between the child and one representing himself as the parent causes enough psychological harm to meet equitable estoppel's requirement of detriment and that the application of estoppel and res judicata should have prevented the stepfather from denying liability.

Redman, Stepchild Support: The Real World, 7 Fairshare 8 (Sept. 1987).

Redman focuses on the problem of determining the child support obligations of stepparents. The author begins by stating that the law requires natural parents to be financially responsible for their children until emancipation and the reality that most children not living with their parents are supported by stepparents. Redman next goes into an in-depth discussion of the basis for stepparent responsibility, concluding that the law is not uniform on this matter.

Riley, A Stepparent's Responsibility of Support, 44 La. L. Rev. 1253 (1984).

The author analyzes the impact of Louisiana's community property law on the support responsibilities of a stepparent. Article 2365 of the Louisiana Civil Code states that if a spouse used separate property to pay a community obligation, that spouse upon end of the marriage must be reimbursed by the other spouse for one-half of the value of the property at the time it was used. Louisiana Civil Code Article 2362 describes a child support obligation as a community obligation. The author argues these provisions allow a court to require a stepmother, upon termination of marriage, to pay to her husband or his child one-half of the amount of support payments made from his separate property during the marriage. Riley urges repeal of Article 2362 and suggests the legislature modify Article 2365 to require reimbursement only from community assets. Child support obligations incurred by a spouse would then no longer burden the separate property of the stepparent, comments Riley.

B. Roberts, Service of Process (Child Support Technology Transfer Project) (1987).

This monograph provides valuable information and suggestions for improving service of process in the child support enforcement program. It begins with an explanation of how process is served. It next discusses the role of service of process in the

child support enforcement program. The monograph ends with a chapter on best practices and techniques. This publication also includes in the appendix the federal process rule and other exemplary legislative provisions.

Survey - Family Law - Stepparent Equitably Estopped from Denying Support Obligations After Divorce Based Upon Parent-Child Bond - M.H.B. v. H.T.B., 100 N.J. 567, 498 A.2d 775 (1985), 16 Seton Hall L. Rev. 561 (1986).

This survey provides a synopsis of the holding in M.H.B. v. H.T.B. In this case the court held that a stepparent is precluded from reducing his child support obligation by denying paternity under the theory of equitable estoppel where he had become the child's psychological, if not biological, parent.

Tindall, Separation Agreement Provisions on Support, in 1 Improving Child Support Practices I-318 (1986).

Tindall outlines the tax consequences of support that a practitioner should consider, as well as the specifics of the support award and its payment rate. He also cites a few cases dealing with medical and educational expenses. An extensive offering of sample separation agreement clauses is provided by the author.

B. Support Guidelines

Albano & Dennis, Child Support Guideline: A Necessary Evil, 8 Fam. Adv. 4 (Summer 1985).

After a brief discussion of the federal mandate requiring every state to enact child support guidelines by October 1, 1987, the authors argue that while it is important to reduce the backlog of child support cases, blind application of guidelines will lead to the same evil they are designed to eliminate. The authors point out that many guidelines ignore relevant factors such as marital and nonmarital debts, the child's standard of living if the parents had not divorced, prior support obligations, college expenses, special medical and dental expenses, special expenses for talented children, and tax consequences.

Bailey, A Practitioner's Approach to Child Support, 60 Wis. B. Bull. 19 (June 1987).

Wisconsin's trend-setting support system is examined by the author. Bailey notes that the new support guidelines, which became effective July 1, 1987, are to be applied in support cases unless the obligor can show that application of the percentage standard would be unfair to the child or either party after considering 15 factors, including day care costs, educational needs, joint custody and medical expenses. The author contends that the current system is a fundamental philosophical change from a standard of need to a standard of entitlement and that the state and federal courts can expect to hear challenges to this change.

Casnote, Formula Established for Determining Child Support, 58 Temple L.Q. 435 (1985).

Prior law in Pennsylvania was that the father had sole responsibility for the financial support of his children. The Pennsylvania Supreme Court held both parents responsible according to their ability. The guidelines used to establish the amount included the reasonable expenses in supporting children and the ability to pay, but according to the author, results were inconsistent because of the court's discretion in applying the principle. She therefore praises the state's supreme court ruling in Melzer v. Witsberger, 480 A.2d 991 (Pa. 1984), which held that a child support award must be based on specific guidelines. Melzer sets out a mathematical formula to employ for future support orders that lessen the confusion.

Cassetty & Douthitt, Support and Visitation Schedules, Guidelines and Formulas, in 1 Improving Child Support Practice I-105 (1986).

This paper provides an overview of various approaches directed at estimating and measuring the economic consequences of raising children after divorce. It begins with a review of child support awards and compliance rates and the ability of parents to pay. It next explains direct and indirect measures of determining the costs of raising children. Using exhibits and tables, the article then focuses on the following techniques for determining child support awards: the cost-sharing approach, the income-sharing approach, and the taxation approach. The author concludes by discussing the adequacy and equity of child support payment awards.

Cheney & Bech, The 1986 Divorce Revolution, 12 Vt. B.J. & L. Dig. 4 (Aug. 1986).

The impact of Vermont's new support guidelines is investigated by the writers. The guidelines are based on the combined income of the parents prorated based on each parent's income and time spent with the children. Also, a payment from the more affluent parent may be made to the less affluent one to equalize incomes after the support payment transfer is added to or subtracted from each income.

Foster & Raggio, New York's Proposed Child Support Guidelines: Pouring Oil on Troubled Fathers, 7 Fairshare 12 (June 1987).

This article criticizes the proposed guidelines drafted by the State of New York's Commission on Child Support. The authors claim that the proposed guidelines would drastically increase the child support obligations of non-custodial parents but do nothing to guarantee that the custodial parent will pay his or her share, which would be unfair to non-custodial parents who are usually fathers. This article also points out that the proposed guidelines may encounter constitutional problems including possible impairment of contract (due to the retroactive nature of the proposed legislation) and due process (due to possible taking of property, including income, without just compensation, due to the proposed fixed percentage schedules).

Giampetro, Mathematical Approaches to Calculating Child Support Payments: Stated Objectives, Practical Results, and Hidden Policies, 20 Fam. L.Q. 373 (1986).

This essay considers the use of mathematical formulas to determine child support payments but finds they offer little improvement in providing consistency. The author describes the judicial discretion that currently prevails in figuring child

support payments and the formulas meant to provide consistent results, such as the cost-sharing and income-sharing formulas. According to the author, neither judicial discretion nor formula use improves the condition of the child, who typically suffers a reduced standard of living in the post-divorce family. The author argues that the formulas, which are meant to achieve consistent results, will in fact only increase the burdens on divorced parents, because the variables within the formulas are still subject to the judge's definitions and preference as to who should carry the burden of proof in a divorce case. Even if such formulas promoted uniformity, she contends, they do nothing to ameliorate the effects of reduced purchasing power that families suffer after divorce. If the goal is that children not suffer, then according to the author, the legislature should decide questions of allocation, namely, whether the taxpayer should cover the loss in purchasing power, and if not, how the economic loss should be divided between the parents.

Gold-Bikin and Lev, How to Win the Most Child Support for Your Client, 4 Compleat Law. 20 (1987).

The authors contend that the guidelines adopted by states as a result of the CSEA of 1984 have shifted the focus in a child support case from the child's needs to the parents' income. Since one objective in maximizing the child support award, according to the authors, is maximizing the income of the payor spouse, they discuss how the use of a cash-flow analysis may properly increase the amount on which the award is based.' They emphasize that counsel may persuade the court to deviate from the guidelines in particular circumstances.

Goldfarb, Child Support Guidelines: A Model for Fair Allocation of Child Care, Medical, and Educational Expenses, 21 Fam. L.Q. 325 (1987).

This article presents a model for an equitable allocation of child care, medical and educational expenses between parents. Following a brief introduction, the author provides an overview of the different theoretical approaches to devising child support guidelines such as equalization of the standards of living, cost-sharing, income sharing, and a hybrid of the cost- and income-sharing models. The author differentiates between ordinary and extraordinary expenses and then argues that an average amount for ordinary expenses should be included in the formula for computing the basic child support award, while the actual amount of extraordinary expenses should be prorated between the two parents separately from, and in addition to, the basic underlying award. Goldfarb discusses the legal policy issues that arise in connection with the support for child care, medical and educational expenses. The author concludes that the

major cause of the high poverty rate among female-headed, single-parent families is the inadequacy of child support awards and suggests that child support guidelines can improve the amount of the awards.

S. Goldfarb, Child Support Guidelines: How You Can Make a Difference (1987).

This booklet, published by the NOW Legal Defense and Educational Fund, provides a brief introduction to child support guidelines. The author discusses, for example, the importance of support guidelines, some of the basic approaches to support guidelines, important factors to look for in analyzing the guidelines and how advocates can get involved in this issue. The publication also includes resources for further assistance.

Goldfarb, What Every Lawyer Should Know About Child Support Guidelines, 13 Fam. L. Rep. (BNA) 3031 (Sept. 29, 1987).

This article provides a series of brief answers to commonly asked questions about the child support guidelines mandated by the CSEA of 1984. The author begins by describing the guidelines, why they are needed, and how they are drafted and adopted. The author next reviews four basic theoretical approaches from which current child support guidelines are derived, namely: equalization of standards of living; cost-sharing; income sharing; and, a hybrid of the cost-sharing and income-sharing models. The author then identifies some specific factors that should be considered in connection with the guidelines, including whether a particular guideline: 1) defines the sources of parental income that will be taken into account; 2) deals with preexisting support payments; 3) treats extremely low-income and extremely high-income parents differently from moderate-income parents; 4) includes child care, medical services, and educational expenses in the original award; and, 5) reduces child support payments because of non-traditional visitation and custody arrangements. The article ends with a discussion of what lawyers should know about the "income shares" formula, the predominant model for guidelines currently enacted.

Harhai, Key Issues in the Colorado Child Support Guidelines, 16 Colo. Law. 51 (1987).

The author summarizes the Colorado support guidelines, in effect as of November 1, 1986, that take into account stipulations, income, and deductions.

Herrell, Child Support Guidelines: A Judge's View, in 1 Improving Child Support Practice I-60 (1986).

While Judge Herrell views the promulgation of guidelines and support formulas as a progressive and useful step in the determination of child support awards, he feels that they must not be mandatory. Judge Herrell suggests that the guidelines and formulas be sufficiently flexible to allow for the infinite number of variables likely to arise in individual cases. He states that no child support formula or guideline system can do equity to the parties if it must be rigidly and mechanically applied. To support his position, the judge discusses in detail a number of factors that he considers troublesome in child support cases including: the potential for human error in the calculation of one's income and expenses, the effect of alimony on the child support award, the problem of setting support where there are two or three families involved, the debt load, special needs of children, custody and visitation arrangements and the effect of property division.

Horowitz, "Guidelines" Are New Reality for Lawyers, 3(9) Matrimonial Strategist 1 (Oct. 1985).

Horowitz analyzes how the role of the family law attorney may change in states that enact guidelines as mandated by the CSEA of 1984. The author notes that attorneys still have a role to play in the setting of the support amount, as most guidelines are either advisory or rebuttably presumed to apply, leaving the practitioner room to argue for divergence from the prescribed amount. An attorney needs complete financial information about the parties and well-reasoned arguments in support of deviation from the guidelines. Those arguments, says Horowitz, should be based on a sound assessment of the parties' standing and what factors generally will lead a decision-maker to diverge from the guideline's predisposed results.

Norton, The Challenge of Mandatory Child Support Guidelines?, 5 Cal. Law. 59 (Oct. 1985).

This article looks at support guidelines used in several counties in California and reviews their effectiveness. The author also discusses the pros and cons of judicial discretion in the setting of the support amount.

Norton, Mandatory Support Schedules - Is Your State Ready? 12 Fam. L. Rep. (BNA) 3015 (May 20, 1986).

The author discusses the arrival of mandatory state child support guidelines resulting from congressional legislation. He offers the California guidelines as an example to states in the process

of formulating similar guidelines. Norton sets out the three main principles on which the California guidelines rest: 1) that the schedule should be based on the best data on child-rearing costs; 2) that parents should be responsible for support according to their financial means; and, 3) that allocation should depend on the time the parent spends with the child. He then gives an example of a schedule that would follow those principles.

Pontius, Minnesota's Child Support Guidelines: Toward a Fair and Rational Standard for Child Support, 9 Hamline L. Rev. 459 (1986).

This article provides a comprehensive overview of the Minnesota child support guidelines enacted in 1983 by the Minnesota legislature. After a discussion of the legislative history and policy considerations underlying the child support guidelines, the author analyzes judicial implementation of the legislation. The author next identifies major areas of controversy and the current legislative activity aimed at improving the prevailing child support guidelines.

Recent Amendments to Illinois Child Support Statutes: Income Percentage Guidelines, 19 J. Marshall L. Rev. 207 (1985).

The author provides an overview of recent amendments to Illinois' child support laws intended to bring Illinois into compliance with federal law requiring all states to establish guidelines for determining child support awards by October 1, 1987, in order to receive AFDC money. The author contends that in its zeal to effectuate the desired compliance, the Illinois legislature has instituted changes which invade constitutionally-protected family choice areas, leaving guidelines that are unconstitutionally vague and resulting in unconstitutional classifications.

Smith & Laramore, Massachusetts' Child Support Guidelines: A Model for Development, in Child Custody, Support, and Sexual Abuse Allegations in Divorce Litigation (1987).

This paper covers the development of the Massachusetts' child support guidelines. It begins by describing some of the research sources used and elaborating on the policy considerations that motivated various choices. It next reviews the basic decisions surrounding the type of guidelines created. Also discussed in detail is the standard of living analysis used by the drafters of the Massachusetts guidelines. The paper concludes with a summary look at key factors analyzed in the development of the guidelines.

Thompson & Paikin, Formulas and Guidelines for Support, 36 Juv. & Fam. Ct. J. 33 (1985).

The authors describe formulas and guidelines used in Oregon, Washington, Wisconsin, Delaware and Texas. Thompson and Paikin identify two underlying rationales for most guidelines: the cost-sharing approach and the income-sharing approach. Under the first approach, the cost of raising a child is estimated and then apportioned between parents, usually on the basis of income. The income-sharing approach, on the other hand, assumes the right of the child to share in the standard of living of the absent parent without reference to the actual costs of rearing the child. The authors suggest that all proposed guidelines be tested on a wide variety of factual situations to ensure that the results are consistent with a state's statutory requirements.

Uda, Child Support Guidelines Encourage Equitable Awards, 12 Mont. Law. 8 (Mar. 1987).

The article examines Montana's support guidelines, adopted by the Montana Supreme Court, which became effective in January 1987. The writer notes that the guidelines are not binding on the judiciary. A table is included that shows the guidelines are based on the net available resources of the parties.

Weaver, Family Law Newsletter: New Child Support Guideline Adopted, 15 Colo. Law. 1662 (Sept. 1986).

Colorado's new child support guideline creates a rebuttable presumption of applicability in most cases. The author notes the implications of impinging on the court's leeway. Appendices of support schedules are provided.

Williams, Child Support and the Costs of Raising Children: Using Formulas to Set Adequate Awards, 36 Juv. & Fam. Ct. J. 41 (1985).

Williams discusses formulas for adequate awards and presents evidence that current levels greatly undervalue the true costs of rearing children. The author reviews pertinent economic data on necessary child-rearing expenditures and the level of child support orders that would be derived under five support formulas, showing how the variables affect the award amount. He then lists factors state decision-makers should use to evaluate guideline models. After summarizing the results of his comparative analysis, the author notes that it is the judiciary in each state that is particularly suited: 1) to develop the necessary formula that will be flexible enough to ensure adequate recognition of

the many mitigating circumstances that will arise; 2) to allow for equitable results in anomalous cases; and, 3) to use its educated discretion in modifying rulings for situations not contemplated in the original design.

Williams, Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches, in 1 Improving Child Support Practice I-1 (1986).

Williams begins with a review of pertinent economic data concerning expenditures on children and then describes five different child support guidelines that represent a range of underlying conceptions and different levels of comprehensiveness. He next reviews the levels of child support orders that would be derived from each approach across a wide range of obligor incomes. The article ends with a summary of results of his comparative analysis and makes several conclusions for development of guidelines by states.

R. Williams, Development of Guidelines for Establishing and Updating Child Support Orders - Interim Report (National Center for State Courts) (1985).

This interim report, prepared by Robert Williams of the Institute for Court Management of the National Center for State Courts, provides an assessment of issues that have arisen in the development of formulas for the amounts of initial and updated child support awards. This report begins with a discussion of basic objectives and underlying principles for developing formulas. It next: 1) reviews and analyzes the available economic data concerning expenditures on children; 2) discusses the factors that should be considered in developing formulas; 3) describes five formulas representing different underlying concepts and varying assumptions about the economic nature of the expenditures on children; and, evaluates the effects of different formulas on child support orders under a range of circumstances.

Williams, Guidelines for Setting Levels of Child Support Orders, 21 Fam. L.Q. 281 (Fall 1987).

Williams summarizes guidelines research performed by the Child Support Guidelines Project, funded by OCSE and administered by the National Center for State Courts. He also presents recommendations from the National Advisory Panel on Child Support Guidelines concerning principles for the development of guidelines. Part II analyzes the need for child support guidelines based on available data relating to the adequacy and equity of child support awards. Part III reviews economic data concerning expenditures on children that provide a benchmark for assessing levels of child support awards. Part IV describes the

three major types of guidelines being considered by states, as well as a fourth type which represents an alternative conceptual approach. Part V reviews the levels of child support orders that would be derived from each, across a wide range of obligor incomes. Part VI discusses the development and use of guidelines within states. Part VII analyzes the use of guidelines for modifications of orders. Williams concludes in Part VIII with observations on the impact of child support guidelines on the practice of family law.

R. Williams & Advisory Panel on Child Support Enforcement, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report (National Center for State Courts) (1987).

This three-part report contains the Advisory Panel's recommendations regarding child support guideline legislation. Part I constitutes recommendations to Congress for new legislation on the subject of child support awards. Part II consists of recommendations to states in developing child support guidelines. Part III includes recommendations to OCSE concerning needed further research on child support guidelines.

Women's Legal Defense Fund, Critical Issues, Critical Choices: Special Topics in Child Support Guidelines Development (1987).

This publication contains a collection of papers on various topics on the development of child support guidelines. It is particularly useful for advocates planning strategy for adopting guidelines in their state. The publication also includes recent support developments in Illinois, Michigan, Minnesota, Washington and Wisconsin.

Women's Legal Defense Fund, Essentials of Child Support Guidelines Development: Economic Issues and Policy Considerations: Proceedings of the Women's Legal Defense Fund's National Conference on the Development of Child Support Guidelines (1987).

This report contains a number of papers on the development child support guidelines. Among the issues addressed are: guideline models, income definition, joint custody, updating awards, current guideline proposals, and the treatment of expenses such as child care and health insurance.

Young, Child Support Guidelines, 30 Advocate (Idaho B.J.) 22 (May 1987).

The author, who is the chairperson of the Idaho Child Support Enforcement Commission and a judge, discusses the proposed support guidelines for Idaho practitioners. The guidelines are based on Wisconsin's concept, which primarily looks at the gross income of the obligor and takes a percentage of it as the monthly support obligation. These guidelines would not apply to those who earn under \$500 per month or over \$75,000 per year.

C. Additional Resources

Annotation, Adequacy or Excessiveness of Amount of Money Granted as Combined Award of Alimony and Child Support, 2 A.L.R. 3d 537 (1965 & Supp. 1987). Note that this annotation has been superseded by the annotation in 27 A.L.R. 4th 1038 (1984 & Supp. 1987).

Annotation, Child Support: Court's Authority to Reinstitute Parent's Support Obligation After Terms of Prior Decree Have Been Fulfilled, 48 A.L.R. 4th 952 (1986 & Supp. 1987).

Annotation, Divorce: Provision in Decree that One Party Obtain or Maintain Life Insurance for Benefit of Other Party or Child, 59 A.L.R. 3d 9 (1974 & Supp. 1987).

Annotation, Effect of Remarriage of Spouses to Each Other on Child Custody and Support Provisions of Prior Divorce Decree, 26 A.L.R. 4th 325 (1983 & Supp. 1987).

Annotation, Enforceability of Premarital Agreements Governing Support or Property Rights Upon Divorce or Separation as Affected by Circumstances Surrounding Execution - Modern Status, 53 A.L.R. 4th 85 (1987).

Annotation, Excessiveness of Amount of Money Awarded as Child Support, 1 A.L.R. 3d 382 (1965) & 1 A.L.R. 3d 324 (1965). Note that this annotation has been superseded by the annotation in 27 A.L.R. 4th 864 (1984 & Supp. 1987).

Annotation, Excessiveness or Adequacy of Amount of Money Awarded for Alimony and Child Support Combined, 27 A.L.R. 4th 1038 (1984 & Supp. 1987).

Annotation, Excessiveness or Adequacy of Money Awarded as Child Support, 27 A.L.R. 4th 864 (1984 & Supp. 1987).

Annotation, Liability of Parent for Support of Child Institutionalized by Juvenile Court, 59 A.L.R. 3d 636 (1974 & Supp. 1987).

Annotation, Long-Arm Statutes: Obtaining Jurisdiction Over Nonresident Parent in Filiation or Support Proceeding, 76 A.L.R. 3d 708 (1977 & Supp. 1987).

Annotation, Propriety of Decree in Proceeding Between Divorced Parents to Determine Mother's Duty to Pay Support for Children in Custody of Father, 98 A.L.R. 3d 1146 (1980 & Supp. 1987).

Annotation, Spouse's Professional Degree or License as Marital Property for Purposes of Alimony, Support, or Property Settlement, 4 A.L.R. 4th 1294 (1981 & Supp. 1987).

Annotation, Stepparent's Postdivorce Duty to Support Stepchild, 44 A.L.R. 4th 520 (1986 & Supp. 1987).

SECTION III - ESTABLISHMENT OF PATERNITY

With hundreds of thousands of children born out of wedlock every year, advocates have stepped up a massive campaign to establish paternity, not only to ensure that fathers pay support for their children, but to give the children all available rights and opportunities inherent in a father/child relationship.

Paternity testing through analysis of blood and tissue samples has made the paternity establishment process function more accurately, speedily and inexpensively in thousands of cases. The testing is not without controversy, though, and state judges, legislators and commentators are busy wrestling with the degree to which the test results should be admissible. Human leukocyte antigen test results can reveal absolute paternity exclusion (assuming testing and analyzing procedures were accurately followed), and the likelihood of paternity, the latter causing a clash between statistical probability and legal admissibility. Subsection A contains articles addressing paternity testing.

Before the CSEA of 1984, the constitutional parameters of paternity statutes of limitations were unsure. The U.S. Supreme Court had struck down statutes of limitation requiring a paternity case to be brought within one and two years of the child's birth. The Court did not provide a definition of a statute that would be on the threshold of constitutionality, so several articles in this supplement written in late 1983 and 1984 offer opinions of what would pass muster. All the conjecturing was laid to rest when Congress, in the CSEA of 1984, required states to increase their statutes of limitations to at least a child's eighteenth birthday in order to retain their Title IV-A federal contributions.

The constitutional debates in a paternity context have shifted to due process and right-to-counsel issues. Traditionally, paternity trials were quasi-criminal in nature. They have incalculable impact on the parties involved. Is appointed counsel for indigent defendants constitutionally required? If paternity cases are treated as other civil cases, does the putative father have any supplemental rights beyond those that he would be accorded in a contract or tort suit? Paternity's constitutional niche is still unsettled, and in subsection B writers reflect on its appropriate place. Subsection B also contains articles on teenage pregnancy and child support enforcement.

A. Paternity Testing

American Association of Blood Banks, Inclusion Probabilities in Parentage Testing (1983).

This publication, a product of a 1983 conference, contains numerous articles written by physicians on the issue of paternity. Section I of the book describes the goals and objectives of the conference. Section II covers concepts, logic and methods of paternity testing, while Section III contains legal topics associated with paternity tests and results. Section IV deals with variables, errors and the power of exclusion in paternity testing calculations. Sections V and VI include articles on the extent of testing, expression of paternity likelihood, medical-legal applications in England, Scandinavia and Europe and special problems in HLA reporting. Section VII provides numerous articles analyzing various paternity test cases. Section VIII contains conclusions, comments and recommendations on the exclusion and paternity probabilities, logic, calculations, data observations and medical-legal usefulness of paternity testing.

Brandes, 1984 Survey of New York Laws - Family Law, 36 Syracuse L. Rev. 342 (1985).

In the section on paternity, the author writes that due to recent statutory amendments expanding the admissibility of the blood genetic marker test results, contested paternity proceedings will probably decline because courts must order the test, upon motion, and accept its results if properly authenticated. The author notes that the decline in contested cases is consistent with recognition that children born out of wedlock have the same rights as children born during a marriage.

Butts & Schwartz, Serologic Testing in Disputed Parentage Cases, 48 Tex. B.J. 754 (July 1985).

This article discusses several issues that arise in paternity cases in Texas, including the varying standards of proof and statutes of limitations for married men contesting paternity of children born to their wives and for men never married to the children's mothers. Married men must prove by clear and convincing evidence that they are not related to the children. For unmarried men, if the other side cannot prove paternity by a preponderance of the evidence, the action fails. Inconclusive blood tests, therefore, may lead to different findings of paternity depending on the marital relationship of the putative father and the mother, state the authors.

California Supreme Court Survey: January 1984 - July 1984 - Family Law, 12 Pepperdine L. Rev. 329 (1984).

The family law section of the survey examines the California Supreme Court's decision in County of Los Angeles v. Soto, 35 Cal. 3d 483, 674 P.2d 750, 198 Cal. Rptr. 779 (1984). The author expounds on the court's holding that an agreement with the district attorney in which a non-custodial parent acknowledged the paternity of a child and stipulated to the entry of judgment ordering payment of child support, could be set aside upon a showing that the non-custodial parent was unaware of his or her rights and would not have executed that agreement had he or she been aware of those rights.

Child Support Technology Transfer Project, Paternity Establishment, Second Edition (1986).

This handbook, revised after the passage of the CSEA of 1984, highlights recent scientific improvements in the technology of parentage testing and laboratory procedures that have enhanced the process of paternity establishment. The handbook is organized into four basic chapters developed to assist all paternity workers in the child support enforcement program: the need for establishing paternity; scientific testing for paternity establishment; processing the paternity case; and, establishing paternity across state lines.

Kolins, The Role of Paternity Testing in Cases of Disputed Parentage, 63 Mich. B.J. 1169 (Dec. 1984).

Dr. Kolins describes the technicalities of paternity testing. He reminds practitioners that inclusionary testing, which Michigan has allowed since 1982, cannot prove paternity but can provide a percentage of likelihood of paternity. Exclusionary testing can prove one is not the father. The author states that 95% of all falsely accused fathers can be excluded through the combined results from seven genetic testing systems.

Lake and Paulsen, From Here to Paternity, 8 Fam. Adv. 41 (Summer 1985).

The authors outline in detail the methodology of paternity blood testing. They explain that there are three levels of paternity testing, with level I being the least definite and level III the most reliable. Lake and Paulsen state that first, experts analyze test results to determine the probability that a defendant is not the child's father. While the likelihood of paternity cannot be proved with one hundred percent accuracy,

exclusion can be absolute. If the defendant is not excluded, technicians perform tests to estimate the likelihood of paternity. The authors advise lawyers to insist on a level III test, particularly a HLA test, which they claim is the most accurate one in wide use in 1985. They warn that HLA tests need to be performed shortly after the blood is taken and that samples cannot be refrigerated. Emphasizing the complexity of paternity testing, the authors suggest procedures to minimize error. The laboratory should use handwriting samples, fingerprints and photographs to ensure accurate identification of the parties. Technicians should sequentially number samples and perform duplicate tests. The authors conclude that complicated, ever-changing testing techniques require lawyers to stay abreast of recent research so their clients can receive the best possible representation.

Lee, Affirmative Proof of Paternity: H.L.A. and a Normand v. Burkei Epilogue, 28 Boston B.J. 29 (July/Aug. 1984).

The writer notes that Massachusetts does not recognize inclusionary use of human leukocyte antigen test results. The author suggests constitutional issues may be raised by fathers who want to prove paternity. He comments that inclusionary use of the results is logical and necessary, as they are reliable and probative.

Lemmon and Murphy, The Evidentiary Use of the HLA Blood Test in Virginia, 19 U. Rich. L. Rev. 235 (1985).

The authors discuss the background and scope of paternity testing statutes in Virginia, including Section 20-61.1, which allows tests, such as the human leukocyte antigen test, to be used as evidence of paternity in child support proceedings. They argue that the legislature should resolve the remaining unsettled question of how much weight should be accorded such evidence by expressly giving the HLA test great evidentiary weight, in accord with other jurisdictions.

McPherson, Introduction of Blood Tests in Paternity Litigation, in 1 Improving Child Support Practice I-367 (1986).

After a brief discussion of the significance of blood tests in paternity determination, the author focuses on the admissibility into evidence of blood test results in paternity litigation. Among the evidentiary issues discussed are the hearsay problem, evidentiary predicate or foundation, the sufficiency of the evidence, the chain of custody, genetic testing in divorce cases, Fourth and Fifth Amendment protections against unreasonable searches and seizures and self-incrimination and Fourteenth Amendment protection against denial of free blood tests to

indigents. The author concludes by stating that although blood testing is now regarded as an evidentiary staple, practitioners should remember that the determination of paternity remains merely a probability and that there is room for more traditional evidence to buttress blood test results as indicators of paternity.

Note, Cutchember v. Payne: Approaching Perfection in Paternity Testing, 34 Cath. U.L. Rev. 227 (1984).

The author discusses admissibility of human leukocyte antigen (HLA) test results in paternity actions. After noting the development of traditional blood tests and their use to exclude a putative father, he analyzes cases accepting HLA test results as evidence of paternity. He focuses on Cutchember v. Payne, 466 A.2d 1240 (D.C. App. 1983), in which the D.C. Court of Appeals decided the D.C. blood test statute permits admissibility of HLA test results for inclusionary purposes. The statute prohibits use of blood test evidence to prove the accused is the father. The court reasoned it does not apply to HLA testing for three reasons: 1) it was enacted prior to the use of HLA tests; 2) the statute was designed to eliminate problems unassociated with HLA tests; and, 3) it applies to tests based on blood typing and not those, such as the HLA, based on tissue typing. The author approves of the court's decision but argues that it failed to establish the evidentiary requirements that must be met before a lower court can admit HLA test results.

Note, Human Leukocyte Antigen Test Results are Admissible in Paternity Cases to Show the Likelihood of Paternity - Turek v. Hardy, Pa. Super., 458 A.2d 562 (1983), 88 Dick. L. Rev. 565 (1984).

This note analyzes the holding in Turek v. Hardy that human leukocyte antigen (HLA) test results are admissible in paternity proceedings to show the accused is likely to be the father. The Pennsylvania blood test statute remains silent on admissibility of results for confirmatory purposes. The court found that HLA test results reliably indicate the likelihood of paternity and improve paternity dispute resolution. It noted the statute was enacted before HLA testing developed and addresses problems with traditional blood tests that do not exist with HLA tests. The author maintains the Turek decision is representative of an emerging trend in paternity law. He argues that the process for calculating the likelihood of paternity is controversial, unreliable, speculative and prejudicial to the accused. Increasing use of HLA testing demands implementation of procedural safeguards to protect a putative father's rights, argues the author.

Roberts, Establishing a Family: Blood Tests and the Paternity Determination Process, 18 Clearinghouse Rev. 1290 (1985).

The author examines the right of an indigent paternity defendant to a state-paid blood test. She describes the types of paternity tests currently in use and lists the foundation lawyers must present to ensure the results are admitted by the court. The author discusses in depth the Connecticut case of Little v. Streater, 452 U.S. 1 (1981), in which the U.S. Supreme Court affirmed a paternity defendant's right to a blood test regardless of his ability to pay. She reviews the application of the Little holding to other states. The author argues an accused must have access to both red cell and human leukocyte antigen tests to comply with due process and equal protection requirements. Urging states not to adopt administrative or quasi-judicial paternity proceedings allowed under the CSEA of 1984, she maintains the right to a blood test is best protected in a judicial proceeding. The author remains optimistic that lawyers can obtain pre-paid blood tests for indigent paternity defendants because sufficient statutory and constitutional arguments are available.

B. Rights and Procedures in Paternity Cases

Casenote, Constitutional Law, 22 J. Fam. L. 752 (1984).

This casenote reviews the decision in District of Columbia ex. rel. W.J.D. v. E.M., 467 A.2d 457 (D.C. 1983), declaring unconstitutional a two-year statute of limitations on establishing paternity. Relying on the two-part test established by the U.S. Supreme Court in Mills v. Habluetzel, 456 U.S. 91 (1981), and Pickett v. Brown, 462 U.S. 1 (1983), the court held that two years did not provide an adequate opportunity for interested persons to bring a paternity action. The court found the statute of limitations did not substantially relate to the District's interest in preventing stale or fraudulent claims. It noted the District does not toll the statute of limitations on actions during minority unlike some other jurisdictions' statutes that do not run until the child reaches the age of majority. The court also stressed that improvements in paternity testing make the loss of evidence unlikely.

Children's Defense Fund's Adolescent Pregnancy Prevention Clearinghouse, Child Support and Teen Parents (Nov. 1987).

This report focuses on ways to increase and improve paternity establishment and identifies child support enforcement services available to children born to teen mothers. It analyzes the child support system and the difficulties for teen parents, covering such topics as child support and AFDC recipients, working with young fathers, paternity establishment, support awards and collections, and other legal issues affecting teens.

Comments, Paternity Determinations in Washington: Balancing the Interests of All the Parties, 8 U. Puget Sound L. Rev. 653 (1985).

This comment focuses on the competing interests of parties involved in a paternity determination proceeding. Among the interests identified are: 1) the mother's and child's interest in the child's monetary support; 2) the state's interest in the child's support payments to alleviate the cost to the government; and, 3) the interest of the innocent defendant in the availability of procedural protections in court. The author writes that the Uniform Parentage Act adopted in Washington provides procedural safeguards for paternity defendants but suggests that more safeguards are necessary. Also, in order to better serve the interests of the parties involved in a paternity proceeding brought by the state to recover AFDC expenditures, the author recommends that administrative determinations be

permitted. In such a proceeding, the child would receive benefits sooner, the state would conserve financial resources and the defendant would receive the same safeguards provided in a judicial determination, contends the author.

Davis, Children Born Out of Wedlock: Their Time Has Come!, 11 Ky. Bench & B. 10 (Apr. 1985).

The author examines U.S. Supreme Court decisions regarding children born out of wedlock and concludes that discriminatory laws based on the legitimacy of the child serve no state interest, and therefore, could not withstand constitutional attack on equal protection grounds. Davis reviews Kentucky's four-year statute of limitations for paternity actions and finds it unable to pass constitutional muster. Kentucky's five-year general statute of limitations, which is tolled during the child's minority, is a constitutionally-adequate alternative, contends the author.

Dembitz, Child's Rights and Exaggerated Concern for the Out-of-Wedlock Father, 56 N.Y. St. B.J. 22 (May 1984).

The writer points out that the U.S. Supreme Court differentiated between those fathers that have accepted some measure of responsibility for the child and those who have not in its equal protection analysis in Lehr v. Robertson, 463 U.S. 248 (1983). Accordingly, the author believes that those fathers who have not taken an active role in their children's lives or affirmative steps to acknowledge paternity of their out-of-wedlock child need not be afforded a full array of notice and opportunity-to-contest rights in adoption cases. The author concludes that in such cases, the child's right to legitimacy outweighs the rights of the putative father.

Esterle, Gideon's Trumpet Revisited: Protecting the Rights of Indigent Defendants in Paternity Actions, 24 J. Fam. L. 1 (1985-86).

After setting out the background of the modern paternity action and the critical importance of accurately determining paternity, the author explores the rights of indigent defendants in paternity actions. According to Esterle, the due process protections for these defendants should be expanded beyond the right to a state pre-paid paternity blood test, established by the U.S. Supreme Court in Little v. Streater, 451 U.S. 1 (1981). He argues that the indigent defendant's right to counsel in paternity actions and the standards for waiving the right to either a blood test or counsel must be clarified to protect the constitutional right set down in Streater.

Faupel, Family Law Paternity, 31 Wayne L. Rev. 614 (1985).

In this section the author discusses the following cases: 1) Pizana v. Jones, 127 Mich. App. 123, 339 N.W.2d 1 (1983), in which a Michigan appeals court held that where a child is born out of wedlock, the issue of paternity must be decided under Michigan's paternity laws rather than under the child custody laws; 2) Lynch v. Lynch, 127 Mich. App. 34, 338 N.W.2d 413 (1983), where the court found that Michigan's Child Custody Act is applicable when a circuit court determines paternity issues at the time of divorce; 3) Frazier v. Castellani, 130 Mich. App. 9, 342 N.W.2d 623 (1983), which held that the six-year statute of limitations under Michigan's Paternity Act is not tolled where a putative father is out of the jurisdiction of the court but amenable to process; and, 4) Whitman v. Mercy Memorial Hospital, 128 Mich. App. 155, 339 N.W.2d 730 (1983), which held that the hospital's policy prohibiting unwed fathers from gaining access to the delivery room violated the Elliot-Larsen Civil Rights Act. (Note that Michigan now complies with the CSEA of 1984 requirement of an 18-year statute of limitations.

Laughery, Out-of-State Support: Getting Mileage Out of Long-Arm Statute, 8 Fam. Adv. 10 (Summer 1985).

This article examines the use of long-arm statutes to assert personal jurisdiction over out-of-state defendants in paternity actions. The author briefly reviews the evolution of the minimum contacts doctrine before setting out a test to determine if a court has jurisdiction to enter a support order against a nonresident. The court must have personal jurisdiction under the state's long-arm statute and the statute's application must satisfy due process requirements. Activities subjecting a defendant to personal jurisdiction under a long-arm statute vary from state to state. Many states have enacted statutes allowing courts to assert personal jurisdiction over any defendant who meets the minimum contacts test. The author suggests these statutes may not successfully reach as many defendants as statutes with specifically-listed actions that trigger jurisdiction. Specific language notifies an individual when he or she will be subject to a state's jurisdiction and is less likely to violate due process rights, says Laughery.

Note, Natural Father of a Child Born Out of Wedlock May Not Assert as a Defense Against His Support Obligation the Mother's Deliberate Misrepresentation That She Was Using Contraception - Frank Serpico v. Pamela P., 29 Vill. L. Rev. 185 (1984).

This note begins by examining the development of common and statutory law affecting the support rights of children born out of wedlock. The author next discusses the decision in Frank Serpico v. Pamela P., 110 Misc. 2d 978, 443 N.Y.S.2d 343 (1981),

which found the father liable for the support of his natural child. The father asserted that the mother's misrepresentation that she was using contraception violated his right to privacy by depriving him of his freedom to avoid procreation. Finding no constitutional rights of the defendant had been abridged, the New York Court of Appeals rejected the defense. It stated the primary consideration in paternity proceedings is the welfare of the child. It further noted the father's relevant interest was his freedom to avoid procreation through contraception, and the mother's conduct did not prevent him from using birth control. The author concludes the court's reasoning was a correct application of constitutional principles.

Note, Tennessee Statute Imposing Two-Year Limitation Period on Paternity and Child Support Actions Brought on Behalf of Illegitimate Children Violates Equal Protection. Pickett v. Brown, 103 S. Ct. 2199 (1983), 22 J. Fam. L. 371 (1984).

In Pickett v. Brown, the United States Supreme Court held that the Tennessee statute at issue was unconstitutional because it did not provide children born out of wedlock with an adequate opportunity to bring suit to establish paternity to obtain support and that the two-year time limit was not substantially related to the state's interest in preventing stale or fraudulent claims. The author reviews the implications of this decision.

Note, Unwed Fathers: Is Arizona Denying Their Right to Recognition as Parents?, 26 Ariz. L. Rev. 145 (1984).

This note begins with an overview of the United States Supreme Court's use of the Fourteenth Amendment to shield out-of-wedlock children from government discrimination. The author then discusses the Court's decisions dealing with the constitutional rights of natural fathers in relation to their out-of-wedlock children, focusing on various procedures for establishing paternity and the constitutionality of the state statutes involved. The note continues by analyzing the Arizona paternity statute and related case law, pointing out the weaknesses of the statute. The author concludes by suggesting means by which the judiciary or legislature might interpret or change the Arizona paternity statute to avoid constitutional inconsistencies with the rights of the natural father.

Roberts & Ott, The Right to Counsel in Paternity Proceedings, 18 Clearinghouse Rev. 1170 (Feb. 1985).

The authors delve into current law on the subject and conclude that convincing a court that indigent putative fathers have a right to counsel in paternity cases is a difficult goal. If a state's paternity process may lead directly to incarceration of

the father for nonsupport, then the argument is strong for a right to counsel; the more distant the possibility of incarceration becomes, the less likely a court will find a right to counsel, absent a state statute, comment Roberts and Ott. Also, one should look to see if more stringent safeguards of due process exist under a state's constitution than those under the Fourteenth Amendment.

Savage & Roberts, Unmarried Teens and Child Support Services, 21 Clearinghouse Rev. 442 (Oct. 1987).

Savage and Roberts examine teen pregnancy and child support, highlighting services available to teen mothers and special problems associated with paternity establishment. The authors note that if the father is not a teenager, he may face statutory rape charges if he admits paternity, complicating cases that might otherwise settle quickly. Teen fathers who owe a support debt to the state as a result of the mother receiving AFDC may find their credit affected when they apply for student loans and other credit, note the writers.

Support Enforcement Division, Oregon State Department of Justice, Paternity Procedures Manual (1984).

This manual describes the policies and procedures of Oregon's paternity program. The manual contains detailed flow charts with narratives, forms and form letters used in the processing of paternity cases.

Support: Still a Different Standard for Illegitimate Children, 5(4) Matrimonial Digest 2 (May 1987).

This commentary asks whether there still exists a double standard for children born out of wedlock versus those children born during a marriage when it comes to setting child support levels. A California case raised eyebrows when the lower court judge barred discovery regarding the obligor's net worth and lifestyle, because the obligor admitted he was the father of the out-of-wedlock child, earned one million dollars a year, and had the ability to pay any reasonable amount of support. The court ordered \$1,500 per month in support. The trial judge was upheld on appeal. The appellate court said lifestyle and net worth were irrelevant, though it acknowledged that the child was entitled to more than "bare necessities." The commentator wonders whether full financial disclosure can be avoided by a divorcing obligor who "admits" a certain income level.

C. Additional Resources

Rivera v. Minnich, ___ S. Ct. ___, 55 U.S.L.W. 5075 (June 23, 1987). (See Annotation in Appendix C.)

Annotation, Admissibility and Weight of Blood-Grouping Tests in Disputed Paternity Cases, 43 A.L.R. 4th 579 (1986 & Supp. 1987).

Annotation, Admissibility, Weight and Sufficiency of Human Leukocyte Antigen (HLA) Tissue Typing Tests in Paternity Cases, 37 A.L.R. 4th 167 (1985 & Supp. 1987).

Annotation, Blood Grouping Tests, 46 A.L.R. 2d 1000 (1956 & Supp. 1987).

Annotation, Comment Note - Rule as Regards Competency of Husband or Wife to Testify as to Nonaccess, 49 A.L.R. 3d 212 (1973 & Supp. 1987).

Annotation, Death of Putative Father as Precluding Action for Determination of Paternity or for Child Support, 58 A.L.R. 3d 188 (1974 & Supp. 1987).

Annotation, Determination of Paternity of Child as Within Scope of Proceeding Under Uniform Reciprocal Enforcement of Support Act, 81 A.L.R. 3d 1175 (1977 & Supp. 1987).

Annotation, Determination of Paternity, Legitimacy, or Legitimation in Action for Divorce, Separation or Annulment, 65 A.L.R. 2d 1381 (1959 & Supp. 1987).

Annotation, Discrimination on Basis of Illegitimacy as Denial of Constitutional Rights, 38 A.L.R. 3d 613 (1971 & Supp. 1987).

Annotation, Effect in Subsequent Proceedings, of Paternity Findings or Implications in Divorce or Annulment Decree or in Support or Custody Order Made Incidental Thereto, 78 A.L.R. 3d 846 (1977 & Supp. 1987).

Annotation, Foreign Filiation or Support Order in Bastardy Proceedings, Requiring Periodic Payments, as Extraterritorially Enforceable, 16 A.L.R. 2d 1098 (1951 & Supp. 1987).

Annotation, Legitimation by Marriage to Natural Father or Child Born During Mother's Marriage to Another, 80 A.L.R. 3d 219 (1977 & Supp. 1987).

Annotation, Long-Arm Statutes Obtaining Jurisdiction Over Nonresident Parent in Filiation or Support Proceeding, 76 A.L.R. 3d 708 (1980 & Supp. 1987).

Annotation, Paternity Proceedings: Right to Jury Trial, 51 A.L.R. 4th 565 (1987).

Annotation, Presumption of Legitimacy of Child Born After Annulment, Divorce, or Separation, 46 A.L.R. 3d 158 (1972 & Supp. 1987).

Annotation, Presumption of Legitimacy, or of Paternity, of Child Conceived or Born Before Marriage, 57 A.L.R. 2d 729 (1958 & Supp. 1987).

Annotation, Proof of Husband's Impotency or Sterility as Rebutting Presumption of Legitimacy, 84 A.L.R. 3d 495 (1978 & Supp. 1987).

Annotation, Right of Indigent Defendent in Paternity Suit to Have Assistance of Counsel at State Expense, 4 A.L.R. 4th 363 (1981 & Supp. 1987).

Annotation, Statutes Limiting Time for Commencement of Action to Establish Paternity of Illegitimate Child as Violating Child's Constitutional Rights, 16 A.L.R. 4th 926 (1982 & Supp. 1987).

Annotation, Statute of Limitations in Illegitimacy or Bastardy Proceedings, 59 A.L.R. 3d 685 (1974 & Supp. 1987).

Annotation, Validity and Construction of Putative Father's Promise to Support or Provide for Illegitimate Child, 20 A.L.R. 3d 500 (1968 & Supp. 1987).

Annotation, Who May Dispute Presumption of Legitimacy of Child Conceived or Born During Wedlock, 90 A.L.R. 3d 1032 (1979 & Supp. 1987).

Annotation, Who is "Dependent Child" within Meaning of §§ 406(a), 407(a) and 408(a) of the Social Security Act (42 U.S.C.S. §§ 606(a), 607(a) and 608(a) Entitling Families to Aid for Dependent Children (AFDC), 23 A.L.R. Fed 232 (1975 & Supp. 1987).

SECTION IV - MODIFICATION OF SUPPORT

Another area increasingly highlighted in child support literature is the modification of existing orders.

One long-standing controversy surrounds the interplay of custody and/or visitation interference with support. Should visitation interference lead to a suspension of a support duty or are the two issues completely independent of one another? While most, but not all, states follow the independent issues theory, several commentators discuss what they consider the correct balance to be.

States cannot allow retroactive modification of an order prior to the service of a modification request on the non-moving party, based on Congress' mandate that the 18 states as of 1986 that allowed retroactive modification pass legislation banning it in order to continue to receive federal welfare money. 42 U.S.C. § 666(a)(9)(1987). As of 1986, 18 states had to pass amending legislation in order to comply with the ban. Several authors look at retroactive modification, and whether equitable principles ever favor its use.

Prospective modification on the other hand, is a growing occurrence, as general concern swells for accurate and adequate support awards. One issue is the threshold of change needed to trigger a court's consideration of a request for modification. Some states require substantial changes in circumstances to be first shown; others allow any change that may affect a support award under an established formula to trigger modification. A few writers comment thoughtfully on whether built-in cost-of-living adjustments should be universally applied. Pending legislation in Congress would mandate review of orders every three years or sooner. If passed, more resources would necessarily be shifted to the area of modification requests and periodic review.

Bogart, The Modifications of Judgments for Spousal Alimony and Child Support Alimony: Criticisms and Suggested Reform, 22 Ga. St. B.J. 26 (Nov. 1985).

This article reviews current Georgia law as it relates to support modification, with the author concluding that, as of the time of the article, modification was permissible only when there was a change in circumstances affecting the obligor's situation. Bogart notes that proposed legislation would allow the court to consider the obligee's change in circumstances along with the obligor's.

Brown, Exercising Care While Drafting COLAs, 7 Fairshare 9 (Jan. 1987).

Brown reviews the divergent treatment of cost of living adjustment (COLAs) clauses by courts. From Minnesota's statutory requirement of COLA clause inclusion to the state of Washington's reluctance to accept COLAs based on the consumer price index, judicial and legislative responses vary dramatically. Often, a COLA may be struck down because it is not tied to a specific index, leaving a vague and unenforceable reference to increases in cost of living. Brown recommends built-in adjustments be concise and specific, yet flexible enough under that state's modification laws to allow changes based on unforeseeable circumstances.

Brown, Linking Child Support and Visitation: Case Update, 6 Fairshare 10 (Feb. 1986).

Brown looks at attempts to modify: 1) a support obligation based on visitation noncompliance; or, 2) a visitation schedule based on nonsupport. He points out that the majority position treats each issue separately, while a minority allows linkage. In New York, Brown says, support payments can be escrowed pending restoration of interfered visitation rights. (New York enacted legislation in 1987 that prohibits the use of visitation interference as a defense to child support enforcement or as a ground for cancellation of arrears.)

Brown, Rough Justice in Automatic Support Adjustments, 5 Fairshare 5 (May 1985).

This article focuses on problems associated with the automatic judicial modification of support and the criteria used by courts who have accepted the automatic modification scheme to determine when support figures should be changed and by how much. The author criticizes courts that tend to accept one single factor as the sole criterion for triggering an adjustment, thereby placing the burden on the payor to seek judicial intervention.

Additionally, Brown says that in other cases the criteria often employed do not make a specific determination of either a recipient's need or a payor's ability to pay.

Comment, Child Support v. Rights to Visitation: Equity, Economics and the Rights of the Child, 16 Stetson L. Rev. 139 (1986).

In this comment, the author argues that the legislative intent to alleviate poverty that results from the absence of effective child support enforcement will not be accomplished as long as courts continue to apply equitable principles to solve the basic issue of whether or not a parent has paid his or her support obligation. The author suggests that courts should unwaveringly apply the general rule that a child has an inherent right to parental support, that changes in the parental relationship are not relevant to the issue of support. Also, the author believes that it is not fair for the taxpayer to bear the cost of child support owed by parents who have been relieved of their obligation because of the courts' application of equitable principles.

Comment, Retroactive Modification of Accrued Child Support Payments, 48 Mont. L. Rev. 151 (1987).

Based on equitable considerations, the Montana Supreme Court in State ex rel. Blakeslee v. Horton, 722 P.2d 1148 (1986), allowed past-due child support payments to be modified. Prior law only allowed modification of payments accruing subsequent to a modification motion (part of the Uniform Marriage and Divorce Act). As a result of the decision, examined in some detail, the author believes that child support installments are still non-modifiable when due but that the court now has the discretion to apply equitable principles to avoid harsh results. Although the court can now make an exception to the general rule, according to the author, it is still obliged to consider the best interest of the child and comply with standards requiring clear and convincing evidence of an oral agreement to forego payments.

Dodson, Ending Retroactive Modification of Child Support Arrears, 7 Fairshare 6 (Jan. 1987).

Dodson reviews 1986 federal legislation that prohibits all states receiving AFDC funds from modifying accrued arrearages under existing support orders before the date the other party is notified of the petition or motion requesting modification. Additionally, the law mandates that any support installment is to be considered a final judgment when it is due, by operation of law and without need for another court order. All other states are to give full faith and credit to such accrued, vested and unpaid installments as an enforceable judgment.

D. Dodson & S. Green de la Garza, Retroactive Modification of Child Support Arrears (American Bar Association) (1986).

This paper, written by members of the Child Support Project of the ABA, presents an analysis of the statutes in each state as of July 1985 that govern retroactive modification of support arrears. It discusses public policy considerations for prohibiting retroactive modification and includes case law citations by state. (Subsequent to publication of this paper, Congress enacted 42 U.S.C. § 666(a)(9)(1987), which prohibits retroactive modification of support orders.)

Due & Gabbert, Post-Decree Modification of Child Support in Minnesota: A Critical Review, 9 Hamline L. Rev. 499 (1986).

This article reviews the opinions of the Minnesota Court of Appeals regarding child support modifications. The review focuses on how the court of appeals handles major questions raised in modification cases. The author notes that courts have a particularly difficult time in answering a modification question when it involves a case in which both parents have enjoyed a substantial increase in earnings and the children's basic needs are being met. The article also examines the procedural aspects of a modification motion, including the scope of discovery, the form of the hearing, appellate review, and the appropriate level of child support once the criteria of the statute have been met.

Elser, Modification of Child Support, in 1 Improving Child Support Practice I-409 (1986).

Elser discusses the necessary precautions that a movant must take before requesting a modification of a support award. She mentions that different jurisdictions require varying degrees of changed circumstances to be shown before considering a revision of an award. Elser lists several factors that benefit the movant, such as an involuntary decline in his or her income or long-term illness affecting the movant's ability to earn. The author includes trial tips and sample financial affidavits.

Gourvitz, Duty of Support After Remarriage, 3(6) Matrimonial Strategist 1 (July 1985).

Gourvitz reviews what happens if the custodial parent remarries. He finds some courts take the stepparent's income into consideration, and some do not. Some courts require a remarried custodial parent to continue to provide for the child based on his or her earnings potential, leading to a reduction in the

amount of support if the obligee quits a job after remarriage. Other courts see the custodial parent's possible work choices as irrelevant to the obligor's level of duty.

Horowitz & Dodson, Child Support, Custody and Visitation, in 2 Improving Child Support Practice III-92 (1986).

The authors note that research shows a correlation between regular visitation and regular support payments, although they caution that other factors may influence the findings. Horowitz and Dodson examine how visitation interference affects support orders, and whether a non-paying obligor may raise visitation interference as a defense. They also review how non-traditional custody arrangements, such as joint custody, affect the amount and frequency of support, and how courts handle nonpayment of support and visitation interference.

Horowitz & Dodson, Retroactive Modification of Support Arrearages, 5 Fairshare 3 (Nov. 1985).

This article, written before federal legislation passed in 1986 that prohibited retroactive modification, surveys the law of all 50 states and the District of Columbia. Horowitz and Dodson found that 11 states allowed retroactive modification as of July 1985, while seven more had neither a statute nor a reported case on point. The authors review the consequences of retroactive modifiability, including the delay of enforcement until the accrued arrears can be reduced to judgment. Retroactive modification of arrears also affects interstate enforcement, state the writers. In a URESA action, if the state of the original order allows retroactive modification, due process likely requires that the responding state provide the obligor with the same opportunity to challenge the amount of arrears as he or she would have in the rendering state, forcing the obligee to defend the original order in a foreign forum.

Merrill and Robertson, The Consumer Price Index and Child Support Proceedings, 47 Tex. B.J. 1341 (1984).

This article demonstrates how lawyers can use the Consumer Price Index (CPI) as supporting evidence in proceedings for increased child support payments. The authors show how to calculate the present value of child support payments, the dollar amount that provides equivalent purchasing power to the support award at the time it was entered, and the total percentage change in the cost-of-living for the relevant period. The authors argue that the CPI is an invaluable tool in the practice of child support modification.

Neely, The Primary Caretaker Parent Rule, 21 Trial 18 (1985).

The author, Chief Justice of the West Virginia Supreme Court of Appeals, argues that the state's primary caretaker rule represents the best solution for avoiding bitter custody fights. He notes examples with which he is familiar where women agreed to modest alimony and child support to avoid the risk of losing children in a custody battle. The primary caretaker rule, otherwise known as the sex neutral rule, gives preference in the custody determination to the primary caretaker who meets specific qualifications for caretaking and fitness. According to the author, the application of the rule reduces the volume of domestic litigation. Also, if the mother is the primary caretaker and a good parent, there is virtually no chance she will lose custody so that alimony and child support are no longer bargaining chips and can be settled on the merits.

Note, Making Parents Behave: The Conditioning of Child Support and Visitation Rights, 84 Colum. L. Rev. 1059 (1984).

This note criticizes the tendency of the courts to allow a noncustodian to terminate child support payments in response to the custodial parent's denial of visitation rights or conversely to permit a custodian to deny visitation in response to the noncustodial parent's nonpayment of support. The author discusses current judicial approaches to the linkage of support and visitation obligations, explores the interests at stake in a post-divorce dispute, and challenges various rationales used to justify interrelational remedies. After an examination of the criteria of coerciveness and least detrimental consequences to the parties involved, the author then suggests alternative remedies and enforcement mechanisms for payment of support and denial of visitation that may better meet these criteria. The note concludes that given the unique circumstances of each family and the specific propensities of different family members, the court must closely evaluate each case on its particular facts and choose the most suitable remedy available.

Pearson & Thoennes, Child Custody, Child Support Arrangements and Child Support Payment Patterns, 36 Juv. & Fam. Ct. J. 49 (1985).

The authors provide a preliminary analysis of the relationship between child custody and child support payment patterns by using samples of divorced persons generated in two longitudinal research projects, the Denver Custody Mediation Project and the Divorce Mediation Research Project. This study compares the child support experiences of mothers, and in a few cases fathers, who have sole custody with child support experiences of parents who have joint custody. The authors conclude that economic and personal relationship factors are more important in predicting payment patterns than joint custody.

Polikoff, Custody and Visitation: Their Relationship to Establishing and Enforcing Support, 19 Clearinghouse Rev. 274 (July 1986).

This article looks at four subtopics: how joint custody affects compliance with support orders and determination of the amount of support ordered; how visitation interference is sometimes used to justify support reduction; how threats of custody litigation often frighten the parent with the children into accepting lower support payments in settlement agreements; and, how courts view nonsupport in determination of custody.

Schulman, Child Support: Automatic Escalation Clauses, in 1 Improving Child Support Practice I-423 (1986).

The author reviews case law covering the validity of automatic escalation clauses in decrees and agreements. Schulman provides a cost-of-living adjustment typology for open-ended, fixed percentage of income clauses, and fluctuation in income escalation clauses. She adds a compilation of statutes and legislation and a bibliography.

Skoloff, When Is It Justified?, 3(1) Matrimonial Strategist 1 (Feb. 1985).

The author argues that children who reject contact with their noncustodial parents should lose their right to support. He acknowledges that the law in some states is to the contrary, where the philosophy is that some children do not have ideal relationships with their noncustodial parents but they still need to eat, and that support should not be dependent on good relations.

Slaughter, Suspension of Child Support for Visitation Interference and the New Friend of the Court Acts, 3 Cooley L. Rev. 119 (1985).

Slaughter begins with a review of Michigan case law dealing with the impact of visitation interference on the payment of child support. The author next discusses the new Friend of the Court legislation showing how its visitation and support enforcement provisions, as well as other features, could affect the suspension of child support for visitation interference. The author then outlines a comprehensive enforcement method integrating both the new act and suitable elements of past equitable approaches to the problem to ensure that the development and well-being of the children are protected. The author concludes that the new Friend of the Court laws, by greatly expanding the remedies for visitation interference, essentially eliminate the need for the current exception to the

general rule of justifying support suspension for visitation interference. The author further states that only where the custodial parent: 1) lives out-of-state; 2) destroys the visiting parent-child relationship; or, 3) refuses to enforce visitation rights that do not impinge on the well-being of the child, should the court give any consideration to visitation interference in matters of child support.

Termination of Parental Duty to Support, 9 J. of Juv. L. 349 (1985).

This article looks at the case law involving attempts by parents to have their children declared emancipated in order to have their child support obligations modified or terminated. The author points out that emancipation may not always occur when a child attains the age of majority; whether a minor has been emancipated depends on the facts and circumstances of each case. A review of the case law shows that the determinative factors for emancipation before a child reaches majority are: 1) relinquishment by parents of the right to control the child and to receive the child's earnings; 2) the ability of the child to work and be self-sustaining; and, 3) the best interests of the child.

Additional Resources

Annotation, Change in Financial Condition or Needs of Parents or Children as Ground for Modification of Decree for Child Support Payments, 89 A.L.R. 2d 7 (1963 & Supp. 1987).

Annotation, Divorce: Power of Court to Modify Decree for Support of Child which was Based on Agreement of Parties, 61 A.L.R. 3d 657 (1975 & Supp. 1987).

Annotation, Divorce: Withholding or Denying Visitation Rights for Failure to Make Alimony or Support Payments, 51 A.L.R. 3d 520 (1973 & Supp. 1987).

Annotation, Opening or Modification of Divorce Decree as to Custody or Support of Child Not Provided for in the Decree, 71 A.L.R. 2d 1370 (1960 & Supp. 1987).

Annotation, Provision in Divorce Decree Requiring Husband to Pay Certain Percentage of Future Salary Increases as Additional Alimony or Child Support, 75 A.L.R. 3d 493 (1977 & Supp. 1987). Note that this annotation has been superseded by the annotation in 19 A.L.R. 4th 830 (1983 & Supp. 1987)..

Annotation, Remarriage of Parent as Basis for Modification of Amount of Child Support Provisions of Divorce Decree, 89 A.L.R. 2d 106 (1963 & Supp. 1987).

Annotation, Removal by Custodial Parents of Child from Jurisdiction in Violation of Court Order as Justifying Termination, Suspension, or Reduction of Child Support Payments, 8 A.L.R. 4th 1231 (1981 & Supp. 1987).

Annotation, Retrospective Increase in Allowance For Alimony, Separate Maintenance, or Support, 52 A.L.R. 3d 156 (1973 & Supp. 1987).

Annotation, Retrospective Modification of, or Refusal to Enforce, Decree For Alimony, Separate Maintenance, or Support, 6 A.L.R. 2d 1277 (1949 & Supp. 1987).

Annotation, Right of Former Wife to Counsel Fees upon Application, after Absolute Divorce, to Modify Order as to Support or Custody of Child or Children, 15 A.L.R. 2d 1270 (1951 & Supp. 1987).

Annotation, Right to Credit on Accrued Support Payments for Time Child is in Father's Custody or For Other Voluntary Expenditures, 47 A.L.R. 3d 1031 (1973 & Supp. 1987).

Annotation, Vacating or Setting Aside Divorce Decree after Remarriage of Party, 17 A.L.R. 4th 1153 (1982 & Supp. 1987).

Annotation, Validity and Effect, as Between Former Spouses, or Agreement Releasing Parent from Payment of Child Support Provided for in an Earlier Divorce Decree, 100 A.L.R. 3d 1129 (1980 & Supp. 1987).

Annotation, Validity and Enforceability of Escalation Clause in Divorce Decree Relating to Alimony and Child Support, 19 A.L.R. 4th 830 (1983 & Supp. 1987).

Annotation, Violation of Custody or Visitation Provision of Agreement or Decree as Affecting Child Support Payment Provision, and Vice Versa, 95 A.L.R. 2d 118 (1964 & Supp. 1987).

SECTION V - ENFORCEMENT OF CHILD SUPPORT

As practitioners know, often the hardest, most time-consuming part of a support case is collecting the dollars due from a recalcitrant absent parent. Today, there are more remedies than ever to aid the practitioner.

This section begins with a general overview of enforcement. One author examines enforcement against the estate of a deceased obligor; others review enforcement of support obligations against military personnel. Still other articles look at the obligor's due process rights and defenses. Much of the material in subsection A reports on the passage of the CSEA of 1984 and the immense impact the statute will have on enforcement.

Subsection B includes articles on contempt and criminal enforcement. Contempt is alive and well, report the authors, many of whom seek assurances that the alleged contemnor's due process rights are not violated. Also, authors discuss the right to appointed counsel in contempt cases.

Also, the Court decided in Rose v. Rose, 107 S. Ct. 2029 (1987), that while federal law may prohibit the garnishment of veteran's benefits, it does not prohibit a Tennessee judge from considering veteran's benefits in determining whether the veteran had the ability to pay court-ordered support for purposes of finding him to be in contempt of court.

The third subsection looks at income withholding in general (state-specific legislative responses are contained in Section I-C) as well as the still-viable remedy of garnishment. The CSEA of 1984 revolutionized traditional garnishment concepts in support cases. Income withholding has surpassed garnishment as a leading enforcement tool. Income withholding should apply to all support orders handled through a IV-D office and all other orders entered or modified after October 1, 1985. 42 U.S.C. § 666(b) (1987). Unlike most garnishment actions, income withholding is used for current as well as past-due support collection, and is not terminated solely by the elimination of arrears. The CSEA of 1984 mandate that income withholding be automatically triggered in IV-D cases no later than when one month's amount of support is past due. 42 U.S.C. § 666 (1987). Some states, such as Texas, Wisconsin and Massachusetts, require immediate income withholding upon entry of an order, subject to a few exceptions. (Pending bills in Congress would require the use of immediate income withholding instead of the one month's amount of support trigger.) Clearly, income withholding is of immense importance.

Subsection D covers other enforcement tools, primarily tax refund interception. Available to non-AFDC obligees until 1991, the intercept program gathers millions annually to help diminish or eliminate support arrearages. The CSEA of 1984 require the 40 states with state income taxes to develop their own guidelines for state income tax refund interception. While federal and state tax refund interception is a discretionary enforcement tool, states have found it to be a potent collection device. Various authors look at federal and state tax interception - how it works and how it affects the rights of the parties.

The U.S. Supreme Court in Sorenson v. Secretary of the Treasury, 106 S. Ct. 1600 (1986), held that the interception of a refund based on any earned-income credit excess is permissible. One writer examines that decision.

Others look at collecting support through intercepting worker's compensation, attaching assets, credit bureau reporting of an obligor's delinquency, and imposing bonds and securities. One author discusses what a beneficiary should do if an obligor dies without a court-ordered life insurance policy intact.

A. General

Arquilla, Family Support, Child Custody, and Paternity, 112 Mil. L. Rev. 17 (1986).

This article discusses the provisions contained in Army Regulation 608-99 governing family law. The new regulation, contains mandatory language on financial support, child custody and paternity. According to the author, AR 608-99 was designed to respond to the failure of soldiers to provide financial support to families and the problem encountered by family members in obtaining assistance in a timely manner from the chain of command.

Brown, Child Support Obligations After Death of the Supporting Parent, 16 Colo. Law. 790 (1987).

This article discusses the remedies available to a child when a parent with a court-ordered support obligation dies. The Uniform Dissolution of Marriage Act provides for support after death unless the parties agree in writing or expressly provide otherwise in the divorce decree. The author covers such topics as how to present a claim to the estate, the form of payment and the payment itself.

Brown, Enforcing Child and Spousal Support Obligations of Military Personnel, 20 Clearinghouse Rev. 943 (Dec. 1986).

The author, an attorney who is a captain with the U.S. Marine Corps, explains how child support obligations can be enforced against armed services members. The author notes that 42 U.S.C. section 659 covers garnishment procedures that can be used against all government personnel, including military employees. 42 U.S.C. section 665 allows involuntary allotments against service members. The article includes appendices that list the Worldwide Locator Services for each branch of the military and the Military Finance Centers, which are sources of salary information regarding military personnel.

Cipriani, Child Support Enforcement Curriculum: Defenses, 36 Juv. & Fam. Ct. J. 115 (1985).

Recognizing differences in statutes, case law and procedures from different jurisdictions, Judge Cipriani surveys the status of law regarding some of the most commonly raised defenses in the child support enforcement area. Among the possible defenses to a support action that the author discusses are: 1) alternative payment; 2) defective orders; 3) inability to pay; 4) obstruction of relationship; 5) procedural objections; 6) support unecessaries; and, 7) agreement with obligee. The

author notes that the use of these defenses to justify non-compliance with an existing order will usually be unsuccessful. Judge Cipriani asserts that parents are legally and strictly bound to support their children at least until majority or emancipation, regardless of geographic or emotional separation.

Clemens & Cohen, Enforcement of Child and Spousal Orders Against Self-Employed Obligor, 6 Fairshare 3 (June 1986).

Clemens and Cohen examine procedures and approaches appropriate for civil enforcement of a judgment or order for child support against self-employed obligors. They also discuss the legal seizure of various kinds of assets of the self-employed obligor and problems encountered when the assets are part of a business.

D. Cohen & K. Clemens, Enforcement of Child and Spousal Support Orders Against Self-Employed Support Obligor (Center for Enforcement of Family Support) (1986).

Although this paper is limited to addressing California law and procedures for the civil enforcement of a judgment or order for child support against self-employed obligors, many of the procedures can be applied in other jurisdictions that have similar authority. Identification and legal seizure of various kinds of assets, levying on various kinds of real and personal property, and levying on business accounts receivable are among the topics discussed.

Daugherty, Finance Committee Considers Bill to Withhold Wages and Tax Refunds for Child Support, 22 Tax Notes 353 (1984).

The Senate bill that was under consideration in 1983, similar to the bill Congress passed a year later, required mandatory wage assignment and the interception of state income tax refunds from those owing child support. This article cites a GAO study which shows that the percentage of support payments made when wage assignment is used is 14 percent higher than when this technique is not used. The interception of state income tax refunds has proved effective in New Jersey, according to New Jersey Governor Thomas Kean, says Daugherty.

Dodson and Horowitz, Child Support Enforcement Amendments of 1984: New Tools for Enforcement, 10 Fam. L. Rep. (BNA) 3051 (Oct. 23, 1984).

This monograph provides a complete analysis of the CSEA of 1984. The CSEA of 1984 mandate that the states implement certain remedies and procedures to improve child support enforcement by Oct. 1, 1985, as a condition of continued

eligibility in the AFDC program. In addition, the amendments seek to equalize treatment of AFDC and non-AFDC recipients. The authors believe that the new law will increase support collection by providing additional practical tools for collection. The mandatory state enforcement procedures set forth in the amendments generally follow successful support enforcement methods adopted by certain states, including income withholding. The authors feel income withholding will be enormously effective, and they delineate how it will operate. The authors also discuss in detail other enforcement procedures included in the amendments such as tax refund interception, lien imposition and the dissemination of payment information to credit agencies. In the last part of the article, the authors consider the CSEA's required procedures for instituting expedited processes, support guidelines, paternity statutes of limitations, collection of alimony or spousal support and interstate enforcement. They conclude that the CSEA of 1984 will greatly expand the remedies available to enforce child support obligations, among which the income withholding system may prove the most effective.

Hemingway, Practical Considerations in Handling Army Nonsupport Cases, 112 Mil. L. Rev. 105 (1986).

The author discusses how an attorney can use Army Regulation 608-99 to obtain relief for an obligee by: 1) locating the nonsupporting soldier; 2) gaining information on the soldier's pay account; and, 3) lodging nonsupport complaints by electronic message when exigent circumstances warrant it. The author also discusses other possibilities of relief and problems related to privacy.

Hemingway, Support Enforcement Against Public Sector Employees, in 2 Improving Child Support Practice II-286 (1986).

Major Hemingway, an instructor at the Judge Advocate General's School, highlights the laws covering the collection of a support debt from a military service member. He discusses garnishment, allotment, Soldiers' and Sailors' Civil Relief Act defenses, and deductions based on each service branch's regulations. Following the article is a detailed compilation of helpful information regarding location resources, each branch's regulations and policies, and sample letters.

Hooper, The Soldiers' and Sailors' Civil Relief Act of 1940 As Applied in Support Litigation: A Support Enforcement Attorney's Perspective, 112 Mil. L. Rev. 93 (1986).

This article discusses the application of the Soldiers' and Sailors' Civil Relief Act of 1940 in family support litigation. The author, an attorney in a district attorney's office who

assists plaintiffs in family support cases against military defendants, describes the procedures and strategies involved when the Soldiers' and Sailors' Civil Relief Act is invoked.

Horowitz, The Child Support Enforcement Amendments of 1984, 25 Judges' J. 12 (1986).

This article provides a useful discussion of important changes in available child support enforcement procedures resulting from the CSEA of 1984. The author reports that remedies incorporated in the CSEA of 1984 must be available to IV-D agencies both for AFDC recipients and for non-AFDC applicants to the agency, in contrast to earlier legislation that emphasized AFDC collection. Also the federal funding formula has been adjusted to improve interstate enforcement.

Horowitz, How Private Attorneys Can Use Enforcement, 3(8) Matrimonial Strategist 1 (Sept. 1985).

Horowitz outlines how the CSEA of 1984 have expanded the remedies available to enforce child support orders. He reviews wage withholding as it applies to private cases, and how the definition of income varies among the states. Horowitz also notes that under the CSEA of 1984 the obligor is entitled to two notices if his or her income tax refund is intercepted to pay support arrearages. One notice is sent when the IV-D agency refers the case to the IRS for offset; a second notice goes to the obligor when offset takes place.

Horowitz, New Remedies: Congress Gets Tough, 8 Fam. Adv. 2 (Summer 1985).

The author discusses new support enforcement remedies set forth by the CSEA of 1984. By October 1, 1985, with some justifiable delays, states must have implemented wage withholding, and made available imposition of bonds and securities, property liens, and offsets of state and federal income tax refunds. These collection methods must be accessible to non-AFDC as well as AFDC families. An obligor receives procedural due process protections by way of predeprivation notices and opportunities to contest proposed actions. The CSEA of 1984 also address statutes of limitations for paternity actions, spousal support enforcement, and medical support. The author suggests that states improve upon the federal law by imposing additional due process requirements and requiring expedited processes for support-related issues such as custody and visitation. Notwithstanding some individuals' concern with support guidelines, which states must establish by 1987, he concludes the CSEA of 1984 can positively change the practice of child support enforcement.

R. Horowitz, D. Dodson & M. Haynes, Remedies Under the Child Support Enforcement Amendments of 1984 (American Bar Association) (1985).

This monograph, prepared by the Child Support Project of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection, examines several enforcement remedies that states must have available in order to comply with the CSEA of 1984. Among the procedures covered in this manual are: income withholding, state and federal tax refund offsets, liens, bonds and other securities, and ways to locate absent parents and their assets.

Hyde, Enforcement, 35 Juv. & Fam. Ct. J. 49 (Spring 1984).

The author examines the following remedies for enforcing child support orders: contempt, wage assignments, liens on the obligor's property, reduction of visitation rights, and the threat of termination of parental rights. He discusses the procedures for implementing each method of enforcement. The remainder of the article focuses on whether a noncustodial parent can receive credit against child support arrearages for voluntary expenditures. The author stresses that, generally, a noncustodial parent will not receive credit, especially for gifts or voluntary cash payments made directly to the children. On the other hand, some courts may consider granting credit if the custodial spouse requested and/or controlled the additional voluntarily-paid monies. Payments on behalf of a child's education may be credited against support arrearages if the expenditures were on terms consistent with the divorce decree, finds Hyde. Some courts permit credit for educational support only against arrearages attributable to that child, Hyde notes.

Kazen, Anticipating the Obligor: Defenses to Enforcement, in 1 Improving Child Support Practice II-1 (1986).

Kazen details defenses obligors often raise in a support enforcement proceeding, such as inability to pay, visitation interference, improper notice and informal agreement by the parties to modify the court-decreed amount. The author provides tips to the practitioner dealing with these defenses.

Lefcourt, A Summary of the Major Features of the Federal Child Support Enforcement Amendments of 1984, 5 Women's Adv. 1 (Nov. 1984).

This article reviews the major features of the CSEA of 1984. The following provisions are highlighted: automatic wage withholding; income tax intercept; liens; bonds; paternity; spousal support; expedited procedures; guidelines; and, services to non-AFDC families.

Motz & Baida, The Due Process Rights of Postjudgment Debtors and Child Support Obligors, 45 Md. L. Rev. 61 (1986).

This article examines case law involving the Due Process Clause of the Fourteenth Amendment as the basis for challenging state procedures that enable creditors to collect judgments or court-ordered child support awards from third parties. Many of the cases contest the constitutionality of either a state's postjudgment garnishment/attachment procedures, or tax refund intercept procedures for the purpose of collecting past due child support. The authors note that since the U.S. Supreme Court held in Endicott-Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924), that it was not necessary to provide notice and an opportunity to be heard before the issuance of a writ of garnishment on a debtor's wages, no Supreme Court decision has ruled to the contrary. Due process, according to the authors, simply requires notice informing debtors of the proceedings initiated against their property and of their rights, guaranteed by law, to challenge these proceedings.

Murray, The Lawyer's Dilemma, 4(11) Matrimonial Strategist 1 (Dec. 1986).

Murray reviews the options available to practitioners seeking support enforcement against military personnel. He cites the federal employee garnishment statute, 42 U.S.C. § 659 (1987), regulations covering support requirements by active-duty service members even if there are no court orders, service member location assistance, and retirement pay claims under the Federal Uniform Services Former Spouses' Protection Act (FUSFSPA).

Note, Constitutional Complications of the Child Support Enforcement Amendments of 1984, 24 J. Fam. L. 301 (1986).

This note analyzes the constitutionality of the mandatory income withholding provision, the tax refund intercept program, and the paternity statute of limitations provision of the CSEA of 1984. The authors suggest that mandatory wage withholding procedures must be accompanied by a hearing in order to withstand constitutional scrutiny. With respect to the tax refund intercept program, the authors point out that because courts are not in agreement as to the nature of the taxpayer's right to procedural due process, it would be best for states to establish notice and hearing procedures that surpass present standards. The authors note that by extending the paternity statute of limitations to at least a child's eighteenth birthday, Congress has answered any questions as to when one can commence a paternity action.

Timberlake, Senate Passes Child Support Enforcement Bill, 24 Tax Notes 528 (1984).

This excerpt expounds on the adopted conference report on H.R. 4325, the CSEA of 1984. The bill improves techniques for collecting past due child support by expanding the power of both the IRS and state revenue agencies to intercept tax refunds from those owing support payments. Additionally, the bill requires states to impose mandatory wage withholding if an arrearage equal to one month of support accrues. A conference comparison of the House and Senate versions of H.R. 4325 is located in the Tax Notes Microfiche Data Base under Doc. 84-5388.

Zellar, Maximizing Support and Benefits for Families of Men in Military Service, 6 Women's Adv. 1 (Nov./Dec. 1985).

Zellar explains the procedures required to secure the following entitlements for the families of military men: wife support, child support, alimony, benefits due former spouses, medical benefits, pension sharing and other benefits and privileges ranging from child care to use of the military commissaries. In her discussion the author makes reference to applicable provisions of the Soldier's and Sailor's Civil Relief Act, often used by military servicemember as a defense.

B. Contempt and Criminal Proceedings

Comment, The Nonsupport Contempt Hearing: A Survey and Analysis of Florida Law, 12 Fla. St. U.L. Rev. 117 (1984).

The author argues that the Florida courts have blurred the civil and criminal distinction in contempt proceedings for the nonpayment of child support to the point where civil proceedings are not fundamentally fair and in some instances are being converted into criminal proceedings. The author suggests several ways to clarify this distinction and concludes that the indigent contemnor must be provided with counsel at the outset of all civil nonsupport contempt hearings.

T. Ennis & J. Mason, The Use of Contempt to Enforce Child Support Orders in North Carolina (1986).

As the title indicates, this paper describes North Carolina's use of contempt proceedings to enforce child support orders. The authors, acknowledging the distinctions between civil and criminal contempt proceedings, initially focus on three issues as they relate to civil contempt: the ability to pay, willful non-compliance, and evidentiary burdens. The paper next discusses the burden of producing evidence and the burden of proof required in such a proceeding. After concluding that the contempt statute and North Carolina appellate decisions provide imperfect guidance for handling problems associated with the contempt proceeding, the authors suggest ways to ensure fair hearings and to minimize the possibility that contempt orders will be reversed on appeal.

Felder, Supreme Court to Hear Child-Support Cases; Decision Should Affect Enforcement Nationwide, 5(2) Matrimonial Strategist 3 (Mar. 1987).

Felder discusses the lower court decisions leading up to the Supreme Court granting certiorari in Hicks v. Feoick, cert. granted, 55 U.S.L.W. 3607 (March 9, 1987). Hicks deals with the burden of proof in a contempt proceeding regarding the alleged contemnor's ability to comply with the order. A California Court of Appeal struck down as violative of due process California's civil statute that says proof of noncompliance is prima facie evidence of contempt, placing the burden on the defendant to show an inability to pay. Justice O'Connor issued a stay in October 1986, reimposing a superior court judge's contempt finding pending Supreme Court review during its 1987-1988 term.

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Gottsfield, The Child Support Problem: Credible Threat and Use of Incarceration Works, 19 Ariz. B.J. 12 (Dec. 1983/Jan. 1984).

The author, a judge who has presided over many support cases, argues that contempt of court may be the most formidable weapon available to enforce support orders as most obligors will take any step necessary, including paying up, to avoid spending any time in jail upon a finding of willful noncompliance with a court order.

Hermann and Donahue, Fathers Behind Bars: The Right to Counsel in Civil Contempt Proceedings, 14 N.M.L. Rev. 275 (1984).

This article addresses the issue of whether an incarcerated parent found to be in contempt of court for failure to pay his child support obligations has a right to appointed counsel in New Mexico. Relying on the case of the State of New Mexico ex rel. Department of Human Services v. Rael, 97 N.M. 640, 642 P.2d 1099, (1982), which recognized a limited right to counsel for indigents charged with civil contempt, the authors argue that where indigent fathers face contempt charges for nonpayment of child support, automatic assignment of counsel should be required.

Lance, Use of Contempt in Child Support Enforcement, in 1 Improving Child Support Practice II-15 (1986).

Hawaii Family Court District Judge Evelyn Lance analyzes the application of contempt laws and procedures to support cases. She reviews criminal versus civil contempt, direct versus indirect contempt, constitutional requirements and possible defenses for the alleged contemnor to use.

Mandel, People v. Gregori: Unconstitutionality of the Provision of Penal Code Section 270 Making Failure to Provide a Felony, 6 Whittier L. Rev. 71 (1984).

This article discusses the enactment of section 270 of the California Penal Code making the willful and inexcusable failure to provide necessary support for one's children a criminal offense, divided into misdemeanor and felony classifications. The author then focuses on the Fourth District Court of Appeal holding in People v. Gregori, 144 Cal. App. 3d 353, 192 Cal. Rptr. 555 (1983), which held that the distinction between a felony and a misdemeanor conviction on the basis of whether or not there has been a previous adjudication of paternity was a violation of both the state and federal equal protection clauses. The author notes that the court also held that a continuing violation of section 270 over a period of time could not be arbitrarily divided into separate counts resulting in

separate convictions for the failure to provide support. This article concludes with an analysis of the impact of People v. Gregori and suggests a proposal for revising section 270 to bring the statute into conformity with this decision.

Note, The Contempt Statutes: At Odds with Domestic Enforcement, 29 S.D.L. Rev. 164 (1983).

Use of the civil contempt power to enforce alimony and child support payments was enlarged in Hanks v. Hanks, 334 N.W.2d. 856 (S.D. 1983), to include the enforcement of property awards. The author suggests that broadening the scope of the contempt power serves to strengthen the compliance mechanism of the trial court in divorce actions. The author points out, however, that S.D.C.L. section 16-15-6 implies that civil contempt, distinguished from criminal contempt because it is remedial in nature, is arguably subject to replacement by punitive or criminal contempt, which is characterized by determinative sentencing.

Note, Criminal Nonsupport and a Proposal for an Effective Felony-Misdemeanor Distinction, 37 Hastings L.J. 1075 (1986).

This note discusses the problem of nonsupport and California's attempt to alleviate it through the enactment of section 270 of the California Penal Code. The author discusses statutory changes pertaining to the existence and enforcement of the duty to support one's children and the recent trend toward decreased public responsibility for children. The author argues that the alarmingly high poverty rate among female-headed household is a direct result of nonsupport. The note then analyzes the California Court of Appeals' decision in People v. Gregori, 144 Cal. App. 3d 353, 192 Cal. Rptr. 555 (1983), which found unconstitutional section 270 of the California Penal Code that makes failure to provide child support either a misdemeanor or a felony, and discusses the decision's impact on the problem of nonsupport. The author argues that the seriousness of the nonsupport problem demands that the legislature amend section 270 to reinstate the felony-misdemeanor distinction. The author suggests that a felony-misdemeanor distinction would solve the nonsupport problem in two ways: 1) the distinction would deter potential violators and encourage law enforcement officials to enforce the statute more strictly; and, 2) certain procedural advantages resulting from such a distinction would increase judicial control over and facilitate prosecution of those charged with or convicted of nonsupport.

Turner, Contempt and Punishment for Non-Support, 36 Juv. & Fam. Ct. J. 87 (1987).

Judge Turner describes the nature of a contempt proceeding in court. The author writes that for the court to decree an obligor in contempt, it must be satisfied that the payor had the ability to comply with the court's order and willfully refused. The payor's ability to pay, the author points out, is measured by the payor's earning capacity rather than his actual income which consists of an evaluation of the payor's total income including unemployment insurance, tax rebates, and property. The author also discusses several punishments for contempt such as confinement, notification to consumer agencies, and liens on real and personal property.

Voss, Contempt Orders Resulting from Non-payment of Child Support: The Right to Counsel, 19 Ariz. B.J. 33 (Dec. 1983/Jan. 1984).

Judge Voss argues that indigents should never be subject to civil contempt of court charges. By their classification, indigents do not have the ability to pay support and cannot be found to be willfully noncomplying, an essential element of a contempt finding. In criminal contempt cases, the author notes that an indigent alleged contemnor has a constitutional entitlement to appointed counsel, as an indigent would have in other criminal cases in which his or her liberty is at stake.

C. Income Withholding and Garnishment

American Bar Association & National Conference of State Legislatures, Model Interstate Income Withholding Act with Comments (1984).

This model act was drafted by the child support projects of the American Bar Association and the National Conference of State Legislatures. The publication begins with a brief introduction outlining the principles guiding the drafting of the Model Interstate Income Withholding Act and the income withholding requirements of the CSEA of 1984. Two versions of the Act follow: the Model Interstate Income Withholding Act and the Model Interstate Income Withholding Act with Comments.

Comment, Garnishment of Wages to Enforce Child Support - A New Remedy for an Old Problem, 15 St. Mary's L.J. 381 (1984).

This comment discusses the inadequacies of the previous Texas child enforcement system and the probable effect that newly enacted section 14.09 of the Texas Family Law Code will have on the child support enforcement system in Texas. The author concludes with a review of the need for the new amendment to the Texas constitution and how it will operate.

Dodson, Income Withholding: An Effective Way to Ensure Regular Support Payments, 36 Juv. & Fam. Ct. J. 73 (1985).

This article discusses the mandate, established by the CSEA of 1984, that each state establish income withholding procedures to enforce child support obligations. Incoming withholding, the author notes, differs from wage garnishment in that it is used to collect not only support arrearage but also the current support obligation. This method of enforcement requires that all prospective or modified support orders, must include a conditional order or provision for implementing income withholding once the remedy is triggered. This remedy applies to all orders of support, whether contained in judgments for divorce, separation, separate maintenance, paternity, civil protections, guardianship or foster care, and whether administratively or judicially issued.

Dodson, New Remedies: Wage Withholding Gets Tougher, 8 Fam. Adv. 2 (Summer 1985).

The author examines income withholding or assignment as a support enforcement remedy available under the CSEA of 1984. As of October 1, 1985, all state support orders must contain a wage assignment provision. Withholding commences once arrearages

totalling one month's amount of support are past due, or less if a state so chooses. Additionally, an obligor may voluntarily submit to wage withholding. The remedy is available to all families. States can expand withholding to reach other sources of income besides wages. Once the required arrearage occurs, an obligor receives notice of the proposed assignment that states how and when the obligor may contest the action. Strengthening interstate enforcement, the CSEA of 1984 make wage withholding available for foreign states' support orders. The author maintains wage withholding, if fully implemented, facilitates collection of child support. She states the CSEA of 1984 represent a strong commitment to support enforcement.

Hemingway, Pouring Salt on Government Garnishment Liability:
The Supreme Court Reverses Morton, 140 Army Law. 1 (1984).

This article discusses the consequences that the U.S. Supreme Court decision in United States v. Morton, 467 U.S. 822 (1984), will have on federal employees, including military personnel, and retirees whose pay is garnished for alimony and child support arrearages. In Morton, the Supreme Court held that the government cannot be held liable for honoring a writ of garnishment, assuming the writ is regular on its face and that the court that issued it has subject-matter jurisdiction. According to the author, this decision reinforces a provision in the federal garnishment statute which protects the government and the disbursing officers from liability if payment is being made pursuant to legal process regular on its face. As a consequence of Morton, the author points out that: 1) federal employees and retirees will be required to attack the writs of garnishment, or the underlying orders upon which the writs are based, in the state court that issued the writ or underlying order; and, 2) the federal disbursing agents will not be required to look beyond the face of the writ or the underlying order when a judgment debtor asserts that either the writ or the underlying order is invalid.

National Institute for Child Support Enforcement, Wage Withholding (1986).

This 20-minute videotape sets forth the requirements of the law, showing how wage withholding actually works. The advantages of wage withholding for child support are discussed from the point of view of a legislator, judge, case worker, custodial parent, absent parent, and employer.

Note, Garnishment of Spendthrift Trusts for the Enforcement of Court-Ordered Alimony or Child Support: A Public Policy Decision - Bacardi v. White, 463 So.2d 218 (Fla. 1985), 13 Fla. St. U.L. Rev. 433 (1985).

This note explains the various approaches that courts have taken on the issue of whether the assets of a spendthrift trust should be subject to claims for alimony and child support. After discussing the conflicting opinions of two Florida courts on this issue, the author analyzes the decision of the Florida Supreme Court in Bacardi v. White, 463 So.2d 218 (Fla. 1985), to allow, under limited circumstances, the former spouse of a beneficiary of a spendthrift trust to enforce the payment of court-ordered alimony or child support through garnishment of the trust.

Note, Kansas Enacts New Provisions for Child Support Enforcement - Mandatory Wage Withholding, 25 Washburn L.J. 91 (1985).

This article reviews the history of the CSEA of 1984 and the enactment of Kansas Senate Bill 51, which contains mandatory wage withholding provisions. After closely examining the wage withholding provisions of Senate Bill 51, the author concludes that, although Senate Bill 51 does not effectively reach those obligors without regular employment, the mandatory wage withholding provisions guarantee that the family of a regularly-employed absent parent will continue to receive the support it needs despite disputes that were previously used to justify nonpayment.

Roberts, Income Withholding: Part I, 19 Clearinghouse Rev. 1310 (Mar. 1986).

The author examines the requirements under the CSEA of 1984 that all states implement procedures for withholding wages when the obligor becomes more than 30 days' amount of support in arrears. Notice provisions and the right of the obligor to a hearing are also discussed.

Roberts, Income Withholding: Part II, 19 Clearinghouse Rev. 1425 (Apr. 1986).

In part two of Roberts' examination of income withholding, the author specifically addresses several issues, such as interstate income withholding, multiple withholding orders, definition of income for withholding purposes, and employer retaliation against an employee whose wages are subject to income withholding.

D. Tax Intercept and Other Enforcement Tools

Child Support, 9 J. of Juv. L. 129 (1985).

This article reviews recent cases illustrating how federal courts can become involved with child support obligations where state governments use the Internal Revenue Service to intercept and convey to the states federal tax refunds owed to parents who are behind in their child support payments.

Comment, Earned Income Credits Are Protected From the Tax Refund Interception Method of Child Support Collection - Nelson v. Regan, 731 F.2d 105 (2d Cir.), cert. denied, 105 S. Ct. 175 (1984), 51 Brooklyn L. Rev. 1169 (1985).

This comment discusses the impact that the Nelson v. Regan decision will have on earned income credits. The circuit court found the intercept violated the due process rights of the taxpayer. After an examination of the jurisdictional issues and the Second Circuit Court of Appeal's analysis in the case, the author reviews the possible effects that the decision may have on the collection of tax revenues by the IRS and on the structure of family life in America. The author suggests that the extension of the tax refund intercept program to non-AFDC families, though it may lead to a significant recovery of child support arrearages, will probably expand the role of the IRS as a collection agency for private debts and will increase the cost of administering the program. (The U.S. Supreme Court subsequently ruled that earned income credit can be intercepted.)

Comment, Effective Child Support Enforcement in Kentucky: The Tax Refund Intercept Program, 74 Ky. L.J. 667 (1985-86).

This comment explains Kentucky's Tax Refund Intercept Program (TRIP), available to the state child support agency to collect past-due child support that has been assigned to the state. The author explains the complicated statutory framework of TRIP, surveys the major issues raised by both taxpayer challenges and governmental defenses and suggests administrative procedures to ensure the smooth implementation and expansion of TRIP. The author states that even though a revision of the administrative procedures for TRIP should reduce taxpayer challenges, additional legislative clarification is needed to define the scope of TRIP, particularly whether earned income credit can be intercepted. (The U.S. Supreme Court later ruled that earned income credit can be intercepted.) The future success of TRIP, according to the author, depends upon the continuing federal and state efforts to refine and revise implementation procedures.

Comment, In Support of Support: The Federal Refund Offset Program, 37 Tax Law. 719 (1984).

This comment discusses the tax refund offset program as it existed prior to the passage of the CSEA of 1984. The program directed the federal government to offset amounts of past-due support against the federal income tax refunds of taxpayers whose spouses and children received assistance under the AFDC program. After reviewing statutory authority for the offset, the author analyzes constitutional challenges to the program. The four issues discussed are: 1) whether sovereign immunity deprives a court of jurisdiction to hear an offset case; 2) whether states may limit relief by invoking the Eleventh Amendment; 3) whether the government may offset amounts allowable as earned income credits (answered affirmatively by the U.S. Supreme Court in 1987); and, 4) whether the offset deprives individual of property without due process of law. The author maintains that despite constitutional attacks, the tax refund offset program is an effective method of collecting past-due support and should be made available to all families.

Grosman, Enforcement of Child Support Orders Against the Self-Employed: Attachment and Sequestration, Liens, Security and Bonds, in 1 Improving Child Support Practice II-158 (1986).

Grosman examines methods to collect support from persons impervious to income withholding who are mostly self-employed individuals. Grosman argues that it may be more difficult to get support from the self-employed, but it is not impossible. He suggests the use of contempt, attachment, sequestration, liens, security, bonds or trusts to accomplish the support collection.

Jones, Intercepting the Excess Earned-Income Credit From Taxpayers Owing Past-Due Child Support Payments: Sorenson v. Secretary of the Treasury, 40 Tax Law. 407 (1987).

Under Title IV-D of the Social Security Act, the Secretary of the Treasury may intercept tax refunds owing to those who failed to meet child support obligations assigned to a state. Any overpayment of tax is reduced by the amount of child support past due, which is in turn given to the state. In Sorenson v. Secretary of the Treasury, 106 S. Ct. 1600 (1986), the Supreme Court held that excess earned-income credits are overpayments subject to intercept. This article reviews the analysis used by the Court in reaching that decision.

Keith, Collecting from the Self-Employed: IRS Full Collection Procedures and 1099 Wage and Information Documents, in 2 Improving Child Support Practice II-168 (1986).

Keith reviews the availability of two under-used collection aids offered by the Internal Revenue Service. If one applies through a IV-D state agency, and if certain prerequisites are met, the IRS may act as a collector of support arrearages for the frustrated obligee who has been unable to collect all support past due through other enforcement methods. Project 1099 allows an obligee to obtain the addresses of the absent parent and the institution that submitted the wage information. Strict disclosure and evidentiary use rules apply, however, to Project 1099 information, says Keith.

Keith, Collecting From the Self-Employed: IRS Full Collection and 1099 Documents, 7 Fairshare 7 (Apr. 1987).

Through a IV-D agency, a frustrated obligee can use the power of the IRS to gain hard-to-secure support arrearages. If the child support enforcement agency certifies that it has made diligent and reasonable efforts to collect the support debt, at least \$750 is owing, and the obligor has sufficient assets, the IRS will bill the obligor. The IRS will attempt to verify the obligor's financial condition and try to arrange a payment schedule. If no agreement is reached, Keith reports, the IRS may issue a notice of intent to levy, which may leave the obligor with very little to hide, as state exemptions do not apply. The \$122.50 application fee appears to be worthwhile, according to Keith, as the average IRS full collection return was \$10,000 in fiscal year 1985. Project 1099 is a locator assistance tool in which the IV-D agency taps into the IRS's information banks.

Keith, Interception of Federal Tax Refunds: An Update on Litigation and Program Development, in 2 Improving Child Support Practice II-257 (1986).

The author reviews federal income tax refund interceptions and legal issues raised by persons whose refunds have been intercepted. Joint refunds due to an obligor and his or her new spouse pose a problem as to proper division. In California, for instance, under community property laws, the spouse's claim to the refund may be used to satisfy premarital support obligations. The IRS has published rules for proper distribution, says Keith. The writer also looks at earned income credit's inclusion in the definition of "overpayment" for interception purposes (which the U.S. Supreme Court later ruled as congressionally-intended) and possible custodial parent challenges on the horizon.

Note, Defiance of Order to Obtain and Maintain Life Insurance for the Benefit of Minor Children: What Remedy After Death?, 7 Am. J. Trial Advoc. 351 (1984).

This note discusses the availability of a legal remedy to minor children when the now deceased supporting parent chose to defy a court order to obtain and maintain a life insurance policy naming his minor children as irrevocable beneficiaries. The author argues that an equitable interest emanates from the mandating provision of the decree and should affix to any policy or portion of a policy which represents the obligated amount of insurance coverage. The author contends that the supporting obligor parent should be seen as having assigned to the children the rights to any insurance policy representing this stipulated amount.

Note, In Support of Support: The Federal Tax Refund Offset Program, 37 Tax Law. 719 (1984).

This note evaluates the federal Tax Refund Intercept Program which was created in conjunction with the implementation of the CSEA of 1984. After surveying major issues raised by taxpayers objecting to offsets of their tax refunds, and considering the desirability of the program in light of alternative collection methods, the author concludes that the Tax Refund Intercept Program is an effective means of collecting past-due child support and should remain available to all families.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Use of Bonds, Securities and Other Guarantees, in 1 Improving Child Support Practice II-173 (1986).

OCSE's Program Operations Division reviews the CSEA of 1984's requirement that states have procedures to require an obligor to give security, post a bond or give some other guarantee of payment. OCSE looks at bonding industry practices and suggests what states could do to comply with the CSEA of 1984 mandate. The article offers a prototype bonding instrument and lists case assessment factors for use in state guidelines governing use of bonds.

Roberts, Additional Remedies Under the Child Support Enforcement Amendments of 1984, 20 Clearinghouse Rev. 17 (May 1986).

Roberts reviews CSEA of 1984 alternatives to income withholding and to tax intercept. The author discusses that liens can be placed on personal as well as real property, opening up bank accounts, automobiles and trusts to possible collection. Also, credit reporting agencies may be notified when the obligor is

under \$1000 behind in support obligations. If the obligor is more than \$1000 in arrears, reports Roberts, the state must transmit that information to any credit reporting agency that requests it.

Roberts, Federal Income Tax Intercept, 19 Clearinghouse Rev. 853 (Dec. 1985).

The author discusses the interception of federal income tax refunds to pay child support arrearages and the case law surrounding it. She concludes that due process challenges to the current federally-mandated notice and review system would probably be unsuccessful if the procedures were applied properly in a specific case.

Roberts, State Income Tax Intercept, 19 Clearinghouse Rev. 1168 (Feb. 1986).

Roberts examines how states are implementing state income tax intercept programs. She reviews case law and the various intercept systems and protections in place around the country. Appendices reveal the statutes extant in February 1986 that cover state income tax refund intercept, and various characteristics of 17 states' intercept programs.

Sampson, Texas Family Code §§ 14.04, 14.43, in 1 Improving Child Support Practice II-124 (1986).

Prof. Sampson reviews Texas' new immediate income withholding statute and analyzes how it will change the way support cases are handled in Texas. Sampson also points out various deviations from the CSEA of 1984, and rebukes both Congress and the Texas legislature when he sees a requirement or procedure that he views as obfuscating or uneconomical.

Topical Surveys - Workers' Compensation - Applying Workers' Compensation Benefits to Satisfy Support Claims of Family Dependents, 19 Suffolk U.L. Rev. 473 (1985).

This article discusses whether the proceeds of a workers' compensation settlement can be attached, pursuant to a family court order, to satisfy a claim for child support in arrears. One state's answer is in the affirmative. In Cardenas v. Cardenas, 478 A.2d 968 (R.I. 1984), the Rhode Island Supreme Court held that workers' compensation benefits are not exempt from claims for child support even though the benefits are statutorily exempt from the reach of most creditors. The author points out that courts that hold similarly reason that the goal of workers' compensation is to relieve the financial burden upon

workers and their families during the time of disability, and to prevent dependents from reaching these benefits would be inconsistent with the general legislative intent behind workers' compensation.

E. Additional Resources

Hicks v. Feiock, 180 Cal. App. 3d 649, 222 Cal. Rptr. 748 (Cal. Ct. App. 1986), cert. granted, 55 U.S.L.W. 3607 (March 9, 1987) (No. 56-787). (See Annotation in Appendix C.)

Rose v. Rose, 107 S. Ct. 2029 (1987). (See Annotation in Appendix C.)

Sorenson v. Secretary of Treasury, 106 S. Ct. 1600 (1986). (See Annotation in Appendix C.)

U.S. v. Morton, 467 U.S. 822 (1984). (See Annotation in Appendix C.)

Revenue Ruling No. 84-171, IRS, 12/10/84.

The IRS gives examples of its treatment of erroneous child-support offsets. When the IRS delays a taxpayer's refund due to such an offset, the taxpayer is entitled to interest at the established rate. Section 6402(c) of the Internal Revenue Code provides that past-due support can be deducted from the overpayment upon state notification, but any other part of the payment not subject to an offset must be refunded promptly to the taxpayer. Should the IRS fail to correct its own erroneous offset within 45 days, it must give the refund to the taxpayer with interest. However, if a state agency is responsible for the error in notifying the IRS of the taxpayer's child support liability, the state is responsible for granting relief.

Annotation, Appealability of Contempt & Adjudication or Conviction, 33 A.L.R. 3d 448 (1970 & Supp. 1987).

Annotation, Construction and Application of § 200 of Soldiers' and Sailors' Civil Relief Act of 1940, as Amended, 60 U.S.C.S. § 520, Relating to Default Judgment Against Member of Armed Forces, 35 A.L.R. Fed. 649 (1977 & Supp. 1987).

Annotation, Construction and Application of 42 U.S.C.S. § 659(a) Authorizing Garnishment Against United States or District of Columbia for Enforcement of Child Support & Alimony Obligations, 44 A.L.R. Fed. 494 (1979 & Supp. 1987).

Annotation, Contempt Adjudication or Conviction as Subject to Review, Other Than by Appeal or Writ of Error, 33 A.L.R. 3d 589 (1970 & Supp. 1987).

Annotation, Court's Establishment of Trust to Secure Alimony or Child Support in Divorce Proceedings, 3 A.L.R. 3d 1170 (1965 & Supp. 1987).

Annotation, Laches or Acquiescence as Defense, so as to Bar Recovery of Arrearages of Permanent Alimony or Child Support, 5 A.L.R. 4th 1015 (1981 & Supp. 1987).

Annotation, Power of Divorce Court, After Child Attained Majority, to Enforce by Contempt Proceedings Payment of Arrears of Child Support, 32 A.L.R. 3d 888 (1970 & Supp. 1987).

Annotation, Right to Counsel in Contempt Proceedings, 52 A.L.R. 3d 1002 (1973 & Supp. 1987).

Annotation, Right to Credit on Child Support Payments for Social Security or Other Government Dependency Payments Made for Benefit of Child, 77 A.L.R. 3d 1315 (1977 & Supp. 1987).

Annotation, Statute of Limitations, Laches, or Acquiescence as Defense to Action or Proceeding for Alimony or Support of Child Allowed by Court Order or Decree, 70 A.L.R. 2d 1250 (1960 & Supp. 1987).

Annotation, Tolling Provision of Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.S. § 525, 36 A.L.R. Fed. 420 (1978 & Supp. 1987).

Annotation, Trust Income or Assets as Subject to Claim Against Beneficiary for Alimony, Maintenance, or Child Support, 91 A.L.R. 2d 262 (1963 & Supp. 1987).

Annotation, Validity, Construction, and Application of §§ 301-307 of Consumer Credit Protection Act, 15 U.S.C.S. § 4 1671-1677, Placing Restrictions on Garnishment of Individual's Earnings, 14 A.L.R. Fed. 447 (1973 & Supp. 1987).

Annotation, Validity and Effect, as Between Former Spouses, of Agreement Releasing Parent from Payment of Child Support Provided for in an Earlier Divorce Decree, 100 A.L.R. 3d 1129 (1980 & Supp. 1987).

SECTION VI - INTERSTATE AND INTERNATIONAL CHILD SUPPORT ISSUES

The dearth of writings on interstate and international child support issues should not suggest that the area is noncontroversial or unimportant. Thousands of interstate cases are processed monthly by state child support agencies and court personnel. Jurisdiction, due process, service of process, comity, interstate cooperation, choice of law, and modification of another state's earlier order are discussed routinely in offices if not in legal publications. Three articles by Gloria DeHart discuss international enforcement through treaties, conventions and reciprocal agreements. Other authors examine URESA, UEFJA, long-arm statutes, and interstate use of administrative process and income withholding as necessary tools with which to overcome interstate establishment and enforcement problems. With our mobile society, interstate establishment and enforcement cases will not disappear.

American Bar Association, Interjurisdictional Enforcement and Conflicts Problems in Family Law (1984).

Papers from a seminar sponsored by the ABA Family Law Section and Professional Education Systems, Inc., address the problems that lawyers face in obtaining interstate and international enforcement of rights under matrimonial and custody decrees. The following statutes which relate directly to the enforcement of rights in interstate cases are analyzed: the Uniform Enforcement of Foreign Judgment Act, the Revised Uniform Reciprocal Enforcement of Support Act, and the Uniform Child Custody Jurisdiction Act.

American Bar Association, Interstate Child Support Remedies (to be published in 1988).

The added difficulties inherent in interstate child support cases require strategies to overcome them. This monograph, edited by the ABA's Child Support Project, includes articles on URESA, conflicts of law and jurisdictional issues, long-arm statutes, UEFJA, interstate income withholding, administrative processes, tax refund intercepts, interstate procedures for obtaining evidence, IRS full collection procedures, the relationship between custody, support and visitation, military obligors, locating absent parents, and international enforcement.

Barber, Reaching Out to Obtain Support: The Use of Local Courts to Trip Up the Fleeing Parent, in 2 Improving Child Support Practice II-275 (1986).

Barber reviews the impact of Kulko v. Superior Court, 436 U.S. 84 (1978), on interstate cases in which a long-arm statute is used as the basis for obtaining jurisdiction over an out-of-state defendant. Kulko found that a father's two brief visits to California were not by themselves enough to subject him to California's jurisdiction. The author concludes that analyzing each case's facts will uncover the degree of intentional contact between the defendant and the state seeking jurisdiction over him or her. If the contacts are significant and purposeful, the reach of the long-arm statute can be upheld. Barber also discusses the use of federal courts in support cases, garnishment and allotment against military personnel, and interstate enforcement under the IRS' full collection procedures.

DeHart, Getting Support Over There - Jurisdiction, Comity, Adequate Notice, Garnishment: How the Hague Convention Will Bring Order Out of Chaos, 9 Fam. Adv. 34 (Spring 1987).

This article gives a brief overview of problems likely to be encountered by family law practitioners who attempt to enforce child support internationally. The author begins by identifying three international conventions relating to civil law to which the United States has acceded, which are useful in dealing with support and custody cases. The author then describes state solutions to the problem.

G. DeHart, International Enforcement of Child Support and Custody: Reciprocity and Other Strategies (Section of Family Law, American Bar Association) (1986).

This article examines treaties that relate to the international enforcement of child support and custody orders. The author, who as deputy attorney general in California pioneered reciprocity with foreign counties under URESA, discusses the international enforcement of child support obligations through the use of a state's URESA statutes, reciprocity based on analogous reciprocal acts and reciprocity without the corresponding legislation.

DeHart, Reaching Across International Boundaries, in 1 Improving Child Support Practice II-94 (1986).

DeHart details how a state may resolve a support enforcement problem that involves cooperation with a non-American jurisdiction. Ever since Michigan pioneered international reciprocity under URESA with Ontario, most states have recognized URESA-like laws of several countries and provinces. Australia, Canada's provinces, Great Britain, France and West Germany have support enforcement laws recognized as acceptable to many states under comity principles. Their laws are sufficiently URESA-like to allow cooperative efforts, without the need for a U.S. Senate-ratified treaty. DeHart lists countries and provinces with reciprocating agreements with their U.S. state counterparts.

Elrod, Enforcing Child Support Using the Revised Uniform Reciprocal Enforcement of Support Act, 36 Juv. & Fam. Ct. J. 57 (1986).

The author highlights the basic procedures incorporated in the Uniform Reciprocal Enforcement of Support Act (URESAs) and its 1968 counterpart, the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs), which prior to the passage of the CSEA of 1984, provided the most effective means to collect child support

obligations across state lines. The author explains the method for obtaining child support through URESA/RURESAs, including how to initiate the proceeding, the duties of the initiating and responding courts, and the effect of collateral pending proceedings. The article also describes the hearing, possible defenses by the obligor, the order itself, arrearage problems, the enforcement of the court order, the registration procedure for an existing support order and the problems likely to occur when attempting to modify a registered order. The author concludes that URESA/RURESAs offers a potentially effective and efficient two-state procedure for handling interstate support enforcement issues when used in conjunction with the CSEA of 1984.

Elrod, Using URESA to Impose the Initial Support Obligation, 5 Fairshare 11 (Jan. 1985).

After a brief discussion of the URESA framework, Elrod focuses on how to use the civil judgment procedure to obtain personal jurisdiction for the initial imposition of the support obligation.

Guerin, Uniform Enforcement of Foreign Judgments Act, in 2 Improving Child Support Practices II-241 (1986).

Guerin notes that 28 states have passed the Uniform Enforcement of Foreign Judgments Act, giving obligees another interstate tool with which to pursue enforcement. Guerin lists several defenses to UEFJA that the obligor can raise, most of which attack the validity of the underlying order. Guerin provides sample pleadings for the practitioner interested in using UEFJA.

M. Haynes, Interstate Child Support Remedies (American Bar Association) (1986).

This 30-minute, color videotape is available in commercial size, 1/2" and Beta. It describes methods for the establishment and enforcement of child support obligations in interstate cases, pursuant to long-arm statutes, URESA, administrative process, interstate income withholding and state and federal income tax refund offset. The intended audiences are court clerks and prosecutor support staff who handle interstate cases.

Haynes, Interstate Enforcement of Child Support Obligations, in 2 Improving Child Support Practice II-251 (1986).

Haynes discusses the use of long-arm statutes, the Uniform Enforcement of Foreign Judgments Act (UEFJA), the Uniform Reciprocal Enforcement of Support Act (URESAs) and interstate

income withholding to collect support when the absent parent lives across state lines. Each tool has advantages and disadvantages, which Haynes analyzes.

Haynes, An Overview of URESA, in 1 Improving Child Support Practice II-52 (1986).

Haynes summarizes URESA procedures for the practitioner. The author covers: 1) personal jurisdiction and notice requirements and procedures to follow when initiating a petition; 2) registration procedures under URESA; and, 3) the effect a prior order has on another state's determinations under URESA. The article includes three appendices, giving a state-by-state breakdown of URESA law regarding arrearage collection, paternity and registration.

H. Maggard, A Guide to the Revised Uniform Reciprocal Enforcement of Support Act (National Conference of State Legislatures) (1985).

This guide, written by a staff associate for the NCLS's Child Support Enforcement Project, examines the Revised URESA and how it attempts to address many of the problems associated with interstate child support enforcement. Each section of RURESA is discussed and state statutory variations are noted.

National Child Support Enforcement Association, National Roster and Interstate Referral Guide (1986).

This guide provides general information on interstate enforcement from various states and territories. Among the contacts specified for each state or territory are: 1) IV-D agency; 2) URESA information agent; 3) parent location services; and, 4) entity or person handling interstate inquiries and complaints. This guide also includes general information on state URESA provisions including the collection of arrears and establishment of paternity.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Interstate Child Support Collection Study: A Study to Determine Methods, Cost Factors, Policy Options, and Incentives Essential to Improving Interstate Child Support Collections - Final Report (1985).

This report identifies a variety of problems that impede the ability of state and local child support enforcement agencies to process and enforce interstate child support cases effectively

and efficiently. Additionally the report provides short-term and long-term policy and legislative recommendations for both state and federal child support enforcement programs.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Interstate Child Support Enforcement Laws Digest, URESA Laws (Vols. I & II) (1986).

This digest is a compilation of the URESA laws and the case notes that appear in the annotated codes of 54 jurisdictions. It is designed to consolidate statute and case law information into a single format to facilitate interstate case processing. Volume II, not yet in print, will compile all non-URESAs/RURESAs interstate laws. This replaces URESAs Laws Digest, published in 1984.

Perna, The Uniform Reciprocal Enforcement of Support Act and the Defense of Non-Paternity: A Functional Analysis, 73 Ky. L.J. 75 (1984-85).

This article considers the procedural difficulties that arise when paternity is adjudicated in a URESA action. The author believes that URESA proceedings increase the risk of an erroneous determination of paternity and suggests a standard to protect the due process rights of putative fathers. He would have the court appoint counsel for an indigent defendant, consider the defendant's ability to conduct discovery and, if possible, simplify that process, and weigh the potential harm of possible criminal liability or embarrassing publicity to the defendant in contesting the paternity case before the court agrees to hear the paternity claim.

Reichler, Collecting Child Support Across State Lines, 4(5) Matrimonial Strategist 1 (June 1986).

Reichler reviews five approaches to an interstate support case dilemma. She examines the use of long-arm statutes, UEFJA, URESA, interstate income withholding and interception of income tax refunds. Reichler looks at each option's benefits and limitations.

Reichler, Test Your Interstate Support Collection I.Q., 4(12) Matrimonial Strategist 1 (Jan. 1987).

This test, meant to challenge domestic relations attorneys' knowledge of interstate support issues, teaches the practitioner to weigh all the options. In an interstate case, a lawyer may use a long-arm statute, hire an out-of-state private practitioner, seek income withholding, URESA or UEFJA.

registration, file a "regular" URESA petition or make a IV-D agency referral as a conduit to meet the client's goal. Reichler emphasizes the need to review all options before deciding what to do with the interstate case.

Rolland, Collecting Support: How to Use URESA More Effectively, 4(5) Matrimonial Strategist 2 (June 1986).

The author gives tips to the practitioner who files a URESA case. She suggests the allegations in the petition should be specific and unambiguous. Needs and expenses of the petitioner should be accurately detailed. Also, the petitioner should provide sufficient information regarding the respondent's location in order that he or she can be served. Rolland recommends the petition contain paternity proof in cases where the child was born out of wedlock and paternity has not yet been legally established. Attorneys should keep in mind, Rolland cautions, that the law of state in which the obligor lived during the period for which support is sought controls. If a child support duty can be imposed in the obligor's state until a child is 21, an obligee may wish to file a URESA petition for an extension of a support duty if the obligee's state terminates support at age 18.

U.S. Dep't. of State, International Enforcement of Child Support (1985).

This publication consists of instructional material intended for use as a tool for states that wish to enforce child support orders abroad. The materials include practical information for enforcing orders from the United States against U.S. government employees or U.S. military personnel serving abroad, guidelines for retaining the services of foreign attorneys, in connection with private party disputes abroad, and suggestions for obtaining assistance of the U.S. embassy or consulate.

Young, Handling the Tough URESA Cases: Paternity, Registration, Special Defenses, in 1 Improving Child Support Practice II-82 (1986).

The author reviews the defenses an obligor can raise under URESA regarding financial matters, jurisdictional defects, technical compliance and paternity blood tests. He then lists how a prosecuting attorney can respond to the defenses or prevent them from being raised initially.

Additional Resources

Annotation, Construction and Application of State Statutes Providing for Reciprocal Enforcement of Duty to Support Dependents, 42 A.L.R. 2d 768 (1955 & Supp. 1987).

Annotation, Construction and Effect of Provision of Uniform Reciprocal Enforcement of Support Act That No Support Order Shall Supercede or Nullify Any Other Order, 31 A.L.R. 4th 347 (1984 & Supp. 1987).

Annotation, Contempt Based on Violation of Court Order Where Another Court has Issued Contrary Order, 36 A.L.R. 4th 978 (1985 & Supp. 1987).

Annotation, Doctrine of Forum Non Conveniens: Assumption or Denial of Jurisdiction of Action Involving Matrimonial Disputes, 9 A.L.R. 3d 545 (1966 & Supp. 1987).

Annotation, Foreign Filiation or Support Order in Bastardy Proceedings, Requiring Periodic Payments, as Extraterritorially Enforceable, 16 A.L.R. 2d 1098 (1951 & Supp. 1987).

Annotation, Validity, Construction, and Application of Uniform Enforcement of Foreign Judgments Act, 31 A.L.R. 4th 706 (1984 & Supp. 1987).

SECTION VII - TAX ASPECTS OF CHILD SUPPORT

While Congress and the states overhauled the child support establishment and enforcement process during the past few years, Congress also modified the tax treatment of child and spousal support payments. The Domestic Relations Tax Reform Act, part of the Deficit Reduction Act of 1984, Pub. L. 98-369, 98 Stat. 793-805 (codified as amended in scattered sections of 26 U.S.C.), and the Retirement Equity Act of 1984, Pub. L. 98-397, 98 Stat. 1426 (codified as amended in scattered sections of 26 U.S.C. and 29 U.S.C.) together dramatically altered the traditional tax treatment of support payments and the wording of court orders.

One of the most important changes was the abolition of the "Lester" rule. Commissioner v. Lester, 366 U.S. 299 (1961), stood for the presumption that lump sum support payments in which alimony and child support were not distinguished were to be regarded as alimony, deductible to the payor, taxable to the payee. Section 71(c)(2) of the 1984 Tax Reform Act allows income exclusion for the payee if the legal instrument that has a support provision contains a contingency explicitly or implicitly relating to a child.

As under pre-1984 law, the 1984 Tax Reform Act gave the parent having physical custody of a child for the greater part of the tax year the tax exemption, subject to three redefined exceptions: 1) if a custodial parent releases a claim to the noncustodial parent through a signed declaration; 2) if a pre-1985 instrument between the parties allows the noncustodial parent to claim the child and that parent has provided at least \$600 in support; and, 3) if there is a multiple support agreement which is a stipulation signed by all but one of the persons who have contributed over 10 percent of a dependent's support, stating that they will not claim the child as their dependent. This agreement is necessary if no one person contributed over half of the child's support and over half the support received was from persons entitled to claim the child as a dependent but for not individually contributing over half of that child's support. 26 U.S.C. § 152 (1987). Also, each parent can claim the child as a dependent for the purpose of deducting medical bills for the child paid for by that parent. Several authors look at the ramifications resulting from the change.

The Retirement Equity Act of 1984 changes the way lawyers draft agreements and courts write decisions affecting transfer of an obligor's pension and profit-sharing rights to a child or custodial parent during a separation or divorce. Creating an exception to the non-alienation provision of the Employees

Retirement Income Security Act of 1974, the 1984 Act sets standards for qualified domestic relations orders (QDROs), that must be met in order to enforce these types of property transfers. This section examines this new approach, as well as some changes in alimony law under the Tax Reform Acts passed in 1984 and 1986.

Arenstein, You Thought You Knew About Divorce Taxation, 2
Compleat Law. 17(4) (1985).

The author analyzes the major changes in divorce taxation caused by the Domestic Relations Tax Reform Act provisions of the Deficit Reduction Act of 1984. The author points out that the act: 1) eliminates tax planning by allocating support payments through tax deductions; 2) clarifies which of the parents in a divorce may claim a dependency exemption, a deduction for medical expenses, and child care credits; and, 3) affects the head-of-household status, innocent spouse liability, and estate and gift tax exemptions. The biggest change, according to the author, is the reversal of the income tax treatment of property transfers between spouses.

Bailis & Reeg, Implementing Qualified Domestic Relations Orders
Under the Retirement Equity Act of 1984, 63 Taxes 622 (1985).

The authors begin by stating that the Retirement Equity Act of 1984 creates a major exception to the anti-alienation provisions of the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 by providing new rules for the treatment of certain domestic relations orders. The authors next discuss the application of the new qualified domestic relations order (QDRO) rules to pension, profit sharing and qualified plans and raise issues to be considered when a plan administrator receives a domestic relations order that attempts to attach an employee's rights in a qualified plan. The authors claim that, in many cases, application of the QDRO rules of the Retirement Equity Act of 1984 will be simple and helpful in providing guidance to a plan administrator with respect to the division of benefits. The authors note further that in several instances the QDRO rules may not be precise enough to provide sufficient guidance to implement a domestic relations order.

Blake, The Expanding Tax Implications of a Parent's Legal
Obligations of Support - Is Income Shifting to Minors a Thing of
the Past? 12 Fam. L. Rep. (BNA) 3011 (April 29, 1986).

This article analyzes a Pennsylvania case, Sutliff v. Sutliff, 489 A.2d 764 (Super. Ct. Pa. 1985), which involved the right to use funds accumulated in a Uniform Gifts to Minors Act (UGMA) account to satisfy the parental obligation of support. The author is troubled by part of the court's ruling that the post-minority, college-enrolled child may be entitled to support from the parent other than from the UGMA account set up for that purpose by the supporting parent.

Blake, Memorandum: The Tax Implications of a Parent's Support Obligation - Is Income Shifting to Minors a Thing of the Past?, 27 Tax Mngm't. Memo. 83(4) (March 31, 1986).

This memorandum analyzes the Pennsylvania appellate court decision in Sutliff v. Sutliff, 489 A.2d 764 (Super. Ct. Pa. 1985), in which the court did not allow the assets of a child held by a custodian under the Uniform Gifts to Minors Act (UGMA) to be considered in the setting of the level of the support obligation of a parent who was financially able to support his minor children. The author writes that the Sutliff decision holds that a custodian under UGMA abuses his or her discretion and acts improperly if he or she expends funds from a custodian account for the purpose of fulfilling a parent's support obligation, instead of making the payments out of the absent parent's own income and other assets, when the parent is financially able to provide for the minor's support. In his conclusion, the author raises the point that since UGMA accounts are widely used for the specific purpose of helping parents save for college education expenses, the holding in this case could make UGMA accounts unavailable for the very purpose they were created to serve, if a court orders post-minority support for the college-enrolled child.

Booth, Taking Advantage of Lester: How a Couple Can Split the Tax Burden After Splitting Up, in 2 Improving Child Support Practice IV-39 (1986).

Booth analyzes the deductibility of child support and alimony under the old "Lester" rule, before Congress modified the "fixed" versus "not fixed" distinction by making natural or explicit contingencies relating to a child or children the key factor in determining how much of a payment is alimony and how much is child support.

Brown, Sexist Sleepers in Domestic Relations Provisions of the 1984 Tax Reform Act, 30 N.Y.L. Sch. L. Rev. 39 (1985).

A critical analysis of the domestic relations provisions of the 1984 Tax Reform Act is the central focus of this article. The author discusses how certain amendments in the 1984 act, such as the child support presumption change, the revised dependency rule, and the child support arrearage provisions, will benefit women generally. The article also points to provisions in the act that fail to do justice to transferee and payee spouses, most of whom are women, such as in situations where cash payments are received as property settlement.

Comment, Tax Planning in Divorce: Both Spouses Benefit from the Tax Reform Act of 1984, 21 Willamette L. Rev. 767 (1985).

The author compares tax planning in divorce before and after the Tax Reform Act of 1984, covering alimony and child support income and deductions, child exemptions, and transfers of appreciated property. Using specific examples, she shows how tax liability as a consequence of divorce can be reduced overall, or at least clarified, under the new law.

Crocetti, Establishing Support is the Crucial Part of the Test for Qualification As a Dependent, 14 Tax. Law. 4 (1986).

Beginning with the premise that the support test is the most important element in proving that a taxpayer is entitled to a deduction for a claimed dependent, the author, a CPA, shows several ways that this test can be met by focusing on various planning techniques that can be used to substantiate an exemption claim. The author concludes by emphasizing that planning and the effective use of support payments can significantly reduce a client's tax liability.

Crocker, Tax Reform Act of 1984: Domestic Relations Agreements, 12 Barrister 39 (1985).

The author reviews the law of property transfers, alimony, child support and separate maintenance payments after the Tax Reform Act of 1984, explaining how the new rules significantly broaden the determination of child support payments.

DuCanto, The Strange and Untimely Death of Lester, 7 Fam. Adv. 34 (Fall 1984).

The author discusses changes in the taxability and deductibility of child support payments due to the 1984 Tax Reform Act. In Commissioner v. Lester, 366 U.S. 299 (1961), the U.S. Supreme Court held a custodial spouse could exclude from income only those payments a decree or instrument specifically established as child support. The Tax Reform Act permits a custodial spouse to also exclude an amount equal to the amount of reduction in a specified payment caused by a contingency relating to a child. An example of such a contingency is the lowering of the payment amount upon one of the children reaching the age of majority. The Act mentions two types of acceptable contingencies. Section 71(c)(2)(A) allows income exclusion if the contingency is specified in an "instrument relating to a child". Section 71(c)(2)(B) allows income exclusion if the contingency "occurs at a time clearly associated with a contingency of a kind" specified in 71(c)(2)(A). The author contends the legislation is poorly designed and results in adverse consequences. Tax

court cases seeking to define the Act's vague language are on the increase. Insecure about the provision, parents rush into inadequate child support agreements resulting in less money for children, claims the author. Also, the changes bring about no recognizable increase in tax revenue collection, DuCanto claims.

Hjorth, Divorce, Taxes and the 1984 Tax Reform Act: An Inadequate Response to an Old Problem, 61 Wash. L. Rev. 151 (1986).

In his extensive review of the changes effected by the 1984 tax reforms, the author discusses the major changes in the area of child support taxation. Although he considers most of the provisions relating to property settlements beneficial, he disputes the merit of the new rules applying to alimony and child support. He argues that the Lester rule repealed by the 1984 tax law changes should be reinstated to permit the deductibility of child support payments where the payee agrees to report the payments as income.

Kittrell, An Overview of the 1984 Domestic Relations Tax Provisions, in 2 Improving Child Support Practice IV-53 (1986).

Kittrell analyzes the way the Deficit Reduction Act of 1984 modifies tax planning techniques for the matrimonial lawyer. He looks at definitional guidelines for alimony, important especially for the alimony provider's attorney to know if the provider is to be assured of the deduction. He concludes that the new rules may decrease the amount of money available for child support if the obligor is in a high tax bracket and the obligee in a lower one, as the support, which was "hidden" as alimony under the pre-1985 "Lester" theory, is no longer deductible. Kittrell also examines property transfers, dependency exemptions, the Retirement Equity Act of 1984 and qualified domestic relations orders.

Landey, Domestic Relations Aspects of the Tax Reform Act, 71 Women Law. J. 4(2) (Winter 1985).

The Domestic Relations Act of 1984 is briefly summarized in this article. Some of the changes in the domestic tax law which the article identifies relate to: the transfer of property between spouses; the definition and treatment of alimony and child support payments; the dependency exemption; the innocent spouse rules; and, the jointly-filing spouse provisions.

McLachlan, Dependency Exemptions Under the New Rules, 7 Fam. Adv. 12 (Fall 1984).

This article discusses how the Deficit Reduction Act of 1984 affects dependency exemptions, medical expense deductions and the filing status for divorced parents with dependent children. The new rules establish that where both parents contribute one-half of the child's support, the custodial parent is entitled to the personal exemption. The author notes, however, that one of the exceptions to this rule allows the noncustodial parent to claim the personal exemption if the custodial parent signs a written entitlement waiver and the noncustodial parent attaches it to his or her tax return. With respect to medical expenses, the author writes that under the new rules, the parent paying the medical bills is entitled to claim them on his or her separate return as long as the parents are divorced, legally separated, have a written separation agreement or have lived apart for the last six months. The new provisions affecting the filing status and credits are contained under I.R.C. section 423 which restates and amends the tax rules defining when couples are separated or married for tax purposes.

McLachlan, Dependency Exemptions Under the New Rules, in 2 Improving Child Support Practice IV-51 (1986).

McLachlan discusses the divorce-related changes found in the Deficit Reduction Act of 1984, including dependency exemptions, medical expense deductions and filing status for divorced parents with dependent children.

Note, The Effect of the Tax Reform Act of 1984 on Divorce Financial Planning, 24 J. Fam. L. 283 (1985-86).

The author provides a brief overview of the impact of the Tax Reform Act of 1984 on transfers of property, alimony, and child support. Since the act supplies uniform federal definitions for these terms, which make the tax consequences of divorce more predictable, she concludes that the new rules will simplify tax issues that previously caused much litigation. However, in a divorce involving more complicated issues, such as fluctuating income, expert tax advice will generally still be needed.

Note, The Federal Income Tax Consequences of the Legal Obligation of Parents to Support Children, 47 Ohio St. L.J. 753 (1986).

This note begins with an explanation of when and how income tax consequences of a parent's legal obligation of support arise. The writer explores the boundaries of a parent's obligation of support through: 1) a presentation of general views of a

parent's obligation of support; 2) a summary of the federal income tax cases that have dealt with this issue; and, 3) an examination of the possible guidelines followed by the courts in deciding this issue. The author ends by suggesting that tax planners and parents must keep abreast of the changing boundaries of parental support obligations under local law to avoid unforeseen income tax liabilities.

Podell, The 1986 Tax Reform Act's Impact on Family Law: An Overview, 13 Fam. L. Rep. (BNA) 3001 (Nov. 18, 1986).

The author discusses the impact of the 1986 Tax Reform Act on all divorced taxpayers, particularly the amendments affecting alimony. Under the old rules alimony payments had to meet the periodic and support tests to be considered as income to the recipient and as a deductible expense to the payor. Section 1843 of the new law created a major change in this area, setting out a six-part test for alimony and establishing more elaborate recapture rules, which the author explains in detail. He also reports on the tax implications in other areas of family law, covering such topics as the new tax rates, personal exemptions, standard deductions, changes in itemized deductions, dependent children and tax shelters. The appendices include excerpts from the 1986 Tax Reform Act and sample comparison of payments for the 1987 and 1988 tax years.

Randall, The Domestic Relations Tax Reform Act of 1983 - New Rules, But Simple, 19 Gonz. L. Rev. 69 (1983-84).

This article discusses the impact that the Domestic Relations Act of 1983 will have on property transfers during marriage and at the time of divorce, the manner in which alimony and child support payments are treated, and how dependency exemptions are to be considered.

Riebesehl, Dependency Exemption Saves Client Money, 3(2) Matrimonial Strategist 1 (Mar. 1985).

The author notes that under the Tax Reform Act of 1984, the dependency exemption will be more valuable, as the exemption will be adjusted to reflect increases in cost of living. Riebesehl says an absent parent who provides no support but has physical custody of the dependent child for over six months can claim the exemption if the legal custodian waives it. He recommends that any custodial parent waiver of an exemption claim be made for that tax year only, in order to induce the obligor to make child support payments in the future.

Riebesehl, A Look at Dependency Exemptions, New Rules, 5(5)
Matrimonial Strategist 1 (June 1987).

Riebesehl examines two tax cases that deal with pre-1985 claims for dependency exemptions. In one case, the tax court equally divided among the parent and her two children, the rental value of a home of which the custodial parent was given exclusive occupancy. Two-thirds of the rental value was imputed to the custodial parent's child-raising expenses, allowing her to claim the children as dependents under the old law under which the person who proves contribution of over one-half of the support of the dependent child can claim the child. The other case involved a divorced man living with a married woman claiming her children as dependents on their joint return. The claim was disallowed, as this was an adulterous relationship, illegal under local law. Even if the woman had been divorced, the tax court noted that the taxpayer's home state did not recognize common law marriages. Riebesehl also comments on an IRS temporary regulation regarding real estate transactions affecting marital domiciles following divorce or separation.

Riebesehl, New Cases Raise Issues On Dependency Exemptions and Alimony, 3(10) Matrimonial Strategist 4 (Nov. 1985).

This article discusses court decisions relating to dependency exemptions and alimony deductions decided before the enactment of the Tax Reform Act of 1984.

Riebesehl, New Decisions on Alimony and Child Support, 4(2)
Matrimonial Strategist 2 (Mar. 1986).

Riebesehl discusses a case decided under the pre-1984 tax reform laws, when Commissioner v. Lester, 366 U.S. 299 (1961), controlled. Lester allowed unallocated payments to be treated as alimony and not support, which is important because alimony is deductible to the payor and taxable to the payee, while child support is neither deductible nor taxable. In Platt v. Commissioner, 51 T.C.M. 49 (1985), a separation agreement left unallocated \$750 per month in alimony and child support. The agreement was merged into a divorce decree, which allocated \$700 of the \$750 as child support. The tax court found that the decree superseded the agreement and the obligor could only deduct \$50. Additionally, the court held that it did not matter that the agreement was merged; if either a decree or an agreement fixes a child support amount, that specifying provision governs. The author believes this decision is disturbing, as tax considerations that go into drafting the terms of an agreement may be set aside despite contrary intentions.

Riebesehl, Taxation - Deduct Temporary Support, 3(5) Matrimonial Strategist 2 (June 1985).

Under the Tax Reform Act of 1984, a temporary support order must state that payments end if the payee spouse dies if the obligor wants to deduct the support as alimony, whether or not the spouse dies while the temporary order is in effect. If the temporary order is silent, then the support will not be deductible to the obligor.

Women's Law Center, Dependent Care Tax Provisions in the States: An Opportunity for Reform (1987).

This report prepared by L. Lynneisensee and N. Campbell at the Women's Law Center analyzes the current status of state dependent care tax provisions and makes recommendations for reform of those provisions. The report also includes statistics from all the states and the District of Columbia.

H. Wren, L. Gabinet & D. Camad, Tax Aspects of Marital Dissolution (1987).

This publication provides full coverage of the impact of the Tax Reform Act of 1986 on tax planning in marital dissolution situations. Topics range from spousal and child support to agreements between unmarried persons. Other features include sample forms and clauses and helpful checklists such as questions to ask each client and creative tax analysis and planning.

Additional Resources

Annotation, Construction of Provisions of Internal Revenue Code Relating to Alimony or Maintenance Payments, 4 A.L.R. 2d 252 (1949 & Supp. 1987).

Annotation, Effect of Receipt of Governmental Welfare or Social Security Benefits by Individual Claimed as Dependent of Another on Dependency Support Requirements of 26 U.S.C.S. § 152(a), 46 A.L.R. Fed. 931 (1980 & Supp. 1987).

SECTION VIII--THE EFFECTS OF BANKRUPTCY ON CHILD SUPPORT

The Bankruptcy Code still makes alimony and child support debts nondischargeable although courts have disagreed over the past few years regarding the scope of the exception's applicability in certain fact situations. According to one writer, the exception to discharge, 11 U.S.C. § 523(a)(5), has generally been interpreted liberally by the courts. Six articles examine support dischargeability, and the parameters of this Title 11 subsection.

Bushman III and Kelly, Protecting Clients During Bankruptcy, 4(8) Matrimonial Strategist 1 (Sept. 1986).

The authors note two basic rules for the practitioner to recognize in a bankruptcy case involving divorcing or divorced spouses. First, when a bankruptcy petition is filed, the bankruptcy court has exclusive jurisdiction over all jointly-held property. Second, only alimony, maintenance and support obligations are not dischargeable and are not subject to the automatic stay. The writers warn that attorneys should make sure the nonsupporting spouses' creditors are secured so that property settlement and debt payments are not left completely vulnerable to discharge.

Elliott, Section 523(a)(5): The Exception From Discharge of Alimony, Maintenance and Support Obligations, 4 Bankr. Dev. J. 109 (1987).

Although most debts are discharged by bankruptcy, 11 U.S.C. section 523(a)(5) makes an exception for obligations to pay alimony, support and maintenance. The article discusses the statutory requirements and situations where the statute has received inconsistent interpretations by the courts, such as in determining when the support obligation arises. The author concludes that the current trend is to expand the scope and applicability of this provision, due to policy considerations that the debtor has a continuing duty of familial support which cannot be eradicated by a bankruptcy filing.

Freeburger & Bowles, What Divorce Court Giveth Bankruptcy Court Taketh Away: A Review of the Dischargeability of Marital Support Obligations, 24 J. Fam. L. 587 (1985-86).

This article reviews the growing body of federal domestic relations law that has developed as a result of 11 U.S.C. section 523(a)(5). The authors offer the family law practitioner useful advice on how to deal with support and dischargeability.

Kline, Bankruptcy and Divorce, 10 Okla. City U.L. Rev. 561 (1985).

Kline discusses the interplay between bankruptcy law and divorce law. He highlights the following aspects of the bankruptcy code: the automatic stay provision; the dischargeability of certain post-marital obligations; provisions affecting community property; debts to third parties; debts assigned to other entities; the avoidability of liens arising from the divorce decree; and, state court modifications of support obligations subsequent to the bankruptcy discharge.

Ravin & Rosen, The Dischargeability in Bankruptcy of Alimony, Maintenance and Support Obligations, 60 Am. Bankr. L.J. 1 (1986).

This article discusses the impact that bankruptcy laws have had on family support obligations. The authors write that throughout the history of American bankruptcy law, family support obligations have been excepted from discharge. Focusing on section 523(a)(5) of the Bankruptcy Code, the authors examine the following topics: 1) the statutory source of the nondischargeability of alimony, maintenance and support obligations; 2) factors considered by the courts in rendering a decision as to whether an obligation is actually in the nature of alimony, maintenance or support; 3) the effect of changed circumstances on bankruptcy petitions; 4) the dischargeability of assigned debts; and, 5) the res judicata and collateral estoppel effects of state courts' decisions on section 523(a)(5) litigation. The authors conclude by suggesting that in divorce proceedings, counsel should always anticipate bankruptcy and explore other options such as trusts, escrowed funds, performance bonds and standby letters of credit to assure that alimony, maintenance and support obligations are made on a timely basis.

J. Replogle, Bankruptcy and Support Enforcement: How to Make Sure It Stays Owed to the Kids (Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services) (1986).

This monograph provides an overview of portions of the Bankruptcy Code that affect the child support creditor. The following topics are discussed: support amendments and dischargeability; conversion; automatic stay; lien avoidance under section 522(f); child support provisions in a Chapter 13 plan; confirmation and operation of a Chapter 13 plan; section 553 set-offs and the tax intercept; reimbursement of welfare assistance; complaints to determine dischargeability; discharge; support discharge before and after August 13, 1981; and, the jurisdiction of the U.S. Bankruptcy Court.

Additional Resources

Annotation, Debts for Alimony, Maintenance, and Support as Exceptions to Bankruptcy Discharge, Under § 523(a)(5) of Bankruptcy Code of 1978, 11 U.S.C.S. § 523(a)(5), 69 A.L.R. Fed. 403 (1984 & Supp. 1987).

**SECTION IX - ALTERNATIVES TO JUDICIAL DETERMINATION
AND
ENFORCEMENT OF CHILD SUPPORT**

The CSEA of 1984 mandate use of "expedited process" for IV-D agencies in the handling of support cases. 42 U.S.C. § 666(a)(2) (1987). The law contemplates the use of administrative agency hearing examiners and court-appointed or elected quasi-judicial officials such as masters or commissioners, instead of judges. Eight articles look at expedited process, a small number considering how far-reaching the expedited process requirement may be in many states. Also, a law review note comments on a New Jersey decision allowing child and spousal support issues to be submitted to binding arbitration, subject to special de novo review by a court with jurisdiction over the case.

We found only one report dealing with mediation specifically in a child support context, which was surprising, considering the vast number of cases that are heard by mediators before court review. Two articles look at custody mediation with tangential reference to support issues.

Center for Policy Research, Report on the Child Support Mediation Program of the Family Court of Delaware (1986).

According to the author, this report offers a qualitative and quantitative analysis of child support mediation as it is used in the Family Court of Delaware. The report also analyzes the reactions of various groups affected by its use. Voluntary agreements produced in mediation are compared with those resulting from judicial and masters' hearings in terms of the level of awarded support and eventual compliance with the awards.

D. Cooper, M. Henry & V. Schwartz, A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement (National Institute for Child Support Enforcement) (1985).

This technical guide was intended for use by states considering, planning or implementing an administrative process for the establishment and enforcement of child support obligations. The guide explains the concept of the administrative process; discusses the benefits to be gained from implementing an administrative process for child support enforcement; suggests how child support obligations can be established and enforced administratively; and, provides guidance and assistance to jurisdictions engaged in drafting or implementing an administrative process statute. This guide also includes a chart analyzing provisions contained in current administrative process statutes in sixteen states.

Expedited Judicial Process in New York, Child Support Report (Dec. 1985).

This article describes the New York Support Enforcement Act of 1985, which provides comprehensive reform of child and spousal support enforcement through provisions for expedited procedures, expansion of the powers of hearing examiners and implementation of automatic-wage-withholding actions initiated by private attorneys and by support collection units.

Folberg, Mediation of Child Custody Disputes, 19 Colum. J. L. & Soc. Prob. 413 (1985).

In light of recommendations from the Law Revision Committee that New York enact legislation on child custody mediation and other procedural reforms, the author discusses proposed legislation regarding child custody mediation. In the context of divorce mediation in general, he notes that the premise in this type of dispute resolution is that parents are the best decision-makers regarding the care of the child. After discussing how the procedure works and policy questions such as the role of the courts in reviewing mediated agreements and the extent of the

mediator's participation in any subsequent court proceedings, the author concludes that the proposed legislation should receive favorable attention.

Henry & Schwartz, Expedited Processes for Child Support Enforcement, 36 Juv. & Fam. Ct. J. 77 (1985).

Using Pennsylvania and Missouri as representative state models, the authors describe expedited quasi-judicial and administrative processes as they have been implemented in the states prior to the passage of the CSEA of 1984. They also discuss the new amendment requiring each state to enact and implement expedited processes for establishing and enforcing child support obligations and, at the state's option, for establishing paternity. Expedited process, the authors point out, includes any administrative or quasi-judicial process in which the presiding officer is not a judge, which increases the effectiveness of the establishment and enforcement process, and which meets specific processing time-frames. The authors conclude that both the administrative and quasi-judicial processes have proved to be effective ways of improving the handling of child support cases while protecting due process rights of affected individuals.

National Institute for Child Support Enforcement, Expedited Processes for Child Support Enforcement (1985).

This 13-minute, color video, tailored for judicial and legal audiences, discusses the benefits of both quasi-judicial and administrative processes for establishing and enforcing child support orders as required under the CSEA of 1984.

Negotiating to Settlement in Divorce (S. Katz ed. 1987).

This publication draws on the skills and perspectives of practitioners, academicians, mediators and a judge involved in divorce negotiations. It provides insights on the elements of successful divorce negotiations as well as guidelines for when not to negotiate. This book includes a chapter by H. Joseph Gitlin on negotiating settlements concerning property, alimony and child support.

Note, Domestic Relations - Parties Can Contract to Submit Alimony and Child Support Payments to Binding Arbitration. Faherty v. Faherty, 97 N.J. 99, 477 A.2d 1257 (1984), 15 Seton Hall L. Rev. 708 (1985).

This note analyzes the decision by the New Jersey court in Faherty v. Faherty, allowing spouses to agree to submit support and alimony disputes to arbitration. The note points out that

although the court found that child support disputes can be made subject to the arbitration process, it is still essential for the trial court to conduct a special de novo review of an arbitrator's award when the child's best interest might be adversely affected, such as in cases where the arbitrator's award is less than the amount of support that is requested and where the child's standard of living is actually and materially affected.

Roberts, Expedited Processes and Child Support Enforcement: A Delicate Balance - Part I, 19 Clearinghouse Rev. 483 (Aug./Sept. 1985).

The 1984 changes in the federal law that controls IV-D procedures emphasize expedited attention to all support cases. In order to process cases expeditiously and more inexpensively, states began to implement quasi-judicial or administrative systems to meet the statutory requirements. This article examines how due process can still be accorded to the parties in a manner that will not greatly slow down the process. The author contends that certain actions, such as paternity determination and contempt, are ill-suited for expedited process, as not enough protections for the parties' constitutional rights can be grafted onto the speedier, though usually more informal, systems.

Roberts, Expedited Processes and Child Support Enforcement: A Delicate Balance - Part II, 19 Clearinghouse Rev. 620 (Oct. 1985).

In the author's second article on administrative and quasi-judicial processes, she examines the procedures used in Michigan, Delaware, Missouri, Virginia, and Oregon. The first two states use quasi-judicial process and the latter three use administrative process. The article looks at the possible due process problems inherent in each system as well as potential conflict-of-interest questions that may arise. At the end of the article, Roberts provides model procedures for both administrative and quasi-judicial systems based on the best of the reviewed statutes.

F. Silvester & D. Cooper, The Administrative Adjudication of Child Support Obligations (National Institute for Child Support Enforcement) (1981, reprinted in 1984).

This monograph examines the application of administrative law to child support enforcement, reviews both the background and the development of child support obligations and discusses the

adjudication of child support cases in an administrative setting. This publication also includes a sample method for designing and implementing administrative process legislation.

Weitzman, The Divorce Revolution: How the Legal Reforms Background Backfired, 7 Women's Adv. 1 (Jan. 1986).

In this article, Professor Weitzman briefly describes her ten years of research on the consequences of no-fault divorce and domestic law reforms since the legal revolution in divorce law began in 1970. Weitzman contends that her research reveals that the court's interpretation of "equality" at divorce often disregards the economic inequalities created during marriage. She states that in dividing "marital property," judges systematically neglect the major assets of the marriage, namely, the husband's career assets such as his salary, pensions, professional license, health insurance and enhanced earning power while ignoring the wife's drastically diminished job prospects. The author adds further that in order to divide marital property "equally," judges often order the forced sale of the family home creating further hardships for women and children. Another major finding according to Weitzman is the inadequacy of alimony and child support awards.

Women and the Law (C. Lefcourt & C. Boardman eds. 1984).

This legal treatise, which draws on the expertise of nationally-recognized authorities on women's rights, emphasizes practical strategies. It contains numerous sample complaints and checklists. A chapter is devoted to the determination and enforcement of child support.

Woods, Mother's Day - 1984 Report on the Status of Mothers in the United States, 5 Women's Adv. 1 (May 1984).

Woods remarks that whether women maintain their own household or live in two-parent households, they do not receive appropriate economic recognition for their work either inside or outside the home. She points out that poverty in female-headed families is rising and that most families receiving AFDC are still below the poverty level. Other problems confronting mothers to which Woods alludes are: serious wage and job discrimination; discrimination within the social security system and lack of workmen's compensation; the economic toll of divorce; and, the inadequacies of child support and child custody awards. Woods ends with a brief discussion of recent developments that benefit mothers.

Young, Expedited Administrative Processes to Establish and Enforce Child Support Obligations, in 2 Improving Child Support Practice III-196 (1986).

This paper briefly examines the use of administrative processes to establish support orders, identifies enforcement techniques which can be used to enforce them, and suggests factors to be weighed when considering which administrative process to adopt.

Additional Resources

Annotation, Validity and Construction of Provision for Arbitration of Dispute as to Alimony or Support Payments, or Child Visitation or Custody Matters, 18 A.L.R. 3d 1264 (1968 & Supp. 1987).

SECTION X - TRAINING MATERIALS

This section covers practical materials written for the advocate who is handling a support case. Several annotations review handbooks, guides and articles, many of which are available from the federal Office of Child Support Enforcement. Also, some representative continuing legal education materials are included.

Administrative Office of Courts, Alabama's Child Support Enforcement Handbook, Unified Judicial System Standardized Child Support Forms (1984).

This handbook, a result of changes mandated by the passage of the Uniform Parentage Act and the Alabama Income Withholding Act, contains Unified Judicial System standardized child support forms for such actions as criminal and civil support, paternity establishment, income withholding, and URESA.

Alabama Bar Institute for Continuing Legal Education, Advanced Family Law (1986).

This compendium of 1986 CLE material regarding Alabama family law includes: a review of the use of demonstrative evidence in domestic cases; use of expert witnesses in valuation; consideration of retirement benefits and pension plans in divorce settlements; and, getting attorney fees in domestic cases.

Alabama Bar Institute for Continuing Legal Education, Advanced Family Law (1987).

Alabama's 1987 CLE materials concerning family law are compiled in a bound volume available through the University of Alabama. Topics include custody disputes, preparing a child to be a witness, tax aspects of divorce, and a mental health professionals's perspective on family law cases.

Alabama Bar Institute for Continuing Legal Education, Family Law Seminar (1986).

This seminar focused on negotiation and settlement of a divorce case. Papers discuss a judge's view of pre-trial settlement, custody and visitation negotiations, financial concerns, parental rights termination, paternity establishment, and support collection through URESA.

Alabama Bar Institute for Continuing Legal Education, Marital Law Handbook (1985).

This handbook covers the gamut of Alabama domestic relations law, and is available through the University of Alabama. One section specifically deals with support, custody and visitation issues.

J. Atkinson, Modern Child Custody Practice (Vols. I & II) (1986).

This book provides a useful step-by-step reference manual for the domestic relations practitioner. The book is organized under the following chapter headings: 1) client interview and evaluation; 2) mediation; 3) jurisdiction; 4) factors considered in deciding custody; 5) visitation by noncustodial parent; 6) joint and split custody; 7) out-of-state move by custodial parent; 8) third-party custody and visitation; 9) modification of custody and visitation orders; 10) child support; 11) trial practice and negotiations; 12) use of mental health experts; 13) attorneys for the child and guardians ad litem; and, 14) appeals. Chapter 10 on child support consists of approximately 107 pages and covers the following areas: procedural issues at the beginning of a case; factors determining amount and duration of support; guideline; formulas; automatic adjustment clauses; enforcement; and, tax considerations.

Child Support Technology Transfer Program, Improving Program Performance Through Management Information - A Workbook (1986).

This workbook is directed towards state and local managers and supervisors who must plan, direct, and operate child support enforcement programs. It provides a step-by-step process to identify what information is needed and how this information can be used to operate an effective program. The exercises and worksheets are tailored to the specific needs and responsibilities of individual offices.

The Children's Foundation, 1986 Directory of State and Local Child Support Advocacy Groups (1986).

This directory provides a list of grass-roots groups from across the United States. It also includes a list of local branches of national organizations that are involved in the child support area.

B. Clair & A. Daniele, The Ex-Factor: The Complete Do-It-Yourself Post Divorce Handbook (1986).

This book describes many practical steps that may be taken, without an attorney, to enforce, reduce or modify the original support award or legal obligation of parents. Part one deals with issues affecting the monetary aspects of a support case. Part two addresses the problems wrought by child-related issues.

Continuing Legal Education & Family Law Section of the State Bar of New Mexico, New Developments in Public and Private Child Support Enforcement (1986).

This compilation of papers presented at a continuing legal education seminar includes writings on: the impact of the CSEA of 1984 on public and private law practice; problems with New Mexico law in light of the CSEA of 1984; the impact of the CSEA of 1984 on the state IV-D agency; and, the role of the private attorney in RURESA proceedings.

W. DaSilva, New York Matrimonial Practice (1987).

This handbook provides useful information and sample forms to aid the general practitioner who handles matrimonial cases in New York courts. Sections deal with the modification of child support agreements, motions practice, the interim relief for maintenance and child support, factors for the modification of an order or judgment, and procedures for temporary support and other pendente lite relief.

Dep't. of Public Welfare, New England Child Support Interstate Directory (1986).

This directory includes information regarding the various URESA and non-URESA remedies available in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Each state's section contains the following sub-sections: IV-D agents, URESA case processing procedures, other enforcement techniques, contacts for use in processing interstate cases, and IV-D agency organizational charts.

Family Law Manual - Maryland (1984).

This family law manual, which is updated annually, covers alimony, contempt, divorce, property distribution, separation agreements and issues involving children. Information concerning child support include: the standard of review on appeal for child support cases; the nature of the support obligation in the collections and enforcement process; the duty to support incapacitated children; factors to consider in determining support and other general information affecting illegitimate children; jurisdiction; modification; statute of limitations; and, issues affecting stepchildren.

Family Law Practice (MB) (A. Rutkin ed. 1985).

This Mathew Bender publication, updated with supplements and revisions, is national in scope and practice-oriented. It provides guidance for every stage of a family law proceeding,

from initial client contact through modification and enforcement of child support orders. Also highlighted is a section on paternity proceedings.

Florida Bar, Florida Dissolution of Marriage (2nd ed. 1985).

This continuing legal education manual contains papers from Florida bar members on issues relating to the dissolution of marriage. Topics covered are child support; alimony and support without dissolution of marriage; bankruptcy considerations; and dissolution of marriage and public benefits.

Florida Bar, Florida Dissolution of Marriage (Supp. 1987).

This 1987 update to the Florida Dissolution of Marriage manual includes a chapter on child support enforcement, among other family law topics.

Florida Bar, Paternity and Other Florida Family Practice (1979, 1987).

This manual expands and updates the coverage of Adoption, Paternity and Other Florida Family Practice (1979, 1982) It includes general topics such as: paternity establishment; change of name; rights, liabilities and property of minors; counseling the troubled family; and, the effect of military service on those issues.

Florida Family Law (MB) (B. Abrams ed. 1986).

This six-volume Mathew Bender publication provides complete coverage of every aspect of Florida's family law. Each chapter includes an analysis of the law, together with numerous cases, forms and other practical illustrations to cover such areas as the enforcement and modification of decrees, parent/child relationships and bankruptcy's impact on families.

Florida Family Law Reporter (MB) (B. Abrams ed. 1986).

This reporter provides summaries of all Florida Supreme Court and appellate court matrimonial decisions, significant Florida legislation affecting family law practice, U.S. Supreme Court and federal court decisions in all areas of family law and relevant federal tax developments.

M. Fromm, Child Support Enforcement in Maryland (1986).

This booklet, published by the Maryland Commission for Women in cooperation with the Organization for the Enforcement of Child Support, provides reference information on the laws and regulations governing child support and its enforcement in Maryland. The purpose of the booklet is to advise readers of their legal rights and responsibilities and to aid them in the collection of child support. Among the topics discussed include reasons for non-payment of child support, legal assistance alternatives, enforcement methods, paternity determination, the differences in the operations of Maryland's 24 jurisdictions, government involvement in interstate enforcement of support, Title IV-D, Project 419, Title XIX and the CSEA of 1984.

S. Green and J. Long, Marriage and Family Law Agreements (1984).

This book begins by charting developments in family law, providing historical background on the subject for the family law practitioner. The authors also cover issues affecting the institution of marriage and the expanding use of antenuptial agreements. The book also provides information on the expanding area of non-marital cohabitation. Chapter 4 covers separation agreements. Chapter 5 documents many of the changes surrounding the traditional purposes of marriage, procreation and parenthood. This chapter includes a discussion of the support rights of the child, paternity actions and the statute of limitations affecting such proceedings, the evidentiary rules in paternity proceedings, and the right to support for a child born out-of-wedlock.

M. Henry & V. Schwartz, Essentials for Attorneys in Child Support Enforcement (National Institute for Child Support Enforcement) (1986).

This handbook represents a first step in development of an integrated training curriculum with a national perspective for attorneys who represent state and local child support enforcement agencies operating under Title IV-D of the Social Security Act. This handbook attempts to identify practical and legal issues encountered by attorneys, and is intended for use as an initial research tool by IV-D attorneys.

M. Henry & V. Schwartz, A Guide for Judges in Child Support Enforcement (National Council of Juvenile and Family Court Judges) (1986).

This guide provides judges with a comprehensive overview of the role of the judiciary in the child support enforcement process. In addition to providing guidelines for specific questions that

have been raised by the judiciary, this guide identifies exemplary state legislation that has been enacted to address those problems. Among the issues discussed are the federal and state roles in the child support enforcement process, paternity establishment and the use of blood testing, the interstate enforcement process and URESA, potential defenses in the child support adjudication process and alternatives to the traditional court system in adjudicating child support cases.

N. Hurowitz, Support Practice Handbook: Preparation, Negotiation and Trial (1985).

This comprehensive support practice handbook, written by a veteran domestic relations practitioner, provides a detailed guide for use by any attorney handling a support case. Among the topics discussed are the initial interview and how an attorney should establish the client-attorney relationship; the key elements in determining support; ways to start the support action and methods of discovery; the need for an expert; defenses to the support action; strategies and techniques in negotiating settlements; the nature of the preliminary hearing; preparation for trial; post-trial motions and appeals; petitions to modify the support order; enforcement strategies; problems and considerations surrounding professional ethics; and, the tax aspects of support.

J. Lieberman, Child Support in America: A Practical Advice for Negotiating and Collecting a Fair Settlement (1986).

Lieberman describes in detail factors that should be considered in negotiating a fair settlement, including: how to determine the child's current and future needs; how to determine the obligor's ability to pay and the obligee's to contribute; and, how to protect the child's financial rights in the event of death of the obligor, his or her remarriage or relocation. In later chapters, the author offers advice on applying for an increase in the amount of child support and on countering the obligor's efforts to reduce his or her obligations. In the discussion of ways to improve the present child support system, the author argues for forceful new state laws that will automatically subtract child support from the obligor's income, whether it be wages, bonuses, unemployment compensation, or retirement benefits. The author also includes a directory of state child support enforcement agencies and national organizations that are working to reform legislation.

L. Loynd & D. Cooper, Establishing an Enforceable Case: A Self - Instructional Course (National Institute for Child Support Enforcement) (1981, reprinted 1983, 1985).

This self-instructional course, intended to aid the child support worker in the preparation of enforceable child support cases, consists of eight modules: 1) constructing an enforceable case; 2) analyzing the evidence; 3) working the case; 4) starting the case; 5) discovering evidence; 6) trying the case; 7) understanding potential defenses; and, 8) using remedies and elements of proofs.

Maryland Institute for Continuing Professional Education of Lawyers, Inc., Maryland Divorce and Separation Law (1985).

Chapter 5 of this practice manual concerns topics relating to children. One section of the chapter deals with paternity proceedings, discussing: the nature of the civil action; the purpose of the paternity proceeding; the criminal non-support statute for children born out-of-wedlock; wage liens; Lord Mansfield's Rule; rehearing on the basis of newly-discovered evidence; the statute of limitations; and, the legitimization of the child.

J. Mize, California Marital Termination Settlements (Supp. 1986).

This annual publication by the California Continuing Education of the Bar includes a chapter on child support developments that may affect settlements. Papers presented identify recent significant cases affecting support rights and obligations, new statutory provisions of support, and sample forms used in establishing support obligations.

New Hampshire Bar Association, Child Support: A CLE Seminar (1986).

This practice handbook, designed to improve the knowledge and skills of practitioners representing individuals confronted with child support enforcement issues, includes: the statutory provisions of child support; methods of support determination; the non-cash aspects of support; sample child support formulas; a discussion of private-attorney child support enforcement remedies covering the drafting of stipulations or proposed orders of support, instituting contempt proceedings and making security arrangements; information on how URESA works; and, information on IV-D agency services. The handbook also contains sample pleadings for use in child support litigation.

New York Family Law (Yellow Book) (MB) (1987).

This Mathew Bender publication, updated annually with replacement volumes, contains complete texts of the Domestic Relations Law; the Family Court Act and the Uniform Rules for the Family Court; Social Services Law; and, various Court Rules.

New York Practice Guide: Domestic Relations (MB) (1987).

This two-volume practice guide, updated with supplements and revisions, covers matrimonial actions and proceedings in New York. Topics include: spousal and child support; the enforcement and modification of money judgments and the tax consequences of dissolution and effect of the 1986 tax reform.

New York State Bar Association, Matrimonial and Family Law Update '84 (1984).

This continuing education publication contains articles on 1984 legislative changes and judicial interpretation that affect New York's family law. Section V deals with modification and enforcement of marital agreements and decrees. It includes several articles that discuss New York's new equitable distribution law, DRL section 236, and its effect on the enforcement of separation agreements executed either before or after its effective date, July 19, 1980. The section also identifies recent New York cases on judgment modification and enforcement, child support, maintenance, custody, visitation, separation agreements, judgments and orders.

New York State Bar Association, Matrimonial and Family Law 1987 - Valuation, Taxes, Pensions and Post Litigation Problems: What Every Lawyer Handling Matrimonials Will Eventually Encounter (1987).

This book contains articles written by New York attorneys on trends and developments in matrimonial law. Brandes summarizes equitable distribution decisions since November 1, 1986. Berman covers recent decisions and legislation affecting a range of topics including child support, modification of agreements, standards applied in the family court in child support and maintenance cases, and the change of circumstances standard in child support modification cases. Hanschu examines recent decisions and developing trends affecting maintenance, child support, equitable distribution, counsel fees, custody and visitation. Goodman, Inclima and Bennett discuss various provisions of the federal tax changes of 1984 and 1986 as they

affect maintenance, support, property distribution, pensions and qualified domestic relations orders. Dranoff and Schwarz identify recent legislation and case law in the support enforcement area.

New York State Bar Association, New York Matrimonial Practice: New Laws, New Court Procedures, and the Lawyer's Self Preservation (1986).

This publication by the New York State Bar Association's continuing legal education section examines New York's Child Support Enforcement Act. It reviews recent matrimonial cases and highlights developing trends in the field. The publication also covers problems confronting the matrimonial lawyer in handling the relationship between clients and the court system. Also included are discussions of the rights and remedies lawyers have when changes in the fee arrangements and retainers occur in the course of their legal representation. Attorneys' case conduct is coming under increasing scrutiny and challenge, and the publication examines the pitfalls of poor case handling.

North Carolina Academy of Trial Lawyers, Child Support Enforcement Act: A Structure for Child Support Enforcement (1985).

This publication includes a series of papers on the CSEA of 1984. Horowitz and Dodson analyze how the amendments will affect the private practitioner. Arenstein focuses on the interstate enforcement of child support. Kelso examines the validity of property settlement agreements, protecting third party interests and prenuptial agreements. Curtis and Follin cover the automation of domestic law practice. Glover and Peterson discuss how the CSEA of 1984 affect the appeals process. Lewis looks at problems associated with setting fees. The manual also includes articles by Gordon on the interception of federal tax refunds to satisfy child arrearages and the use of child support tables and, Hemmings on locating absent parents and their assets.

Parents Without Partners, State and Local Child Support Enforcement Organizations (1987).

This publication, which is updated periodically, contains a directory of grassroots child support advocacy groups. The directory can be obtained through the organization of Parents Without Partners, at 8807 Colesville Road, Silver Spring, MD. 20910.

B. Schnell, The Child Support Survivor's Guide (1984).

This book by Barry Schnell, an administrative analyst for the child support enforcement program in New Jersey, provides information and advice for parents who want to enforce their child support order as well as protect the economic and emotional needs and rights of their dependent children. This guide discusses the procedures involved in applying for child support, establishing paternity and determining the amount of child support. Schnell outlines the available child support enforcement procedures and explores other child support concerns such as visitation rights, grandparent's rights, military allotments, tax exemptions, and the availability of public assistance in child support. The author also provides a child support information checklist, a roster of state agencies administering child support programs under Title IV-D of the Social Security Act, and a list of supportive organizations and agencies.

M. Simpkins, What Every Woman Should Know About Child Support, Getting It! (1985).

This book provides a step-by-step guide to collecting child support for those entitled to receive it. The book features 13 chapters that include a state-by-state breakdown of child support enforcement requirements; a discussion of how to establish paternity and make it stick; and, suggestions on how to break down the barriers and get free professional legal help.

State Bar of Montana, Family and Children's Law Section, Annual Meeting - June 21, 1985 (1985).

This continuing legal education publication includes statutory provisions and articles in the following areas: 1) domestic relations tax law; 2) child support enforcement; 3) joint custody; and, 4) ethics in family law.

State Bar of Nevada & Nevada Family Law Section, Family Law Seminar (1986).

This collection of seminar papers delivered in Reno in December 1986 includes discussions of the UCCJA, qualification of the expert psychology witness, trial pointers, an overview of pension, retirement and profit sharing and a review of the distinction between equitable and equal distribution under Nevada law.

State Bar of Texas, Texas Revolution in Child Support: Perspective, Pleading, Practice (1986).

Texas held a CLE seminar in 1986 on changes in its child support practice. Sponsored by the State Bar of Texas, the seminar produced writings on the following topics: 1) using guidelines; 2) determining a support duty; 3) discovering evidentiary issues; 4) drafting and repairing enforcement orders; 5) using income withholding; 6) tackling an interstate case; 7) viewing support from a judicial perspective; and, 8) reviewing Texas' Child Support Enforcement Improvement Act of 1986.

M. Takas, Child Support: A Complete Up-to-Date, Authoritative Guide to Collecting Child Support (1985).

This book, written primarily for parents, is by Marianne Takas, a Boston-based attorney who has written extensively on the legal rights of women and children. This step-by-step handbook shows, among other things, how one can: 1) get an order for child support or alimony; 2) establish paternity; 3) collect support in tough cases or across state lines; and, 4) find high quality collection services at an affordable price. In part one, the author describes the pros and cons of the various public agencies and private professionals who can help a parent with support actions. Part two provides information on how to get a child support order that serves the custodial parent's family's needs and how to avoid or solve common problems. Part three explores the methods available to collect overdue support such as: how to improve the amount that is owed; how to collect it from wages or property or other means; and, how to guard against defenses commonly offered by nonsupporting absent parents.

Texas Family Law Reporter (MB) (1983).

This reporter, which covers recent legislative and case law developments, functions as a monthly supplement to Family Law: Texas Practice and Procedure (1982). Regular features include: all Texas Supreme Court and Court of Appeals family law decisions; significant Texas legislation affecting family law practice, U.S. Supreme Court and Fifth Circuit cases in all areas of family law, and federal tax developments related to family law.

Youth Advocacy Clinic, Child Support: An Advocate's Guide to Representation (1986).

This compilation of CLE material from a seminar held in Richmond, Virginia in December 1986, focuses on child support. Papers include: putting a support case together; representing

the non-custodial parent; looking from a judge's perspective; analyzing the effect of statutory changes; examining the interrelationship of support, visitation and custody and, describing the remedies available under the CSEA of 1984.

SECTION XI - THE IMPOVERTIZATION OF THE CUSTODIAL PARENT

Recently, academic attention has focused on the impact of inadequate support on the custodial family. Not only are there the obvious negative financial implications, but also potential adverse social and psychological effects on those whose standards of living plummet after separation or divorce.

The phrase "feminization of poverty" has become shorthand for post-separation impoverishment for female-headed households. Inadequate support contributes to gender economic disparity, as Senator Wallop points out. While male-headed households below the poverty line have declined 51%, according to the U.S. Census Bureau, female-headed households have suffered a 54% increase in the number of below poverty-line households between 1960 and 1980.

Additionally, one author asserts that this economic mismatch causes women to be more dependent on men and to consider remarriage more often than if pressing financial problems were not a factor. Another article questions whether the judiciary has understood in the past the economic effects of divorce on the custodial parents, as pre-guideline child support levels seemed, in general, fairly modest.

Another writer says the impoverishment issue not only affects women in general, but minority women in particular, as 66% of black, female-headed households lived in poverty in 1983.

Several authors indicate that intrinsic, intangible costs, such as child-raising and opportunities foregone in order to be with the children, are not factored into even the more generous guidelines, but should be.

Some authors offer solutions to balance the skewed economic picture of post-separation life, such as augmented awards, public education of the disparity, and a presumption that the primary caretaker should receive custody to minimize the custody-for-lower-support tradeoff that often exists in divorce negotiations.

Brunch & Wikler, The Economic Consequences, 36 Juv. & Fam. Ct. J. 5 (1985).

The authors discuss the ways the judicial system historically has contributed to the economic inequality between women and men by awarding insufficient support and by inadequately enforcing support awards. They present findings concerning American spousal and child support awards, employment and remarriage opportunities, and the costs of rearing children. The article also questions current judicial practice, proposes new principles to guide the setting and enforcement of divorce-related support orders, and stresses the importance of the CSEA of 1984. The authors suggest that for the law to achieve its goals, a clear understanding of post-divorce economics is required.

California State Legislature, Final Report of the Senate Task Force on Family Equity (1987).

This report reviews research on the economic impact of divorce on women, men, and children subsequent to the enactment of California's no-fault divorce law in 1970 and recommends legislative remedies to address inequities created by the current handling of divorce cases.

Hunter, Child Support Law and Policy: The Systematic Imposition of Costs on Women, 6 Harv. Women's L.J. 1 (1983).

This article analyzes how the child support system functions and concludes that it is used: 1) to privatize the costs of divorce; 2) to impose these costs on women; and, 3) to reinforce both women's economic dependence on men and the social pressures on women to marry. The author argues that only basic alterations in social arrangements, which significantly empower women and change relationships between women and men, will address the underlying problems highlighted by the child support system. In the meantime, however, the author suggests that child support programs should not be premised on assumptions of idealized paternal involvements in child rearing or economic equality between men and women. Rather, the author recommends that child support reforms should be designed to guarantee women with children economic resources sufficient to allow them to achieve real autonomy, because without it, the author contends, broader social changes cannot occur.

Kessler, Crisis in Child Support: New Federal Legislation to Alleviate the Problem, 20 Trial 29 (Dec. 1984).

The author discusses the nationwide failure of fathers to comply with their child support obligations. Citing studies on the economic status of women, she concludes: 1) fewer than one-half of women who head single-parent families receive the full child support awarded them; 2) a father's failure to support is not limited to any one race, economic class, or section of the country; and, 3) a father's failure to support is related to his ability to pay. The author maintains female-headed families who do not receive court-ordered support suffer a decrease in their standard of living, with many slipping into poverty. Also, children experience adverse emotional consequences associated with their lower standard of living. The article ends by outlining the CSEA of 1984. The author argues the new legislation represents Congress' political commitment to alleviate the support problem facing women and children in single-parent households.

Lams, The Economic Position of Divorced Women, 5 Fairshare 12 (June 1985).

This commentary provides an overview of the impact that divorce and tax reforms have on the economic status of divorced women with children.

Roberts, Ameliorating the Feminization of Poverty: Whose Responsibility?, 18 Clearinghouse Rev. 883 (Dec. 1984).

The author looks at the devastating financial situation facing a disproportionate share of female-headed households. Roberts points out that 36% of female-headed families lived in poverty in 1983, compared with 15% of the general population. The author says that the feminization of poverty issue is not only a "women's issue," but a racial one as well, as 66% of black, female-headed households with two children lived in poverty in 1983. The article argues that advocates should not just focus on public benefits as the way to ameliorate poverty but also consider equalizing employment opportunities and wages as well as bolstering the child support system. The child support system, the author feels, is a fertile source for improvement of the standard of living for female-headed households. Roberts believes the CSEA of 1984 will aid in the drive to reduce poverty.

P. Roberts, Women, Poverty and Child Support (1986).

Roberts' myriad articles on low-income clients and the child support system are compiled in this book published by the National Clearinghouse for Legal Services. Roberts discusses

paternity establishment, blood tests, AFDC and IV-D agency interaction, ethical considerations for the IV-D attorney, and remedies available under the CSEA of 1984.

Wallop, The Last Campaign - Child Support and Poverty, 4 Det. C.L. Rev. 1467 (1983).

Senator Malcolm Wallop (R-Wyoming) provides a useful overview of the successes and failures of various federal programs implemented in the early 1960's to eradicate poverty in the United States. In his discussion of available statistics and reports on poverty, the author notes that while the poverty rate of white male-headed families has dropped 51% since 1960, the number of poor families headed by women has dramatically increased by 54% for the same period. The feminization of poverty, as the author calls it, results from the increase in the number of divorces, unwed mothers and the break up of families. The author concludes that this problem can be remedied by national legislation geared at improving child support enforcement measures statewide as well as nationally.

L. Weitzman, The Divorce Revolution (1985).

This book, based on ten years of research, discusses the impact of the first no-fault divorce law in the United States and how it affects the entire scope of family law. The results of the author's research demonstrate how no-fault divorce laws have changed the focus of the divorce process from "moral questions of fault and responsibility to economic issues of ability to pay and financial need." This book analyzes the economic impact of divorce on women and children, and identifies current problems associated with property, spousal and child support awards. According to the author's research results, women living with minor children experience a 73% decline in their standard of living after divorce, while men experience a 42% rise in theirs.

Wikler, The Economics of Divorce: The Impact of Child Support on Children and Taxpayers, 25 Judges' J. 9 (1986).

Wikler, an associate professor of sociology at the University of California, Santa Cruz, begins with the premise that divorce has had a negative impact on the economic status of women and children. She suggests that judges need to know how much this misfortune is due to the workings of the child support system. Based on data from various studies, she argues that there are three ways in which the child support system burdens children unduly: 1) enforcement of child support is weak; 2) too few eligible children are awarded support; and, 3) child support awards levels are too low.

Wishik, Economics of Divorce: An Exploratory Study, 20 Fam. L.Q. 79 (1986).

In her preface the author notes the increasing attention paid to the economic results of divorce and the "feminization of poverty" that has accompanied the reform of the country's divorce laws. The author conducted a study on the economic impact of divorce occurring in four court districts of Vermont, the results of which form the basis for this article. The subjects considered include spousal maintenance awards and home ownership by marital duration, and child support awards by number of children. She compares her findings in Vermont to national statistics as well as California figures. Her conclusion is that wherever studied, divorce is shown to be economically damaging to women and children, and even more so in Vermont. Vermont has half the national average in incidence of spouse maintenance awards, and is below average in the amount of child support awarded. Following the discussion of her findings is a comprehensive list of recommendations for changing the pattern of poverty. Included are legislative reforms such as amending property laws to recognize ante- and post-nuptial contracts regarding property and legislative consideration of the primary caretaker presumption to avoid the economic coercion that can result when custody is uncertain. She also recommends public education about this situation, which would provide, for example, information on the real costs of child care. The appendix sets out proposed amendments to Vermont statutes on property, spousal support and child custody.

APPENDICES

Appendix A - Materials Available Through the National Child Support Enforcement Reference Center

Appendix B - Other Federal Materials

Subsection 1. Federal Legislation

Subsection 2. Federal Hearings

Subsection 3. Federal Reports

Subsection 4. Pending Legislation

Appendix C - United States Supreme Court Cases

**Appendix A. - Materials Available Through the
National Child Support Enforcement Reference Center**

Office of Child Support Enforcement,
U.S. Dep't. of Health and Human Services
330 C St., SW, Washington, DC 20201

American Bar Association & National Conference of State
Legislatures, Model Interstate Income Withholding Act with
Comments (1984). (See Annotation in Section V-C.)

Center for Health and Social Services Research and Maximus,
Inc., Costs and Benefits of Paternity Establishment - Final
Report and Executive Summary (1985).

This report examines whether child support cases involving paternity establishment can be processed cost-effectively and, if so, what is necessary to accomplish this goal. The study focuses on paternity programs in three jurisdictions where there was reason to believe that paternity cases were likely to be handled cost-effectively. Additionally the study identifies factors that may contribute to the benefit/cost ratio of establishing paternity.

Center for Policy Research, Report on the Child Support
Mediation Program of the Family Court of Delaware (1986). (See
Annotation in Section IX.)

Child Support Technology Transfer Project, The Central
Registry/Clearinghouse: A Tool for Improving the Child Support
Enforcement Program (1983).

This monograph focuses on potential uses of a central registry/clearinghouse approach in the child support enforcement program. The central registry/clearinghouse concept refers to an automated system that establishes in a master file data that are relevant to child support enforcement case handling, record keeping, and management. It is described as a particularly powerful form of automated data processing, because its capabilities enhance not only the effectiveness, but also the management, of the child support enforcement program's work.

Child Support Technology Transfer Project, A Guide to Drafting, Passing, and Implementing Beneficial Child Support Legislation (1984).

This monograph, intended for use by anyone involved in the drafting and passage of child support enforcement legislation, contains a step-by-step approach to the legislative process including how to assess the needs for beneficial legislation, how to draft legislation and how to devise a plan for implementation. The monograph also includes a chapter detailing how Missouri's legislative process carried out support reform.

Child Support Technology Transfer Project, Improving Program Performance Through Management Information - A Workbook (1986). (See Annotation in Section X.)

Child Support Technology Transfer Project, Paternity Establishment, Second Edition (1986). (See Annotation in Section III-A.)

Child Support Technology Transfer Project, Resource Balancing, A Workbook (1986).

The model described in this monograph is a simplified version of a model developed and pilot-tested in Essex County, New Jersey. The model indicates the ideal staffing pattern and caseload prioritization to maximize collections. The model provides an analytic description of an organization that can then be used for evaluating the effect of change on an organization. Additionally, the model offers policy suggestions and methods to maximize total collections or the effective use of staff. The model is designed to aid any program manager concerned with workflow and staff allocation. The basic ideas include the sequential flow of cases through the system, the interdependence of functional units, and the effects of change in one area on other areas.

D. Cohen & K. Clemens, Enforcement of Child and Spousal Support Orders Against Self-Employed Support Obligors (Center for Enforcement of Family Support) (1986). (See Annotation in Section V-A.)

D. Cooper, M. Henry & V. Schwartz, A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement (National Institute for Child Support Enforcement) (1985). (See Annotation in Section IX.)

Court of Common Pleas of Allegheny County Family Division and ANACOMP, Inc., Allegheny County (PA) Child Support Enforcement Computer System Overview (1986).

This overview describes a state-of-the-art child support case management and accounting system designed to handle all functions of receiving and paying out of child support collections. The system permits accurate, automatic monitoring of cases and automatic generating of many of the user-designed forms for a variety of situations such as orders, petitions, notices, motions and letters. The system stores and allows access to all case data with all possible functions being automated and has the capability of generating a multitude of reports. It is a comprehensive ADP system for a court-oriented child support program.

Dep't. of Public Welfare, New England Child Support Interstate Directory (1986). (See Annotation in Section X.)

D. Dodson & S. Green de la Garza, Retroactive Modification of Child Support Arrears (American Bar Association) (1986). (See Annotation in Section IV.)

Expedited Judicial Process in New York, Child Support Report (Dec. 1985). (See Annotation in Section IX.)

M. Haynes, Interstate Child Support Remedies (American Bar Association) (1986). (See Annotation in Section V-A.)

M. Henry & V. Schwartz, Essentials for Attorneys in Child Support Enforcement, (National Institute for Child Support Enforcement) (1986). (See Annotation in Section X.)

M. Henry & V. Schwartz, A Guide for Judges in Child Support Enforcement (National Council of Juvenile and Family Court Judges) (1986). (See Annotation in Section X.)

R. Horowitz & D. Dodson, Child Support, Custody and Visitation (American Bar Association) (1985).

The two authors, co-directors of the ABA Child Support Project in 1985, wrote this report to state child support commissions on the relationship of support, custody and visitation. Horowitz and Dodson analyze the states' laws on modifying orders and reducing arrearages because of custodial parent visitation

interference, and conditioning visitation on compliance with a child support order. The writers also review how non-traditional custody arrangements, such as joint custody, affect support awards and their enforcement.

R. Horowitz, D. Dodson & M. Haynes, Remedies Under the Child Support Enforcement Amendments of 1984 (American Bar Association) (1985). (See Annotation in Section V-A.)

L. Loynd & D. Cooper, Establishing an Enforceable Case: A Self-Instructional Course (National Institute for Child Support Enforcement) (1981, reprinted 1983, 1985). (See Annotation in Section X.)

W. Lukhard, An Approach for Virginia to Respond to the Child Support Enforcement Amendments of 1984 (1984).

This paper outlines the means by which Virginia can comply with the major provisions of the CSEA of 1984. Other states may find this approach useful in assessing their own needs and planning for implementation.

H. Maggard, A Guide to the Revised Uniform Reciprocal Enforcement of Support Act (National Conference of State Legislatures) (1985). (See Annotation in Section VI.)

H. Maggard & J. Smith, National Conference of State Legislatures' Children and Youth Program: Information Clearinghouse Reference List (National Conference of State Legislatures) (1985). (See Annotation in Section I-A.)

Maximus, Inc., CHASE User's Manual for the Revised Micro-Based Case Handling and Statistical Evaluation System (MicroCHASE) (1986).

This manual describes the concept of case prioritization, provides an overview of MicroCHASE, and explains how to use the preliminary analysis results. The revised Case Handling and Statistical Evaluation System (CHASE) software was developed to assist state and local child support enforcement offices in setting priorities for working on their cases. The new software operates on IBM PC-compatible microcomputers under PC-DOS and MS-DOS. In Chapter V, the logic and generation of case profiles and priority classes are presented.

McGeorge School of Law, Interviewing for Court Diversion (1986).
(See Annotation in Section II-A.)

National Child Support Enforcement Association, National Roster and Interstate Referral Guide (1986). (See Annotation in Section VI.)

National Child Support Enforcement Reference Center, Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Information Sharing Index (1986).

This index, published annually, describes what materials are available from the National Child Support Enforcement Reference Center for use by state and local officials and practitioners involved in the child support enforcement area. The Reference Center library has many articles, books, reports, sample forms and statutes, and audio/visual materials on a variety of child support topics including, but not limited to: the establishment of paternity; the establishment and enforcement of the support obligation; management and operating techniques; state plans and state operating procedural manuals; numerical listing of information memoranda; and, action transmittals and abstracts of child support collection techniques.

National Conference of State Legislatures, Selected State Child Support Laws (1984).

This guide, intended to assist legislators in identifying exemplary laws as they contemplate change in their state programs, focuses on three major provisions of the CSEA of 1984, namely: income withholding; state income tax intercept; and, expedited judicial and administrative procedures. The guide includes copies of state laws of the above-mentioned provisions and an appendix explaining the components of exemplary state law and how they are used by the states.

National Conference of State Legislatures, State Child Support Laws - Compliance with the 1984 Federal Amendments (1986). (See Annotation in Section I-C.)

National Conference of State Legislatures, State Legislative Summary: 1986 - Children and Youth Issues (1986).

This 50-state profile identifies and summarizes laws affecting children that were enacted during the 1986 legislative sessions. The laws are listed by session citation and categorized into 16 public policy issues.

National Institute for Child Support Enforcement, Expedited Processes for Child Support Enforcement (1985). (See Annotation in Section IX.)

National Institute for Child Support Enforcement, History and Fundamentals of Child Support Enforcement, Second Edition (1986). (See Annotation in Section I-A.)

National Institute for Child Support Enforcement, Wage Withholding (1986). (See Annotation in Section V-C.)

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Child Support Enforcement Amendments of 1984, P.L. 98-378 (1984).

This 28-minute color videotape, prepared by the Social Security Administration's Office of Training, presents a comprehensive overview of provisions contained in the CSEA of 1984.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Child Support Enforcement Amendments - Eleventh Annual Report to Congress for the Period Ending September 30, 1986 (Vols. I & II) (1986).

This two-volume report informs Congress of the dimensions of the nonsupport problem in the country and the progress being made to solve it. Also included is an overview of the CSEA of 1984. Volume II contains statistical data about federal and state programs involved in child support enforcement, including the amount collected compared to the amount expended to collect the support in each state, as well as a comparison of AFDC and non-AFDC support recovery.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Child Support Enforcement Amendments - Ninth Annual Report to Congress for the Period Ending September 30, 1984 (Vols. I & II) (1984).

OCSE's annual report to Congress details the accomplishments for fiscal year 1984. Also included is an overview of the CSEA of 1984 and OCSE's response to their passage.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Child Support Enforcement - Tenth Annual Report to Congress for the Period Ending September 30, 1985 (Vols. I & II) (1985).

Volume I contains selected state-by-state financial, statistical and program data obtained by state child support enforcement agencies. It also includes a series of graphs and tables on various financial and programmatic statistical information of the fiscal years 1981-85. Volume II contains information on the dimensions of the non-support problem in the country, looks at the state of the child support enforcement program, and summarizes a decade of progress in the child support enforcement area.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, The Consumer Reporting Network (1986).

This publication is provided as a supplement to Absent Parents are Also Consumers to enhance CSEA of 1984 implementation efforts in the exchange of information between IV-D agencies and credit reporting agencies.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Federal Tax Refund Offset Program, State/Local Address and Phone Directory for Administrative Reviews, Processing Year 1986 (1985).

This directory was prepared to aid states in the interstate transmittal of case documentation in cases requiring an administrative review. It also features a state-by-state index indicating whether case documentation should be sent to a state or local office, and a listing of addresses and contact persons if any further information is needed.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Foreign Jurisdictions and Reciprocating States (1985).

This publication provides addresses of foreign jurisdictions and states that have reciprocity for child support enforcement services with them.

Office of Child Support Enforcement, U. S. Dep't. of Health and Human Services, A Guide for Designing and Implementing a Case Processing System for Child Support Enforcement (1986). (See Annotation in Section I-A.)

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Interstate Child Support Collection Study: A Study to Determine Methods, Cost Factors, Policy Options, and Incentives Essential to Improving Interstate Child Support Collections - Final Report (1985). (See Annotation in Section VI.)

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Interstate Child Support Enforcement Laws Digest, URESA Laws (Vols. I & II) (1986). (See Annotation in Section VI.)

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Interstate Child Support Enforcement Transmittal Form (1987).

This form is used to process all IV-D, non-URESA interstate actions such as enforcement of existing orders, locations, initiation of wage withholding, state tax intercept, and administrative review for federal tax offset. Forms are available from State IV-D agencies.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Interstate Wage/Income Withholding Guide, State-Specific (1986).

A reference guide to state-specific procedures designed to aid in transmitting interstate wage/income withholding requests. The interstate referral instructions issued by states are reformatted in a standard outline to provide uniformity in referencing state procedures. New and revised outlines will be distributed periodically.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Kids, They're Worth Every Penny - Handbook on Child Support Enforcement (1985). (See Annotation in Section I-A.)

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Mandatory Income Withholding Implementation Monograph (1985).

This monograph contains a compilation of successful income withholding practices and their implementing regulations promulgated pursuant to the CSEA of 1984.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Standard URESA Forms (1987).

A package of standardized URESA forms has been developed to facilitate URESA requests to responding states, reduce court preparation time, and provide easy access to URESA case information. The package includes the following new forms: 1) Uniform Support Petition; 2) Paternity Affidavit; 3) General Testimony for URESA; 4) Judge's Certificate and Order; and, 5) Order and Judgment.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Summaries of Reports by State Commissions on Child Support Enforcement (1986).

These summaries contain the results of the studies undertaken in each state by the commissions appointed by governors to assess the success of the state's child support enforcement program. The reports are organized by similar topics.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Television Public Service Announcements (1985).

OCSE has made available to states four 30-second spot television scripts directed at the absent parent.

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, URESAs Laws Digest (1984).

This publication, intended as a tool for local caseworkers and prosecutors who handle URESA actions, contains a compilation of the URESA laws and case annotations as they appear in the statutes of the fifty States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands. (The digest has been superseded by the 1986 publication of OCSE's Interstate Laws Digest.)

Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services, Wage Withholding for Child Support: An Employer's Guide (1985).

This guide poses questions that employers are likely to ask about their responsibility under the CSEA of 1984. It includes a list of state child support enforcement agencies for use by employers who have additional questions or concerns not addressed in the guide.

J. Replogle, Bankruptcy and Support Enforcement: How to Make Sure It Stays Owed to the Kids (Office of Child Support Enforcement, U.S. Dep't. of Health and Human Services) (1986). (See Annotation in Section VIII.)

B. Roberts, Service of Process (Child Support Technology Transfer Project) (1987). (See Annotation in Section II-A.)

F. Silvester & D. Cooper, The Administrative Adjudication of Child Support Obligations (National Institute for Child Support Enforcement) (1981, reprinted in 1984). (See Annotation in Section IX.)

Technical Advisory Group, Office of Child Support Enforcement, U.S. Dep't. of Health & Human Services, Information Systems Technical Advisory Group (TAG) OCSE (1986).

TAG, established by OCSE in 1985, seeks as its primary purpose to improve the child support enforcement program at local and national levels through the use of information technology. Members of TAG will continue to share ways in which automated systems are being used in their states through articles in Child Support Report, OCSE's monthly newsletter.

U.S. Dep't. of State, International Enforcement of Child Support (1985). (See Annotation in Section VI.)

R. Williams, Development of Guidelines for Establishing and Updating Child Support Orders - Interim Report (National Center for State Courts) (1985). (See Annotation in Section II-B.)

R. Williams & Advisory Panel on Child Support Enforcement, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report (National Center for State Courts) (1987). (See Annotation in Section II-B.)

Appendix B - Other Federal Materials
Subsection 1. Federal Legislation

I. The Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified at 26 U.S.C. §§ 6103, 6402, 7213; 42 U.S.C. §§ 602, 603, 606, 651 to 658, 664, 666, 667, 671, 1315, 1396a).

This statute overhauled the federal/state child support system, modifying various sections of Title IV-D of the Social Security Act. The CSEA of 1984 mandated, as a condition for a state to continue to receive federal welfare money, that the state implement a comprehensive scheme that includes: mandatory income withholding; federal tax refund interception for non-AFDC obligees until 1991; state tax refund interception; expedited process; support guidelines; child support commissions; revisions in federal fundings of administrative costs, automated management systems, and incentive payments; automatic medical support requests in IV-D cases; and, increased availability of the federal parent locator service. The statute also affects the interrelationship between child support enforcement and AFDC cases, providing IV-D services and Medicaid benefits after an AFDC grant termination in most cases.

Legislative History:

Senate Comm. on Finance, Child Support Amendments of 1984, S. Rep. No. 387, 98th Cong., 2d Sess., reprinted in 1984 U.S. Code Cong. & Admin. News 2397.

House Comm. on Conf., Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 925, 98th Cong., 2d Sess., reprinted in 1984 U.S. Cong. & Admin. News 2447.

House Comm. on Ways and Means, H.R. Rep. No. 527, 98th Cong., 2d Sess. (1984).

II. Domestic Relations Tax Reform Act of 1984, Pub. L. No. 98-369, Title IV, §§ 421 - 426, 98 Stat. 793 - 80 (1984) (codified at various sections of 26 U.S.C.).

The act, passed as part of the Deficit Reduction Act of 1984, made numerous changes in domestic relations tax law, including: 1) treating property transferred to a spouse incident to a divorce as a gift for income tax purposes; 2) redefining alimony to recapture disguised property settlements, to count cash payments only that are paid to the alimony recipient directly or to a third party for the benefit of the payee, and to deny alimony status made to payees residing indefinitely with the payor; 3) changing 26 U.S.C. §§ 151 and

152(e) governing dependency calculations by granting three exceptions to the rule that the parent having custody of the child for the greater portion of the year will be presumed to have provided over half of the child's support, and consequently presumed to be able to claim the child as a dependent for tax purposes. The 3 exceptions are: a) custodial parent's signed release, a copy of which is attached to the return of the noncustodial parent; b) multiple-support agreements; and, c) certain court orders or agreements signed before January 1, 1985, implementing pre-1985 tax options regarding dependency claims. The law also alters the rule of Commissioner v. Lester, 366 U.S. 299 (1961), that payments not specified as child support are to be presumed to be alimony. Instead, explicit or implicit child-related contingencies reducing support payments lead to the payments being treated as child support.

Legislative History:

House Comm. on Ways and Means, Deficit Reduction Act of 1984, H.R. Rep. No. 432, Part II, 98th Cong., 2d Sess., reprinted in 1984 U.S. Code Cong. and Admin. News 697.

House Comm. on Conf., Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 861, 98th Cong., 2d Sess., reprinted in 1984 U.S. Code Cong. and Admin. News 1445.

House Comm. on Ways and Means, H.R. Rep. No. 133, Pt. 2, 98th Cong. 2d Sess. (1984).

III. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (1984) (codified at various sections of 11 U.S.C.).

These amendments amended the nondischargeability of support provision (11 U.S.C. § 523(a)(5)) to include debts based on support ordered by courts of record in an instrument not classified as a separation agreement or divorce decree. The law also expanded the definition of nondischargeable assigned debts to include all governmental assignees.

IV. Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426 (1984) (codified at 26 U.S.C. §§ 1, 72, 401-403, 410-414, 417, 4975, 6057, 6652; 29 U.S.C. §§ 1001, 1001a, 1002, 1052-1055, 1082, 1101, 1301, 1441).

This statute was enacted in conjunction with the Tax Reform Act of 1984, affecting how pension and profit sharing proceeds are transferred under a court order. In order to reach a payor's assets, the request must be based on a qualified domestic relations order (QDRO), which specifies certain facts concerning the plan and the irrevocability of the ordered assignment.

Legislative History:

House Comm. on Education and Labor, H.R. Rep. No. 655(I), 98th Cong., 2d Sess. (1984).

House Comm. on Ways and Means, H.R. Rep. No. 655(II), 98th Cong., 2d Sess. (1984).

Senate Comm. on Finance, S. Rep. No. 575, 98th Cong., 2d Sess. (1984).

V. Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, 100 Stat. 1874 (1986) (pertinent part codified at 42 U.S.C. § 666(a)(9)).

A portion of this Act modified Title IV-D of the Social Security Act to require states to prohibit retroactive modification of support payments and to recognize as a final judgment any support payment installment as it becomes due, if the state wants to retain its federal welfare money.

Legislative History:

House Comm. on the Budget, Omnibus Budget Reconciliation Act of 1986, H.R. Rep. No. 727, 99th Cong., 2d Sess., reprinted in 1986 U.S. Code Cong. and Admin. News 3607.

House Comm. of Conf., H.R. Rep. No. 1012, 99th Cong., 2d Sess. (1986).

Senate Comm. on the Budget, S. Rep. No. 348, 99th Cong., 2d Sess. (1986).

Senate Comm. on Environment and Public Works, S. Rep. No. 479, 99th Cong., 2d Sess. (1986).

VI. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986) (codified at 16 U.S.C. §§ 16, 4601-11; various sections of 19 U.S.C.; various sections of 26 U.S.C.; 28 U.S.C. §§ 1581, 1582, 1961; various sections of 29 U.S.C.; various sections of 42 U.S.C.; 46 U.S.C. § 1177; and 49 U.S.C. § 1741).

The 1986 reforms primarily altered alimony definitions and recapture rules. The Act also increased the dependency exemptions.

Legislative History:

House Comm. on Ways and Means, H.R. Rep. No. 426, 99th Cong., 2d Sess. (1986).

House Comm. of Conf., Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 841, 99th Cong., 2d Sess., reprinted in 1986 U.S. Code Cong. and Admin. News 4075.

Senate Comm. on Finance, S. Rep. No. 313, 99th Cong., 2d Sess. (1986).

Subsection 2. Federal Hearings

Child Support Enforcement Legislation: Hearings Before the Subcomm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways and Means, 98th Cong., 1st Sess. (1983).

Child Support Enforcement Program Reform Proposals: Hearings on S. 673 Before the Senate Comm. on Finance, 98th Cong., 2d Sess. (1984).

Divorce: The Impact on Children and Families: Hearings Before the House Select Comm. on Children, Youth, and Families, 99th Cong., 2d Sess. (1986).

Oversight Hearings on Child Support Enforcement: Hearings Before the Subcomm. on Select Education of the House Comm. on Education and Labor, 98th Cong., 2d Sess. (1984).

Parental Kidnapping and Child Support: Hearings on S. 469 Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary, 99th Cong., 1st Sess. (1985).

Proposed Restructure of the Child Support Enforcement Program: Hearings on S. 608 Before the Subcomm. on Social Security and Income Maintenance Programs of the Senate Comm. on Finance, 98th Cong., 1st Sess. (1983).

Tax Refund Offset Program for Delinquent Student Loans and Child Support Payments: Hearings on S. 98-498 Before the Subcomm. on Oversight of the Internal Revenue Service of the Senate Comm. on Finance, 98th Cong., 1st Sess. (1983).

Subsection 3. Federal Reports

Bureau of the Census, U.S. Dep't. of Commerce, Child Support and Alimony: 1981 (1985).

Bureau of the Census, U.S. Dep't. of Commerce, Child Support and Alimony: 1983, Supplemental Report (1986).

Bureau of the Census, U.S. Dep't. of Commerce, Child Support and Alimony: 1985 (1987).

Child Support Enforcement Amendments of 1984; Conference Report to Accompany H.R. 4325, H.R. Conf. Rep. No. 925, 98th Cong., 2d Sess. (1984).

House Comm. on Ways and Means, Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means, Section 8, Child Support Enforcement, 100th Cong. 1st Sess. (1987).

House Comm. on Ways and Means, Child Support Enforcement Amendments of 1983, H.R. Doc. No. 527, 98th Cong., 1st Sess. (1983).

Senate Comm. on Finance, Child Support Enforcement Amendments; Report to Accompany H.R. 4325, S. Rep. No. 387, 98th Cong., 2d Sess. (1984).

U.S. Congressional Research Services & the Congressional Budget Office, Children in Poverty: A Report Prepared for the House Committee on Ways and Means (1985).

U.S. General Accounting Office, Child Support Collection Efforts for Non-AFDC Families; Report to the Honorable Mario Biaggi, House of Representatives (1984).

U.S. General Accounting Office, Child Support: Need to Improve Efforts to Identify Fathers and Obtain Support Orders; Report to the Secretary of Health and Human Services (1987).

U.S. General Accounting Office, Child Support: States' Implementation of the 1984 Child Support Enforcement Amendments; Briefing Report to the Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, House of Representatives (1985).

U.S. General Accounting Office, Child Support: States' Progress in Implementing the 1984 Amendments; Report to the Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, House of Representatives (1986).

U.S. General Accounting Office, Report on U.S. Child Support: Needed Efforts Underway to Increase Collections from Absent Parents (1984).

U.S. General Accounting Office, Welfare: Issues to Consider in Assessing Proposals for Reform (1987).

Subsection 4. Pending Legislation

H.R. 1604, 100th Cong., 1st Sess. (1987).

H.R. 1720, 100th Cong., 1st Sess. (1987). (Passed by House of Representatives in December, 1987.)

H.R. 1985, 100th Cong., 1st Sess. (1987).

H.R. 2955, 100th Cong., 1st Sess. (1987).

H.R. 3148, 100th Cong., 1st Sess. (1987).

S. 869, 100th Cong., 1st Sess. (1987).

S. 1001, 100th Cong., 1st Sess. (1987).

S. 1511, 100th Cong., 1st Sess. (1987).

Appendix C - United States Supreme Court Cases

Bowen v. Gilliard, 107 S. Ct. 3008 (1987).

In 1975 Congress amended the Aid to Families with Dependent Children (AFDC) program so that with some exceptions for eligibility, applicants had to assign to the state child support payments received for a family member in the AFDC unit. A provision in the 1984 Deficit Reduction Act required AFDC recipients to include in the AFDC unit all children residing within the household for whom support was paid, and to count the child support they receive as income for the entire AFDC unit, thus reducing the AFDC grant of many families. The U.S. Supreme Court held that the 1984 amendment did not violate the Due Process Clause of the Fifth Amendment or its implied equal protection counterpart since the amendment was rationally related to the legislative goal of decreasing federal expenses and the governmental interest in distributing benefits to the needy in a fair way. It was also rational for Congress to conclude that the support money aided the whole family, according to the Court. The Court also held that assigning support payments to the state, which then remitted that amount as part of the AFDC payment for the entire family, was not a taking of the child's property.

Hicks v. Feiock, 180 Cal. App. 3d 649, 222 Cal. Rptr. 748 (Cal. Ct. App. 1986), cert. granted, 55 U.S.L.W. 3607 (March 9, 1987) (No. 56-787).

The U.S. Supreme Court heard oral arguments December 1, 1987, on whether California's contempt statute unconstitutionally shifts the burden of proof to the alleged contemnor in a nonsupport case. If the statute is construed to be more criminal-like than civil, the Court may consider that the state has the burden to prove beyond a reasonable doubt as an element of the offense that the obligor has the ability to pay support. If the Court determines the contempt statute to be of a civil nature, then the Court may allow the shifting of the burden to the obligor to show an inability to pay, as is permissible in other civil proceedings.

Rivera v. Minnich, S. Ct. (1987), 55 U.S.L.W. 5075 (June 23, 1987).

The United States Supreme Court held that the Pennsylvania statute prescribing proof of paternity by a preponderance of evidence does not violate the Due Process Clause of the Fourteenth Amendment. The Court stated that the collective judgment of many state legislatures that adopt the preponderance standard rather than the clear and convincing standard required in proceedings to terminate parent/child relationship, rested on legitimate and significant distinctions between paternity and termination proceedings.

Rose v. Rose, 107 S. Ct. 2029 (1987).

The state court had held that the appellant, a disabled veteran whose income consisted primarily of federal veteran benefits, was in contempt for failing to pay child support that was based on the amount of those benefits. The U.S. Supreme Court held that the state court had jurisdiction to hold appellant in contempt because the Tennessee statute, which construed veteran's benefits as income for the purpose of determining support, was not pre-empted by several federal laws including those concerning the authority of the Veterans Administration to apportion disability compensation (38 U.S.C. § 3107(a)(2)) and those disallowing attachment of veteran benefits (38 U.S.C. § 3101(a)). The Court concludes that while veterans disability may be exempt from garnishment when in the hands of the Administration, a state court can reach these funds for support once they are distributed to the veteran.

Sorenson v. Secretary of Treasury, 106 S. Ct. 1600 (1986).

In this case, an obligor challenged the interception of his income tax refund to offset child support arrearages because the refund is based on earned income credit and not an overpayment of taxes. The U.S. Supreme Court held that excess earned income credit was an overpayment subject to the intercept program under Title IV-D of the Social Security Act.

United States v. Morton, 467 U.S. 822 (1984).

Colonel Richard Morton had \$18,000 taken from his pay under a writ of garnishment sent to the Air Force Finance Center to satisfy a support debt owing to his ex-wife pursuant to an Alabama order. Colonel Morton contended that the Alabama Court had not originally gained in personam jurisdiction over him, and as a result, the subsequent writ of garnishment was invalid.

The U.S. Supreme Court agreed that the underlying order was improper because Alabama did not have in personam jurisdiction over him when it determined whether Colonel Morton owed a duty of support. But the Court said that the federal government may rely on a facially-valid writ under 42 U.S.C. § 659 and is not liable for any garnished sums that later prove to belong to the debtor. The Court said that Colonel Morton had to attack the Alabama order in the issuing court, and that the federal government did not have to investigate the possibility of jurisdictional defects that were not apparent from a review of the writ itself.