CHILD SUPPORT: AN ANNOTATED LEGAL BIBLIOGRAPHY

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U.S. Department of Health and Human Services
Office of Child Support Enforcement

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This bibliography was developed by the Child Support Project of the American Bar Association National Legal Resource Center for Child Advocacy and Protection. This Center has long provided training and education materials in many facets of children and the law, including child abuse and neglect, foster care, child custody and adoption. Special thanks must be given to those who helped prepare the many annotations:

Ed Gilmartin	Leonard Schwartz
Valerie Gross	Ronnie Schulman
Beth Hunter	Nan Shapiro

The next publication of the Child Support Project will will be the first in a regular monograph series. It will address emerging child support enforcement tools such as mandatory wage withholding. Persons interested in receiving the future monographs or other Project materials should contact:

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INTRODUCTION

In recent years, increasing attention has been paid to the issue of child support as a major national problem. While in the past most children were raised in intact families with both parents present throughout their childhood, today ever-increasing numbers of children are being raised in single parent headed households either as a result of divorce or because their parents were never married.

As of spring 1982, 8.4 million women were living with a child under 21 years of age whose father was not living in the household. Only 4 million of these women were due child support payments in 1981, and only 47 percent of that number received the full amount due. For those who received support (less than half the total), the mean amount received per family was $2,110 in 1981. After adjusting for inflation this represented about a 16 percent decrease in support amounts in real terms since 1978. Although support amounts generally are low, the mere receipt of any support has a significant impact on the likelihood of poverty for a single parent headed household. In 1978, 18.3 million people lived in families which included a divorced, separated, remarried, or never-married woman. While the overall poverty rate for this group was 27 percent, in comparison with 8 percent for all other families, the percentage of these families who were in poverty was 18 percent for those who received child support and 32 percent for those who received no child support.

Due largely to these deplorable statistics, child support enforcement has become a national issue. State and federal child support enforcement programs have been established and improved under Title IV-D of the Social Security Act. Scientific developments have made it possible to determine the paternity of a child with more certainty. Individuals and groups around the country have attempted to develop support guidelines that rationalize the frequently erratic methods of setting support amounts. The federal Office of Child Support Enforcement is currently funding a research project to develop an objective method for determining the support level given the circumstances of the parties. State legislatures have developed more sophisticated methods of collecting support, such as wage withholding. A few courts have begun to approve orders that provide for automatic support increases in an attempt to keep up with inflation. Both grass roots child support groups and national women's and children's organizations have begun to focus on child support as a significant problem contributing to the poverty of women and children. Scholars and commentators have developed new

proposals for who should pay support and how. Most recently, the Congress has been considering significant amendments to Title IV-D of the Social Security Act which would require states to establish a number of mechanisms to improve support collection.

Because of concern with the effects of child support on the economic well being of children and because of the significant involvement of the legal profession in the establishment and collection of child support, the National Legal Resource Center for Child Advocacy and Protection in coordination with OCSE decided to develop a project focusing on child support concerns. The Center is a project of the Young Lawyer's Division of the American Bar Association. In the past it has conducted projects on child abuse and neglect, foster care, child custody and child snatching, and child sexual abuse among other topics. In 1983, the Center obtained funding for such a project through a contract with the federal Office of Child Support Enforcement (OCSE) of the U.S. Department of Health and Human Services. Planned activities of the project include publication of a monograph series on child support legal issues, writing on child support for legal periodicals, speaking at conferences and continuing legal education programs on child support issues, organizing two regional/national conferences on child support legal issues, and providing limited technical assistance to legal groups working on reform of the child support system.

This annotated bibliography is the first of our series of monographs on child support legal issues. It gathers in one place annotations of all the major legal literature on child support issues published since 1975. It is intended to provide a base of information for those working on research, policy development, legislation, or litigation in this field. It will be updated periodically during the life of this project.

The major subdivisions for entries in the bibliography are: overview of child support; the establishment of support awards; establishment of paternity; modification of support awards; remedies for support enforcement; interstate and international enforcement of support awards; tax considerations; bankruptcy; alternative mechanisms for establishment and enforcement of support; and training materials.

Our research indicated that some issues we expected to find discussed had little written about them, such as the relationship between visitation and custody and child support

payment patterns and the effects of joint custody decrees on child support awards. An OCSE funded research project is determining under what circumstances different types of custody lead to voluntary payment of support, looking at the duration of compliance and the percentage of the support award paid. We arbitrarily eliminated issues with a tangential relationship to support. For example, we included articles on establishment of paternity and paternity statutes of limitations, but excluded articles on the rights of illegitimate children generally. Where particular cases are the subject of notes the cases have been further researched and an editor's note points out when later cases have overruled the one under discussion. On occasion, an editor's note will also be added to elaborate upon a point made in the annotated article.

The bulk of the entries are articles and other works appearing in legal periodicals since 1975, and legal books dealing with child support issues published since then. That year was chosen because it marked the beginning of the federal/state child support enforcement program under Title IV-D of the Social Security Act. Also included are references to appropriate sections of such secondary references as Corpus Juris Secundum and American Jurisprudence and to annotations in American Law Reports. In addition, in some sections, such as tax and bankruptcy, references are made to appropriate looseleaf services and other resource material which might be useful to the family law practitioner less familiar with those fields. Not included are case decisions, statutory materials and most unpublished materials. The latter may be listed in an update to the bibliography as we become more aware of them. Appendices include a listing of Congressional hearings and reports on child support since 1974 and a listing of selected OCSE publications.

Those working in the field should also be aware of the newsletter, Child Support Report, published by OCSE. It includes a regular column on recent legal developments.

Also of interest are NRFSEA News published by the National Reciprocal and Family Support Enforcement Association, and the Information Release series published by the National Conference of State Legislatures. Another helpful bibliography in one field is the Information Sharing Index of OCSE's National Child Support Enforcement Reference Center. It is updated periodically.

We would like to acknowledge the contributions of Valerie Gross, Nan Shapiro, Ed Gilmartin, Ronnie Schulman, Leonard Schwartz, and Beth Hunter to the research for this bibliography. We also thank Joyce Moore, Carrie Coleman and Steve Gardner for their word processing and other contributions to production of this document. We have also been assisted by the cooperation and advice of our project officer at OCSE, Phil Sharman.

We hope this bibliography will be a useful starting point for others working in the field. We would appreciate user's help in informing us of additional items, published and unpublished, that should be included in future updates of the bibliography.

Robert Horowitz
Diane Dodson
Washington, D.C.
February 1984

SECTION I
OVERVIEW OF CHILD SUPPORT

This section includes articles and books which describe, analyze, or propose reforms to our system for establishing and collecting child support obligations. The single major event in this field in the last ten years was Congress' enactment, in 1974, of Title IV-D of the Social Security Act (codified at 42 U.S.C. §§651-662), which establishes a cooperative state-federal relationship for child support enforcement. Under this program each state must establish a child support enforcement program of its own. Much of the motivation for this legislation was Congress' concern with burgeoning welfare costs, primarily in the Aid to Families with Dependent Children (AFDC) program. It had been determined that the majority of AFDC expenditures over the past 20 years had been incurred through the provision of public assistance to families with absent fathers. Thus, it appeared that to the extent that absent parents paid child support, the government would be relieved of much of its welfare burden.

While Title IV-D leaves most child support enforcement in state hands, it established the federal Office of Child Support Enforcement (OCSE) within the U.S. Department of Health and Human Services. This office oversees and assists the state IV-D programs and makes yearly reports to Congress.

Under the federal law, each state must establish its own IV-D agency with responsibility to locate missing parents, establish paternity (when necessary), and establish and enforce child support obligations. This agency must also establish its own Parent Locater Service (PLS). Generally these services must be provided to both AFDC and non-AFDC families. However, the law does provide for some difference in treatment of these groups; for example, federal income tax refund intercepts are limited to AFDC cases. In a recent case, Carter v. Morrow, 562 F. Supp. 311 (W.D. N.C. 1983) a federal district court held that it was in violation of federal law for a state not to provide services to non-AFDC clients and ordered the state to do so. The impact of this case is unclear and currently proposed federal legislation would extend more benefits to the non-AFDC client. When the parent is located, the agency uses whatever methods are available in that state to obtain or enforce a support order. When a noncustodial parent resides out-of-state, the federal law requires that the state where the noncustodial parent lives must cooperate in enforcing the support order. Once the agency obtains the support payment, it collects and distributes the funds.

In order to assist the states in these efforts, OCSE maintains its own PLS and may certify support cases to the federal courts. The Treasury Department, in AFDC cases certified by states through the OCSE , may deduct support arrearages from any federal tax refund owing to the recalcitrant parent. The federal government also has waived its sovereign immunity to attachment and garnishment of the wages of its employees in child support cases. Thus, a parent's federal wages or benefits may be reached by the state agency.

Title IV-D also provides fiscal incentives for the states to participate in this program. The federal government currently pays 70 percent* of state and local costs for collection services to both AFDC and non-AFDC families. Incentive payments are also made to these government bodies for collections made on behalf of AFDC families.

A number of articles describe the federal program and issues that have arisen under it, as well as other support issues under the AFDC program. There are a number of books and articles that provide a broad analysis of our national child support system and propose reforms of it. In addition, a number of articles focus on child support programs and developments in a particular state.

It is important to recall that the current state/federal IV-D child support system is less than 10 years old. It has had mixed results throughout the country, and areas for improvement are continually being identified. In fact, major child support legislation is expected to pass the current Congress. The final law will most likely alter the federal financial incentives in the IV-D program to emphasize support collections for non-AFDC as well as AFDC clients and require states to enact enforcement remedies, most notably mandatory wage assignments. This new federal initiative may be expected to result in a flurry of new law review articles over the next year.

* Under pending legislation, the Federal matching share would be reduced 1% per year starting in fiscal year 1987 until it reached 65%.

A. ANALYSIS AND REFORM PROPOSALS

J. Cassetty, Child Support and Public Policy (1978).

In this book, the author examines the issues of child support enforcement policy. The book is divided into two parts. In Part I, the author discusses the present system of child support. She establishes a demographic profile of the population for whom child support payments may be expected, identifies the variables that may influence the levels of child support, studies the extent of resources available in the absent father population to make child support payments, and examines the potential cost-effectiveness of public child support enforcement programs. In Part II, based upon her findings, the author makes recommendations for reforms in the child support enforcement system, a system she finds inadequate, unreliable, and inequitable. The author's most basic conclusion is that the present child support enforcement system has the result of imposing most of the real and personal costs of dissolution of the family on the female-headed family. The changes Cassetty proposes in this present system are all based on a complete federalization of the collection and disbursement of child support. More specifically, she advocates such measures as making child support payments mandatory across all income classes, facilitating payment through an automatic wage withholding scheme, and directing child support enforcement policy at fostering an equal sharing by both parents of personal and economic responsibility for the child.

Chambers, The Coming Curtailment of Compulsory Child Support, 80 Mich. L. Rev. 1614 (1982).

In this article, the author forecasts possible changes in the child support system. Although he notes that current support laws are likely to remain in place as long as many single parents live in poverty, he predicts that changes in the perception of absent parent's moral responsibility for the support of their children may lead to the end of compulsory child support. Changes in the law that may occur as attitudes towards parental obligations are altered include: honoring requests from custodial parents in non-welfare cases that support awards not be ordered; modifying support orders over time to account for the earnings of the custodial parent or of any new partner of the custodial parent; and reducing the term of liability. The author advocates a national wage deduction system for the collection of child support.

Comment, Termination of Parental Rights: Should Nonpayment of Child Support Be Enough? 67 Iowa L. Rev. 827 (1982).

This article examines the current policy regarding termination of parental rights in Iowa. Section 600 A.8(4) of the Iowa termination statute provides that a parent's rights may be terminated for failure to pay child support. In a recent case, Klobnick v. Abbott, 303 N.W.2d 179 (Iowa 1981), the Iowa Supreme Court upheld this statute. The author believes that other factors, in addition to non-support, should be considered before parental rights are terminated. For example, a crucial, yet often disregarded factor is the child's opinion. The author criticizes the Iowa statute as being "parent biased," as little weight is given to the children's rights. In conclusion, the author proposes an amendment to the present statute that would give more weight to the parent-child relationship in determining whether parental rights should be terminated.

R. Eisler, Dissolution: No-Fault Divorce, Marriage, and the Future of Women (1977).

This book analyzes the new no-fault divorce laws and compares them to the older laws. Within the chapter discussing alimony and child support, the author proposes several changes such as the establishment of economic guidelines for support awards. Another chapter dealing with child support matters focuses on the welfare system and its implications for women. The final section of the book explores alternatives to the traditional notions of marriage and divorce. One of the author's proposals for legal reform is to develop a new concept of family law which would include within the definition of family a variety of units formed through contractual arrangements. Throughout the book, the author includes numerous case histories. An appendix presents a divorce checklist with a section on determining child and spousal support expenses and a sample marriage contract.

Foster, Freed, & Midonick, Child Support: The Quick and the Dead, 26 Syracuse L. Rev. 1157-94 (1975).

This article addresses legal and practical limitations on the duty of child support and contrasts it with the lack of protection accorded the children of deceased parents. The authors first examine the duty of child support in the state of

New York concluding that "the inequities and discriminations incident to the imposition of the duty of child support should be eliminated and it should be regarded as the joint responsibility of both parents according to their means and the needs of the child." Next, the article examines the new Title IV-D of the Social Security Act, its benefits and its shortcomings. Finally, the authors conclude with a consideration of proposed legislation to make an estate liable for child support.

Ed. note: While at common law a parent's death terminated child support, many courts have limited or rejected this absolute approach. For example, courts have held that the support obligation of a deceased parent does not end where a support agreement cited grounds for termination without including death. Russel v. Fulton Nat'l Bank Atlanta, 247 Ga. 556, 276 S.E. 2d 641 (1981); Bradshaw v. Smith, 48 N.C. 701, 269 S.E. 2d 750 (1980). See also Uniform Marriage and Divorce Act §316(c) ("when a parent obligated to pay support dies, the amount of support may be modified, removed, or commuted to lump sum payment....") New York still does not make an estate liable for child support. However, it does provide in the case of an illegitimate child that the estate will be liable for support if an order of support or judicially approved settlement was made prior to the parents death. N.Y. Fam. Ct. Act §513 (McKinney 1983).

Horowitz, Hunter & Bullock, Economic Interests of Children, in The Legal Rights of Children (R. Horowitz and H. Davidson, eds., Shepard's/McGraw Hill 1984).

As the book title suggests, this chapter attempts to identify child support and paternity issues from a children's rights perspective. Thus, in addition to a general overview of child support/paternity law, it covers such grounds as making the child a party in support enforcement or paternity actions and extending support beyond the age of majority. The chapter is heavily footnoted to case and statutory law, particularly developments over the last three years.

C. Kastner & L. Young, A Guide to State Child Support and Paternity Laws (National Conference of State Legislatures 1981).

This invaluable book, prepared under a contract to the Office of Child Support Enforcement, provides detailed information on child support legislation. It analyzes and provides background information on various topics which should be covered in state support laws; provides exemplary statutory citations for each topic with additional selected case law citations; and offers legislative drafting guides. Its major chapters include child support and the judicial process, administrative procedures to establish and enforce support, paternity determination, and enforcement of support orders.

Krause, Child Support in America: The Legal Perspective (The Michie Company 1981).

"This volume describes, analyzes and evaluates child support enforcement laws and practices, regulations and working procedures at the state and federal levels and their interaction." It is "intended for the state's attorney, the private attorney, and the judge who deal with child support problems. It is directed also to the many public aid officials who are involved in the 'IV-D Program' and who need a compact and comprehensive guide to the legal framework in which they operate." Particular subjects addressed in this book are: child support obligations and enforcement remedies under state law; paternity and its establishment; and the federalization of child support enforcement. The book also contains useful appendices including: Revised Uniform Reciprocal Enforcement of Support Act (1968); Uniform Parentage Act; Citations to State Statutes on Child Support Enforcement and Paternity; Joint AMA-ABA Guidelines: Present Status of Serologic Testing in Problems of Disputed Parentage. Other appendices concern blood typing and a list of state agencies administering child support programs under Title IV-D of the Social Security Act.

Ed. note: For a review of this work see Fleece, Book Review, 20 J. Fam. L. 545 (1981-82).

Krause, Child Support Enforcement: Legislative Tasks for the Early 1980's, 15 Fam. L. Q. 349 (1982).

This paper is drawn from portions of the author's previous work cited above. Here he focuses on three specific changes he finds necessary in the present system of child support

enforcement. First, he discusses the need for setting reasonable support obligations, particularly in the context of the second-family problem. Second, he proposes bringing back a form of "support disregard" in setting AFDC benefits whereby more of the father's support payments would go to his children and less toward reimbursement of the state. Third, he emphasizes the necessity of improved paternity action procedures that would provide greater safeguards for falsely accused men, and argues for federal involvement in blood testing.

Krause, Forcing Fathers to Be Financially Responsible, 5 Fam Advoc 13 (Summer 1982).

This article reviews the legislative and judicial changes which have taken place in the last ten years in the areas of child support enforcement, paternity, illegitimacy and child welfare. The article is drawn from the author's book, Child Support in America. The author believes that there has been great progress in child support enforcement with the passage of the Child Support (Title IV-D) amendment to the Social Security Act. He regrets, however, that there has been much judicial uncertainty in the areas of child custody, illegitimacy and the parent/child relationship. He places much of the blame on the Supreme Court, which he contends has been insensitive to the interests of children in many of its decisions. The author believes that the Supreme Court should give the states more freedom to fashion programs to meet the multitude of social problems endemic to family law.

Krause, Reflections on Child Support, 1983 U. Ill. L. Rev. 99.

This article is also based on portions of the author's work Child Support in America: The Legal Perspective (1981). Here the author reviews the arguments of those who opposed the 1975 federal child support enforcement legislation and gives his favorable impression of the progress engendered by the program thus far. He also contrasts the situation in the U.S. with that in Sweden where mandatory paternity actions are instituted in nearly all cases of nonmarital birth in which the father does not voluntarily acknowledge the child.

National Conference of State Legislatures, Information Releases Related to Child Support (1980-present).

The National Conference of State Legislatures periodically produces informational releases on child support issues. They identify current developments in state legislation and demonstrate the high level of legislative activity in this area. To date there have been four releases, covering years 1980-83, which report on recent state legislative activity, as well as separate releases on "Poverty: The Effects of Nonsupport," "Child Support, Paternity Procedures and Genetic Testing: Information for Drafting Paternity Laws," and "Income Withholding." Copies of these may be obtained from the NCSL, 1125 17th Street, Suite 1500, Denver, CO 80202.

National Council of Juvenile and Family Court Judges, A Guide for Judges in Child Support Enforcement (U.S. Dept. of Health and Human Services, Office of Child Support Enforcement 1982).

This guide is the only non-state specific child support work written for judges. It covers the complete range of child support enforcement issues, describing the federal and state roles, paternity testing and interstate enforcement. It also describes various judicial mechanisms to enforce child support orders as well as potential defenses in these cases. In keeping with contemporary opinion, it devotes a chapter to alternatives to the judicial process, primarily administrative, for child support enforcement. Limited supporting case law is also cited throughout the guide, although few post-1979 cases are provided.

K. Redden, Federal Regulation of Family Law (The Michie Company 1982).

The text presents a complete treatment of the complex area of federal regulation of family law, including child support, federal supervision of child support enforcement, obtaining the support obligation, garnishment of federal payments, establishing paternity, and interstate enforcement of support. Bankruptcy and federal tax consequences relating to child support are discussed in this text.

Swan, Abortion on Maternal Demand: Paternal Support Liability Implications, 9 Val. U. L. Rev. 243 (1975).

This article, through outlining the holdings of several key abortion decisions such as Roe v. Wade and Doe v. Bolton, discusses the rationale for holding fathers civilly and criminally liable for the maintenance of their infant children. The article also illustrates how these holdings undermine the rationale in contractual, tort and criminal law contexts. The author concludes that the elimination of paternal liability may be logically necessary as well as an equitable policy. The author contends that recognition of a paternal veto over the abortion decision is an appropriate response to continuing to hold fathers liable for child support when mothers can obtain "abortion on demand."

The Parental Child Support Obligation (J. Cassetty ed., D.C. Heath and Company, 1983).

This text is a compendium of articles developed through an interdisciplinary effort directed at identifying the fundamental issues associated with the parental child support obligations. These articles address the following issues: (1) the child support system today: laws, practices, and patterns of support; (2) the parental duty to support: establishing standards for child support liability; (3) the parental duty to support: establishing standards for child support payments; (4) social and emotional implications of the economics of divorce; (5) parental child support laws and systems in developed countries other than the United States; and (6) reforming the child support system: options and constraints.

B. THE IV-D PROGRAM AND AFDC SUPPORT ISSUES

Bernet, Child Support Refunds for Former AFDC Recipients, 15 Clearinghouse Rev. 44 (1981).

This article explains the federal requirements regarding the distribution of child support collections to AFDC recipients after they cease to receive assistance. The author notes that, although states have emphasized the collection of child support monies for AFDC recipients, many former AFDC recipients may be unaware of their right to refunds. The author urges advocates to ensure that former recipients receive all child support refunds due to them under federal law. Numerous examples are used to illustrate the distribution scheme.

Bernet, The Child Support Provisions: Comments on the New Federal Law, 9 Fam. L. Q. 491 (1975).

This article examines and analyzes Public Law 93-647 (Title IV-D of the Social Security Act). The author focuses on the challenges federal and state administrators face in implementation, the need for the law, its legislative history, and the new duties and responsibilities it imposes on federal, state and local governments and on welfare recipients. The study concludes with suggested congressional amendments to clarify the law and prevent some of the problems it raises.

Comment, Enforcement of Child Support Obligations of Absent Parents - Social Services Amendments of 1974, 30 Sw. L. J. 625 (1976).

This comment discusses the background of the federal law concerning child support and the difficulty the states have encountered in enforcing child support orders. The attempts of Congress to deal with the problem of child support enforcement are examined and the various provisions set forth in the child support section of the amendments to the Social Security Act are explained. The comment then analyzes and attempts to resolve some of the issues raised by these amendments. Finally, the comment discusses whether the amendments are a practical solution to the child support problem since the low-income parent they are designed to locate will generally be unable to support his child despite any penalties he may face.

Comment, The 1974 Child Support Provisions: Constitutional Ramifications, 6 Cap. U.L. Rev. 275 (1976).

This comment examines Title IV-D of the Social Security Act and its possible effect on the constitutional rights of indigent families who must seek assistance from AFDC. The comment first reviews the political, legal and historical background leading to the 1974 Amendments (Title IV-D) and then describes the implementation of the IV-D program in Ohio. The thrust of the comment, however, centers around the constitutional ramifications of the amendments, particularly focusing on the rights to privacy, equal protection, and due process. The authors conclude that the new legislation is insensitive to welfare recipients' constitutional rights and that until the government undertakes a systematic analysis of the needs of welfare recipients, no program can be designed that is responsive to the needs of the poor.

Fine & Dickson, Family Law - Child Support, 1977 Annual Survey of American Law 261.

This article traces the failure of the original AFDC program to ensure parental contributions to the support of their children caused by insensitive judicial interpretation and poor administration by HEW. HEW did not encourage child support enforcement at the state level and the federal courts would not permit limiting AFDC eligibility if the recipient did not cooperate in locating the missing parent. The article goes on to discuss the effect of the 1974 and 1975 Amendments on these failures through the creation of the Office of Child Support Enforcement, the Parent Locator Service, and the expansion of state and federal enforcement powers. The authors conclude that while problems still exist, the amendments have improved the AFDC program's effectiveness.

Howard, Relative Responsibility in AFDC: Problems Raised by the NOLEO Approach - "If At First You Don't Succeed...", 9 Urb. L. Ann. 203 (1975).

This note begins by reviewing the frequently made justifications for relative responsibility provisions which require an indigent's relatives to contribute to the indigent's support and the social costs involved in their enforcement. The author then focuses on AFDC's relative responsibility provisions, known as NOLEO (Notice to Law Enforcement Officials), which requires that each state AFDC plan "provide

for prompt notice to appropriate law-enforcement officials of the furnishing of AFDC in respect of a child who has been abandoned or deserted by a parent." The article then critiques the then recently enacted child support program. The article outlines the new provisions and briefly pinpoints several problems the new statute presents such as the federal interference in traditionally state issues, followed by an inquiry into constitutional issues it raises (e.g., self-incrimination, equal protection, privacy).

Stouder, Child Support Enforcement and Establishment of Paternity as Tools of Welfare Reform - Social Services Amendments of 1974, pt B, 42 U.S.C. §651-60 (Supp V, 1975), 52 Wash. L. Rev. 169-92 (1976).

This article reviews recently enacted Title IV-D of the Social Security Act requiring states to establish or designate an agency to obtain and enforce orders for support of AFDC children and where necessary, to establish paternity. The author discusses the purposes of the amendments, describes how the provisions are intended to work, and indicates what is required by HEW and the state welfare agencies for compliance. Constitutional and administrative problems which are anticipated as the provisions are implemented are also explored. Finally, the existing Washington State system of child support enforcement is also explained and offered as an example of a successful approach to this difficult problem.

Note, AFDC Eligibility and the Federal Stepparent Regulation, 57 Tex. L. Rev. 79 (1978).

This note focuses on the recurring problems of state courts determining that a stepparent's presence in the home ends a child's AFDC elibility even though the stepparent has no legal obligation to support the child. The author discusses three main topics: (1) the issues raised by recent cases construing the Social Security Act's stepparent regulation which conditions AFDC eligibility on a stepparent's legal obligation to support a child, (2) tensions between state and federal interests in the AFDC program, and (3) a proposed construction of the stepparent regulation. The author supports a construction that utilizes state law to determine the

stepparent's duty to support and factors this determination into the standard of need required for AFDC eligibility. This would permit balance between state and federal interests.

Ed. note: Since this article was written the AFDC law has been amended to provide that the income of a stepparent living in the home with the child will be considered in computing AFDC benefits. 42 U.S.C. §602(a)(31).

Note, Federal Law and the Enforcement of Child Support Orders: A Critical Look at Subchapter 4 Part D of the Social Services Amendments of 1974, 6 N.Y.U. Rev. L. & Soc. Change 23 (1976).

This note first examines the legislative history of IV-D and then looks in detail at each of its major provisions, including those dealing with the establishment of a federal parent locator service, the role of the states as assignees in delinquent claims, and the responsibilities of the welfare parent and the delinquent obligor. The note critically analyzes some of the potential problems with IV-D, including damage to the interests of the children if the parent on welfare is penalized, potential jurisdictional problems of the federal courts, due process issues raised by the mandatory assignment of the welfare parent's claim and violations of the right to privacy. The note explores additional problems which undercut the overall effectiveness of the IV-D program and concludes that while the federal program has shown itself to be cost effective after one year of operation, it is too early to assess the success or failure of the program.

C. STATE SPECIFIC ANALYSIS AND REFORMS

Comment, Allocating the Fruits of a Marriage: A Look at Virginia's New Domestic Relations Statute, 17 U. Rich. L. Rev. 377 (1983).

In 1982, the Virginia General Assembly enacted a new, comprehensive domestic relations statute that this author suggests brings Virginia divorce law more in line with the mainstream approach to domestic relations. The author reviews the legislative history and analyzes the various provisions of the new statute. With respect to child support, the author notes that the new statute codifies a list of factors that courts are to consider when setting the amount of support. He also points out that the legislature declined to include a proposed provision expanding the court's authority by permitting support orders for a child beyond the age of majority for educational purposes.

Comment, The Law of Child Support in Georgia: A Morass, 14 J. Fam. L. 464 (1975-76).

This comment examines Georgia law on child support, with particular focus on "the unique significance attached to a final decree." The Georgia law provides that once a provision for support of a minor child has been made in a final divorce decree, there may be no further action by the mother with custody for the support of the minor child. If the mother becomes unable to support the child, but wishes to retain custody, she can bring an original action for child support. Consequently, although the father has a statutory duty to support his minor child, this peculiarity of Georgia law precludes the mother from enforcing it. Attempts by both the Georgia courts and legislature to mitigate the harshness of this rule are examined to illustrate the inadequacy of their attempts. Finally, the author suggests that the courts should recognize the child's vested property right to support to prevent undue burdens on the child seeking support and to ensure that the Georgia system of providing child support actually operates in the "best interests of the child."

Domestic Relations [Survey of Developments in West Virginia Law: 1980], 83 W. Va. L. Rev. 324 (1981).

This overview of developments in West Virginia domestic relations law includes discussions of cases giving indigent defendants in paternity suits the right to court-appointed counsel and to free blood tests, and holding mere lack of payment of support to be insufficient to justify confinement of a defendant in contempt without an additional finding of contumacious behavior.

Ed. note: For a recent review of counsel rights in paternity actions see Court Appointed Counsel for Indigent Paternity Defendants: A Review of Recent Cases and an Alternative, 6 Child Support Report 6 (1984).

Fullenweider & Feldman, Domestic Relations Judgments in Texas: Draftsmanship and Enforceability, 18 S. Tex. L. J. 1 (1977).

This article provides aid to the practitioner in the tasks of drafting domestic relations decrees and enforcing them, through an analysis of representative Texas case law and statutes. The author discusses several topics, among them, the enforcement of child support provisions by contempt, how to draft child support provisions, the uses of URESA, and the Parent Locator Service. The authors' central thesis is that through proper draftsmanship, enforcement, especially by contempt, is ensured.

Gliaudys, Paternity, A Reluctant Fatherhood, 53 Cal. St. B.J. 318 (1978).

This article discusses the many aspects of a child support case under California Law and Title IV-D of the Social Security Act. Its focus is on the establishment of paternity from plaintiff's and defendant's point of view. The analysis of the roles of the respective attorneys in the paternity and child support areas offers practical advice and provides insight into the district attorney's place in the federal-state scheme set out in Title IV-D.

Harp, Domestic Relations, Annual Survey of Georgia Law, 1981-1982, 34 Mercer L. Rev. 113 (1982).

This article surveys developments in Georgia domestic relations law. Among the cases noted are: a court of appeals decision finding URESA inapplicable to modifications of child support and holding that Georgia law provides the sole procedure for obtaining such modifications, and a state supreme

court case validating the use of HLA blood tests in paternity suits as nonviolative of fifth amendment rights. Other topics discussed include post-judgment enforcement by means of garnishment and contempt.

J. Johnson, Parent and Child: The Law in Tennessee (1980).

This book summarizes Tennessee law governing the relationship between parent and child. Chapter three focuses on the support and maintenance of dependent minor children. The topics covered include: the extent of support required, child support as an equal and joint obligation of both parents, and enforcement of support orders. With respect to enforcement, the author briefly discusses contempt, URESA, and various federal remedies. The author provides numerous citations to cases and statutory materials.

Maxwell, In the Best Interests of the Divided Family: An Analysis of the 1982 Amendments to the Kansas Divorce Code, 22 Washburn L. J. 177 (1983).

This article analyzes the 1982 amendments to the Kansas divorce code. The author asserts that although the new provisions appear to radically alter present Kansas law, they are actually representative of attempts to bring Kansas divorce practice in line with emerging trends in the U.S. and with current Kansas case law. A brief section details changes that have been made with respect to child support. In the area of modification of support, the new code requires a showing of a material change in circumstance before the order can be modified. The new statute also enumerates the relevant factors the court must consider in determining the amount of support.

Note, Georgia's Child Support Laws, 11 Ga. L. Rev. 387 (1977).

Georgia's support laws have undergone few changes in response to the significant increase in the divorce rate. The author concludes that Georgia law is deficient in: (1) placing the duty to support solely on the father, (2) providing the child with no legal interest in his own support, and (3) not providing for modifications of support in the event of a substantial change in the child's needs. He recommends that

change be initiated through judicial action, adoption of the Uniform Marriage and Divorce Act or similar statute, and a change in the law concerning modification of support.

Ed. note: Today, Georgia law places the duty to support on both spouses, Ga. Code Ann. §74-105 (1981); and provides for modification of support on a showing of changed circumstances of either spouse, Ga. Code Ann. §30-220 (1980).

Onoprienko & Shapiro, Family Law [1979 Developments in Florida Law], 34 U. Miami L. Rev. 681 (1980).

Among the child support-related topics discussed in this survey of 1979 Florida family law developments are: discovery, determination of awards, modification of awards, suspension of visitation rights resulting from intentional failure to provide child support, and URESA. With respect to paternity, the authors analyze several Florida cases in light of the Supreme Court's decision in Lalli v. Lalli, 439 U.S. 259 (1978), upholding a New York statute requiring that illegitimate children, wishing to inherit from their fathers by intestate succession, present a declaration of paternity made by a court of competent jurisdiction during the life of the father. Also mentioned is a Florida case, Simons v. Jorg, 375 So. 2d 288 (Fla. Dist. Ct. App. 1979), that declined to compel a putative father to undergo a new blood test that allegedly offers affirmative proof of paternity.

Ed. note: The restriction on illegitimate children's inheritance rights in Lalli was upheld by the Supreme Court due to the state's interest of maintaining an accurate and efficient method of distributing interstate property by preventing spurious claims and by eliminating proof of paternity after the putative father's death.

Survey of Kansas Law: Family Law, 29 U. Kan. L. Rev. 511 (1981).

This survey of Kansas law contains a section outlining case law developments in the child support area from 1978-1980.

Tabac, Alimony and Child Support in Ohio: New Direction After Dissolution, 26 Clev. St. L. Rev. 395 (1977).

This article reviews the modern trend, as illustrated by actions of the Ohio legislature and courts, to extend the duty of child support upon marriage dissolution to both the husband and wife, and cease to require child support upon the child's achieving majority. Child support must now be based upon the needs of the child and either parent's ability to provide financial support. The author points out that parents may still agree to support a child after he achieves majority and that courts may always modify existing child support orders for changed circumstances.

Wadlington, Virginia Domestic Relations Law: Recent Developments, 67 Va. L. Rev. 351 (1981).

This annual survey details several developments in Virginia domestic relations law on child support. Cases discussed include those which: emphasize child support as a duty owed by both parents, modify a divorce decree that incorporated a property settlement to require that the mother contribute to child support, and enforce a contractual agreement to extend support beyond the age of majority (which has been reduced to eighteen). Also noted is a Virginia Supreme Court decision interpreting RURESA to mandate recognition of foreign state divorce decrees even though they lack the finality to trigger full faith and credit. Additional developments include the admission of a mother's testimony of her husband's non-access as evidence to rebut the presumption of legitimacy and the use of a lesser standard of proof of paternity in a workmen's compensation proceeding than that required in a support or inheritance case.

D. ADDITIONAL RESOURCES

In addition to the materials listed above, the following secondary sources may be consulted for information on this topic:

43 C.J.S. Infants §10 (1978).

27B C.J.S. Divorce §§318-321 (1959).

24 Am. Jur. 2d Divorce and Separation §§827-836 (1966).

59 Am. Jur. 2d Parent and Child §§50-53 (1971).

15 Am. Jur. Proof of Facts Child Support §29 (1964).

Court's Power In Habeas Corpus Proceedings Relating To Custody Of Child To Adjudicate Questions As To Child's Support, 17 A.L.R. 3d 764 (1968).

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

SECTION II.
ESTABLISHMENT OF THE SUPPORT OBLIGATION

The establishment of the support award and the determination of its amount are critical elements in obtaining adequate support for children of absent parents. The articles on this topic indicate the prevailing lack of clarity and consensus on how support amounts should be determined and, indeed, how they are determined under present law and practice.

Several studies reported on in this section analyze support awards made in particular localities in an attempt to determine the factors that influenced judges in setting the amounts of the awards. They found a substantial lack of uniformity among judges even in the same court, with the result that similarly situated parties were ordered to pay very different amounts of support.

The lack of uniformity of support awards for similarly situated parties has led to a number of proposals for establishing support guidelines, standards, formulas, or tables. Courts have adopted guidelines through both decisions and court rules. Several articles and books discuss both what courts have done and offer proposals for future practice. The approaches tend to fall into two categories--those that attempt to determine the needs of the child through some mechanism and then apportion that cost to the two parents, sometimes referred to as a "cost based" approach, and those that attempt to equalize the standards of living in the two post-divorce households, often called the "income based" approach or equalization principle. There are several articles and books discussing each of these kinds of approaches.

Several articles discuss the recent trend in equal protection cases which suggest that the obligation to pay child support must be a sex-neutral one and that the obligation to support children cannot be placed on fathers alone. However, one article suggests that treating the custodial and noncustodial parents identically with respect to support also is not fair because it fails to take into account the substantial nonmonetary contribution of the custodial parent in the form of homemaking and child care.

Several articles discuss the legal standards for determining support amounts in effect in particular states through analysis of case law and statutory provisions. Others analyze the effect of our present support award system on the economic well-being of custodial parents and children, often

finding that they are in a much worse financial situation than prevailed during the marriage and that the custodial parent is, in fact, providing the major support of the children.

Finally, several articles discuss the use of automatic escalator provisions in support awards to account for the effects of inflation and the increased cost of raising older children without the necessity of repeated court appearances. For example, automatic modifiers may be pegged to cost of living changes. To date, courts are split over the propriety of such provisions. Some courts reject them as speculative and unrelated to changed circumstances, the litmus test for a modification of support. Other courts endorse such clauses as a means of avoiding costly and traumatic modification proceedings and enabling support awards to keep up with the eroding effects of inflation. An OCSE funded research project which is studying the use of support guidelines is also developing methods for the automatic updating of support awards.

A. GENERAL

Anderson, Child Support: Implications of Abortion on the Relative Parental Duties, 28 U. Fla. L. Rev. 988 (1976).

This article examines the implications of the Roe v. Wade and Planned Parenthood v. Danforth decisions on the father's duty to support his children. The author considers the holdings of these cases as they are used to bolster the argument that since the mother is solely vested with the right to decide whether or not to carry her child to term (during the first trimester of pregnancy), she possesses, as well, the exclusive right to relieve the father of his financial responsibility-to support the child. Through an examination of the interests of the mother, the unborn child, the state and the father, the author concludes that such an argument should not prevail; that "although the father may not veto the abortion decision this does not mean that he should no longer have a duty to support his child or that he may be able to escape his duty by a contract."

Beck, Equal Rights Amendment: The Pennsylvania Experience, 81 Dick. L. Rev. 395 (1977).

This article discusses the effect of Pennsylvania's adoption of ERA on, among other things, child support. The author illustrates how, by injecting an absolutist or literal interpretation of ERA into existing child support laws, courts may be disadvantaging the homemaker and/or custodial parent. The author supports the position that, in calculating the relative incomes of each parent, and thus their minimum contribution to child support, a monetary value should be assigned to homemaking and custodial care.

Bruch, Developing Standards for Child Support Payments: A Critique of Current Practice, 16 U.C.D. L. Rev. 49 (1982).

This article examines current methods for setting child support awards and proposes several reforms. These include developing more accurate measures of child-rearing costs, implementing a principled allocation of these costs between the parents, and using cost-of-living adjustors to incorporate anticipated changes in childrens' needs and parents' incomes into the child support award. This article is an expanded version of the author's chapter in THE PARENTAL-CHILD SUPPORT OBLIGATION, (J. Cassetty, ed. 1983).

Case Note, Domestic Relations - Stepparent is Liable for Support of Spouse's Children From Prior Marriage But Tax Returns Are Not Discoverable in Determining Extent of Liability In Remarriage of Brown, 99 Cal. App. 3d 702, 160 Cal. Rptr. 524 (1979), 21 Santa Clara L. Rev. 865 (1981).

This case note analyzes a California decision holding that all of the property of a non-custodial parent, including her community property interest in the income of her new spouse, may be considered in the discharge of her statutory child support obligation, but that tax returns of her new spouse filed during the second marriage are not discoverable.

Case Note, Parental Duty to Support a Subnormal Adult Child (Watkins v. Watkins, Miss. 1976), 1977 Miss. L. J. 361.

The Mississippi Court in Watkins v. Watkins, 337 So.2d 723 (Miss. 1976), held that a child support decree terminated upon the child's attainment of majority, and a contempt proceeding is an inappropriate action to determine the existence of a parental duty to support an adult retarded child. The author discusses this decision in light of other states' adjudications of the same issue, and the common law approach. At common law, the parental duty to support automatically terminated at the age of majority. This rule has been modified in some states such as Kentucky and New Jersey, where necessity rather than attainment of majority is considered in determining whether an obligation to support a retarded adult child exists. The author concludes that, although the Mississippi court was technically correct in its holding, it sets an unfortunate precedent which should be changed.

Ed. note: Many states, by law, specifically extend parental support obligations to adult handicapped or incompetent children. See, e.g., D.C. Code Ann. §21-586 (1981). Some courts have reached the same conclusion through liberal statutory interpretation of support laws. See e.g, Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983); Sudduth v. Scott, 394 So. 2d 536 (Fla. Dist. Ct. App. 1981).

Case Note, Sex discrimination-statute which imposed criminal penalty upon fathers who willfully neglected to support their minor children held unconstitutional: Cotton v. Municipal Court of San Diego Judicial District, 59 Cal. App. 3d 601, 130 Cal. Rptr. 876 (1976), 15 J. Fam. L. 623 (1978).

The California Appellate court held that the California Nonsupport Statute, on its face, invidiously discriminated

between parents of minor children and against fathers in violation of the Fourteenth Amendment of the U.S. Constitution and its California equivalent. In Cotton, the court further held that the statute touched a fundamental interest and that the classification by sex was suspect. The test used was whether there was a compelling state interest for the sex distinction which the statutory distinctions were necessary to further.

Comment, Child Support: His, Her, or Their Responsibility, 25 De Paul L. Rev. 707 (1976).

This comment analyzes and explains two Illinois appellate court decisions: Plant v. Plant, 312 N.E.2d 847 (1974), in which the court denied a mother any retroactive allowance for support rendered after issuance of a separate maintenance decree, but during a period when the father was incapacitated and without assets; and Hursh v. Hursh, 326 N.E.2d 95 (1975), in which the court overturned a trial court ruling that a divorced mother who was earning more than the custodial father, did not have to contribute any future child support. Further, the author analyzes the new joint and several support obligation of Illinois parents which was created by these two cases.

Comment, Child Support, Life Insurance, and the Uniform Marriage and Divorce Act, 67 Ky. L. J. 239 (1979).

This comment focuses on the ability of the Kentucky courts to order one or both parents to name their child as the beneficiary of a life insurance policy as part of a support decree. The author argues that with the adoption of the Uniform Marriage and Divorce Act, the Kentucky courts will be more likely to assess a mutual obligation on both parents in providing for the support of their dependents. In conclusion, the author believes that it is in the child's best interest for both parents, mother and father, custodian and non-custodian to be required to maintain a life insurance policy for the child's benefit.

DuCanto The Cunning Calculator: The Family Lawyer's Best Friend, 1 Fam. Advoc. 26 (Spring 1979).

This article focuses on the advantages of using a calculator to work out favorable support arrangements for an attorney's clients. The author provides sample problems and answers, as well as graphs and charts to illustrate how a family lawyer can utilize long-range financial forecasting to ensure that his/her's client will receive a favorable alimony or support settlement. The author believes that family lawyers must be well-versed in taxation, finance and the law to secure a client's financial future.

Eden, Economic Guidelines for Child Support, 24 Prac. Law. 25 (1978).

This article, based on a chapter from the author's book, Estimating Child and Spousal Support, examines the economist's role in divorce cases. The author looks at how family income is allocated among family members before divorce, and how this dollar amount changes after divorce. In most cases, parents attempt to maintain the same standard of living for their children as that prior to divorce. However, this is complicated by the fact that the divorce created two familial units, substantially increasing expenses. The "comparative equivalence scale," based on Department of Labor statistics, estimates how divorce changes allocations to each family member. The scale judges what the cost will be to maintain the same standard of living as that prior to divorce, for both family units. The data indicates that it would take over 100% of the total income of both parents to maintain the same standard. This is impossible and the custodial parent (usually the mother) generally is forced to assume responsibility for making up the deficit. This puts a considerable strain on her budget, and consequently lowers the standard of living for her and her children. In addition, the cost of raising a child increases by 2% each year, while inflation also increases the annual cost of raising a child. These factors also contribute to the poverty of female-headed, single-parent families.

Evans, Domestic Relations - Pennsylvania Equal Rights Amendment Reverses the Common Law Presumption that the Husband, Because of His Sex, Should Bear the Primary Duty of Child Support. Conway v. Dana, 318 A.2d 324 (Pa. 1974), 10 Tulsa L. J. (1975).

This article reviews the support modification case of Conway v. Dana in which the Pennsylvania Supreme Court ruled that the long-standing presumption that the father, on the basis of his sex alone, was primarily liable for the support of the minor children of the marriage was no longer valid because of the recently enacted equal rights amendment to the Pennsylvania Constitution. The author goes on to examine a few Oklahoma cases to determine the factors and standards which constitute sufficient grounds for the modification of a support order. The article concludes that "while equal protection has been effective in attacking sex-based discrimination in a few cases of obvious abuse, while hope has been held out that sex may be declared a suspect classification, and while states such as Oklahoma and Iowa, by case law and statute, have removed preferences based upon sex in the specific area of child support, nonetheless the equal rights amendment clearly offers more promise for the future than any of these methods as the best means of eradicating all forms of discrimination based on sex."

Goodman, Oberman & Wheat, Rights and Obligations of Child Support, 7 Sw. U. L. Rev. 36 (1975).

This article examines the factors considered in establishing support to which a child is entitled and the criteria which the courts apply in formulating a support award. It focuses upon the respective contributions required of each parent, while exploring the mother's expanding obligation to provide child support. The article explores the rights of the legitimate child, as well as those of the illegitimate. Finally, it details the extent of the obligation and its duration, while describing modification procedures and legal proceedings for adjudicating support.

Helmhouse, Support Orders, Church Courts, & the Rule of Filius Nullius: A Reassessment of the Common Law, 63 Va. L. Rev. 431 (1977).

This article challenges the commonly-held notion that at the time that English common law was developed English courts imposed no legal duty on a father to support his illegitimate

children. This notion, adopted in American law, is erroneous in its failure to recognize that, under the ecclesiastical jurisdiction, the father's obligation toward illegitimates could be enforced. The author concludes that statutory changes providing for support of illegitimates is, in fact, an adoption of the law of the age immediately prior to the birth of common law.

Ed. note: According to Blackstone, common law viewed the illegitimate child as the son of no one (filius nullius), or the son of the public (filius populi). As such, he could not inherit from anyone and only an act of Parliament could confer legitimacy and inheritance rights.

Horowitz, Some Basic Techniques for the Support Case, 22 Prac. Law 13 (July, 1976).

This article approaches a support case from the point of view of a wife, or former wife, trying to obtain support for herself, and/or her children. The author takes the practicing attorney through a step-by-step procedure for handling a support case, describing what she should do, say, and ask at the first and second interviews, and subsequent steps in a support case, such as contacting the husband, discovery, and trial tactics. Checklists or form sheets are also included for: the statement of expenses, the support interview investigating the husband's financial position, and subpoenas duces tecum.

Hunter, Child Support Law and Policy: The Systematic Imposition of Costs on Women, 6 Harv. Women's L. J. 1 (1983).

In this article, the author argues that the present child support system imposes the costs of child support on women and reinforces women's economic dependence on men. The author examines the methods used to establish child support levels and to enforce the awards and discusses the AFDC system. She compares the results of various formulas and guidelines proposed and presently in use. The author also evaluates various reform proposals and offers her own suggestions for improving the child support system. Among others, these include the adoption of income-sharing formulae which seek to equalize the relative burden of the increased costs of a split household between parents, and supplemental family income programs.

Johnson, Divorce, Alimony, Support and Custody: A Survey of Judges' Attitudes in One State, 3 Fam. L. Rep. (BNA) 4001 (Nov. 9, 1976).

This article is a report of a survey of judicial attitudes towards family law issues in Illinois. With respect to child support, the judges were questioned regarding guidelines used in determining child support. In their responses, the judges indicated that they considered such factors as the individual and relative earnings of the parents, the number of children and their ages, the standard of living the children had previously enjoyed, the assets and fixed obligations of the parties, and the health status of both the parents and the children. The author found that the underlying assumption throughout the responses was that the mother would assume custody and the father would assume support obligations. The appendix includes a reprint of the questionnaire, a local bar association support guideline based on percentage of income, and a suggested schedule for temporary child support from another local bar association.

Liotta, Domestic Relations - Child Support - Equal Obligation of Parents, 77 W. Va. L. Rev. 808 (1975).

The author examines West Virginia's traditional presumption that the father must bear the primary burden of financial support of minor children, based solely upon his sex and without regard to the actual circumstances of the parties involved. In 1969, amendments to the West Virginia code dealing with divorce, annulment and separate maintenance were enacted. These amendments, among other provisions, made child support and maintenance available to either former spouse. The author, in reviewing four cases heard since the legislative enactment, concludes that the West Virginia Court of Appeals, while being aware of the legislative changes, continues to apply traditional standards.

Melli, The Changing View of Child Support, 5 Fam. Advoc. 16 (Summer 1982).

This short acticle traces the change in the public's perception of who should be responsible for the financial support of a minor child. The author argues that over the last twenty-five years the public has slowly come to view the absent

parent, usually the father, as the person primarily responsible for the child's support. This trend, concludes the author, will result in a greater public demand for a more extensive and efficient child support enforcement program in the future.

Note, A Wisconsin Statute Restricting the Right to Marry of Those Under Obligation to Support Minor Children Not in Their Custody Violates the Equal Protection Clause of the Fourteenth Amendment - Zablocki v. Redhail, 434 U.S. 374 (1978), 47 Cinn. L. Rev. 334 (1978).

This note discusses the Zablocki case in which the Supreme Court held unconstitutional under the fourteenth amendment a Wisconsin statute which provided that any person under an obligation to pay child support could not marry without court permission. The author analyzes the legal history of the right to marry, concentrating on Loving v. Virginia, 388 U.S. 1 (1967). He concludes that Zablocki fails to resolve many of the questions raised in Loving.

Note, Child Support in Alaska: Time to Rethink Old Doctrine?, 7 U.C.L.A. Alaska L. Rev. 265 (1977-78).

In this article, the author explores the historical development of the "primary support" concept of child support allocation as a framework for discussing the modern mandate of sexual equality called for by Alaska's adoption of the equal rights amendment. The author discusses the possible implications of the Equal Rights Amendment for gender-based support laws through a survey of the Alaska court decisions and an analysis of other court decisions. The author concludes that, whether the Amendment is deemed to completely bar sex-based classifications or merely to call for strict scrutiny, gender-based support laws must be laid to rest.

Weiner, Child Support: The Double Standard, 6 Fla. St. U. L. Rev. 1317 (1978).

This article presents an historical account of the woman's role in child support and the changing models of the present day. The author discusses the old view, absolute duty of support on the father, the intermediate view, primary duty on the father, and, the modern view, presumptively equal support

obligation on both parents as illustrated by the Uniform Marriage and Divorce Act. She also discusses the effect of the equal protection clause on gender-based support obligations and the potential effect of the Equal Rights Amendment. She concludes that despite the evolution of sex neutral child support laws, their application is often colored by remaining sexual stereotypes. The author cites recent constitutional interpretations as a means of achieving sex-neutral applications of the law.

Weitzman & Dixon, Child Custody Awards: Empirical Patterns for Child Custody, Support, and Visitation After Divorce, 12 U.C.D.L. Rev. 473 (1979).

The primary focus of this article is on the child custody decision. As a part of their analysis, the authors examine the impact of no-fault divorce and elimination of maternal preference on child support orders. The authors note that the traditional legal standard, which charges fathers with the greater burden of support, typically did not result in fathers actually paying the larger share of support. In fact the reality was that the custodial mother bore an equal or greater share of post-divorce child support costs. The authors conclude that the no-fault divorce system had no statistically significant impact on this situation. In fact, because of inflation and a lowering of the age of majority to 18 years, the de facto burden on the custodial mother actually has become heavier, so that she usually provides more than half of actual child support. While the article does not directly discuss the impact on support orders of the repeal of the maternal preference standard, it does conclude that the underlying assumption that the mother assumes custody while the father assumes support has "continued strength." This suggests little change ahead in the support situation described above.

Weitzman, The Economics of Divorce: Social and Economic Consequences of Property, Alimony, and Child Support Awards, 28 U.C.L.A. L. Rev. 1181 (1981).

The primary objective of this article is "to provide data on the economic aspects of divorce," including the patterns of property, spousal and child support awards. The author's basic assertion is that, based on a study of California no-fault divorce procedures, the advent of no-fault divorce laws has shifted the focus of legal issues away from "moral" questions and toward economic needs and abilities. One section deals explicitly with child support. The author suggests three

standards for evaluating the adequacy of child support orders: comparing them with the actual costs of child-raising; assessing the award in terms of the husband's financial resources; and comparing the financial contributions of both spouses and their ability to pay. Tables and further text analyze the social and economic consequences for husbands, wives, and children of various methods of structuring awards. The effects on post-divorce standards of living are examined for various types of families, e.g., young couples as opposed to long-married couples. The problems of inflation and the high rate of non-compliance with support orders are given special treatment, as are the detrimental effects of a changing economic situation on father-child relationships. The article concludes that child support awards are generally insufficient, place a disproportionate burden on the partner with less earning capacity and contribute to the greater "economic casualties" wrought on women and children than on men by the entire divorce system.

White & Stone, A Study of Alimony and Child Support Rulings with Some Recommendations, 10 Fam. L. Q. 75 (1976).

This study presents an analysis of 532 sample spousal and/or child support cases decided in Orange County, Florida. The purpose of the study, done by an economics professor and a professor of business law, is "to ascertain whether or not the legal profession and individual judges adhered to any economic or financial principles in the use of judicial discretion in handing down child support and alimony decrees." The results of their analysis support the hypothesis that each judge had his own model or procedural emphasis to which that judge firmly adhered and that there was no consistency among the circuit judges even in their choice of explanatory variables. Urging the need for a uniform standard, the authors conclude that "the lack of consistent criteria for the determination of equity left the plaintiff's and respondent's equity dependent upon a random selection of the judge and how the criteria fitted into the judge's specific model or procedure."

Yee, What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court, 57 Den. L. J. 21 (1979).

This article analyzes the results of a study of child support orders and enforcement procedures in the Denver District Court during the period January 1977 to September 1978. Although Colorado law dictated that the father's ability

to pay and the needs of the children should be the only issues in establishing child support, the author concluded that many other factors entered into the decisions. The result in Denver was a wide, and seemingly unfair, variation in the amounts ordered. Comparing actual orders with "ideals" expressed in guidelines promulgated by one Denver judge, the author examined the impact of six factors on the establishment of orders, including, e.g., presence or absence of an attorney for the father, season of the year, and fixed expenses of the father. While no single factor explained the inconsistencies, the author concluded that ability to pay and children's needs were not determinative factors and that no systematic method of effective enforcement existed in Denver. The article includes extensive tables and supporting data.

B. SUPPORT GUIDELINES

Bair, How Much Temporary Support is Enough? 1 Fam. Advoc. 36 (Spring 1979).

This article sets forth suggestions for courts wishing to establish temporary support guidelines. Among the recommendations is that there be: a determination of the percentage of net income on which child support amounts will be based; a clear definition of net income; weight factors given to certain type of income such as bonuses, overtime, and commissions; adjustments where the custodial parent earns an income; and a set of rules governing usage of guidelines. The author also states that once family net income exceeds $2,000/month these guidelines are less useful due to tax and other considerations. The article includes sample guidelines/tables from Broward County (Fla.), San Francisco, and Albuquerque, as well as the ABA Family Law Section's recommendations.

Case Note, Smith v. Smith: No Magic Formula for Determining Child Support Payments of the Noncustodial Parent, 18 Willamette L. J. 353 (1982).

This note critiques the Oregon Supreme Court's adoption, in Smith v. Smith, 290 Or. 675, 626 P.2d 342 (1981), of a formula for determining proportional shares of child support. The formula requires consideration of both parents' income in ascertaining the amount to be paid by the noncustodial parent. Though the author lauds the court's rejection of continued reliance on a method based solely on the noncustodial parent's income, she cautions that the formula will fail to achieve the desired uniformity among child support orders as long as courts are required to evaluate subjectively the "needs of the children" and to apply certain modifying factors at their discretion in order to complete the calculation.

Ed. note: This case is one of the few times the highest court of a state has articulated a specific child support formula. In North Carolina, an appellate court recommended the use of a formula considering parents' resources and childrens' needs. Hamilton v. Hamilton, 57 N.C. App. 182, 290 S.E.2d 780 (1982). Another example is the "Melson formula," announced by Judge Melson in the case of I.B. v. R.S.W.B., A-3000, (Del. Fam. Ct. Nov. 10, 1977), and later adopted by court rule.

Comment, Calculation of Child Support in Pennsylvania, 81 Dick. L. Rev. 793 (1977).

This comment is a general survey of the Pennsylvania courts' implementation of vague statutory standards in determining child support awards. The author illustrates how this vagueness has led to inconsistency and uncertainty in litigation. Some examples of the factors discussed and criticized are: the need of the child; the attainment of majority; the parent's income, including future earning capacity; the effect of second families; and, the implementation of sex neutral obligations. From a discussion of the varying standards, the author leads to a presentation of an econometric model as a means of removing the calculation of support awards from the uncertainty of a trial judge's discretion.

P. Eden, Estimating Child and Spousal Support: Economic Guidelines for Judges and Attorneys (1977).

The intention of this author, an economist, is to present economic guidelines based on a study of statistical data to aid judges and attorneys in the allocation of family income at divorce. The author provides an example of how an economist would testify to aid in the determination of child and spousal support in the divorce case of a higher income family. He also develops economic guidelines, accompanied by numerous forms and with instruction tables, for use in cases of divorce in lower or middle income families who cannot afford to hire an economist. Recognizing that child support requirements change over time, he proposes guidelines for use in constructing support orders to anticipate these changes in advance and thus to avoid future litigation where possible. He proposes that the economic suffering resulting from divorce should be shared equally by the post-divorce households.

Franks, Support Calculations Revisited, 19 Tenn. B. J. 13 (1983).

In this article, the author proposes a formula for calculating support. He asserts it accurately reflects the prevailing view that both parents must contribute to the support of their children according to their respective abilities to pay. The author provides a detailed explanation of the calculation of support through this formula.

Franks, Summing Up Child Support: A New Formula, 7 District Law. 28 (July/August 1983).

The author criticizes existing child support tables as being too rigid, unable to account for the needs of a particular child, the income of the custodian, and the amount of time the particular child spends with each parent. To address these shortcomings, he proposes two child support formulas, one for the custodial and one for the noncustodial parent. The variables in each formula include: total financial needs of the child or children, and the annual net income or earning ability of the parents. These formulas attempt to assure that each parent's support of the child is that fraction of the needs of the child that his or her income represents in comparison to the combined incomes of both parents.

Ed. note: This article is largely based on an earlier version, How to Calculate Child Support, 86 Case & Comment 3 (Jan./Feb. 1981). A rebuttal to the District Lawyers article is also annotated in this section. Polikoff, The Inequity of Maurice Franks Custody Formula, 8 District Law. 14 (Nov./Dec. 1983).

Levin, The Use (and Abuse) of Child Support Schedules in Illinois, 71 Ill. B. J. 314 (1983).

In this article, the author cautions against misuse of support schedules in the determination of child support awards. He notes that such schedules can promote results that are more consistent for similar cases and can be a useful tool in encouraging reasonable settlement, but argues that in the final analysis a support schedule is only a benchmark which should never be referred to without consideration of all relevant factors as dictated by law in the determination of the award.

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

This study, prepared under a grant from the Office of Child Support Enforcement, includes a thorough review of the literature on child support guidelines, inflation factors in child support awards, the costs of child rearing and state statutory standards for establishment of support. It contains a selected

bibliography on these issues, including a number of unpublished papers, and excerpts of state legal provisions relating to child support awards. The theoretical basis for child support standards is discussed. A number of issues, including a living allowance for the obligor,; treatment of custodial parent income, income of a current spouse, and earning potential; order of priority of dependents from first and later families; the effect of custody arrangements; and the value of child care services are discussed briefly. The various studies of the cost of raising a child are described. The study includes a section on implications for further research.

Polikoff, The Inequity of the Maurice Franks Custody Formula, 8 District Law. 14 (Nov./Dec. 1983).

This article is a rebuttal to Franks, Summing Up Child Support: A New Formula (annotated in this section). The author criticizes the formula as being "based on the myth that the current system of child support awards is unfair to men." She lists studies and surveys to rebut this belief. Instead, she claims that women and children are impoverished by the current child support awards. The formula itself she criticizes as understating the needs of the child, and therefore the child support payments. Rather than a cost-sharing approach of the Frank formula, she endorses the income -- or resource -- sharing approach (equalization principle). Under this, "the amount of child support should place both households in an equal position relative to the applicable poverty level."

M. Sauber and E. Taittonen, Guide for Determining the Ability of an Absent Parent to Pay Child Support (Research and Program Planning Information Department, Community Council of Greater New York, 1977) (Office of Child Support Enforcement, U.S. Dep't of Health, Educ., and Welf., (CSE)-77-0001).

Title IV-D requires the development of procedures to determine the ability of a parent to provide support and to establish the amount of the child support obligation. In their child support enforcement programs, states are required by federal regulation (45 C.F.R. 302.53) to devise a formula for determining the amount of the child support obligation. The purpose of this Guide is to offer a set of procedures for calculating the specific support obligation to be required from the absent parent. The premise of the Guide is that the absent parent, and that parent's present family should be permitted to

retain sufficient funds to maintain a minimum adequate standard of living. The Guide uses the term Family Maintenance Standard to represent this minimum standard and recommends basing such a standard on the lower level standard developed by the Bureau of Labor Statistics. Under the formula presented in the Guide, the ability to pay child support is represented by the margin or excess funds available to the absent parent after making allowances for the appropriate Family Maintenance Standard and deductions from income over which the parent has no control, such as tax withholdings and deductions for demonstrated special needs, such as medical expenses. The authors have included a set of administrative guidelines for use with this method of determining child support amounts. The appendix provides numerous tables with data on the Family Maintenance Standard. In addition, a model computation form is presented and calculations of the funds available for child support are demonstrated in four case samples.

C. AUTOMATIC MODIFIERS

Comment, Escalation Clauses in Washington Child Support Awards, 55 Wash. L. Rev. 405 (1980).

This comment discusses the use of escalator clauses in Washington child support awards as an alternative to the traditional fixed amount awards which are subject to court modification. The author argues that an escalator clause, which is any provision in a support decree that causes the amount awarded to increase over time, is a more efficient and equitable way to guarantee that a child's needs are met over an extended period of time. Escalator clauses will automatically adjust an award according to the changes in the absent parent's income, thus avoiding the costs and burden associated with petitioning the courts for a modification hearing. In addition, the author examines the different types of escalation clauses and discusses their advantages and disadvantages. This comment contends that the policies and statutory provision of Washington State that govern the making and modifying of child support awards do not bar the use of escalator clauses.

Ed. note: In 1983 the Washington Supreme Court upheld automatic child support modifiers, finding they avoid costly and traumatic modification proceedings. In so holding the court permitted a modifier based on the obligor's income, providing the judge considers statutory criteria and sets a maximum dollar amount related to the children's need. Edwards v. Edwards, 99 Wash. 2d 913, 665 P.2d 883 (1983).

Eden, How Inflation Flaunts the Court's Orders, 1 Fam. Advoc. 2 (Spring 1979)

This article examines the effect of such factors as inflation, the growth of a child, and wage increases on the buying power of the original child support order. The author argues that these economic changes will inevitably erode the value of a fixed support decree, thus undermining the court's interest in ensuring that support of the child remains constant and undiminished. To avoid repeated support modification hearings to amend the original order, the author recommends that family attorneys include clauses in support orders that will automatically increase the award as inflation, or the noncustodial parent's income, increases.

Note, Inflation-Proof Child Support Decrees: Trajectory to a Polestar, 66 Iowa L. Rev. 131 (1980).

This note focuses on the effect of inflation on the purchasing power of amounts received as child support. The author argues that this problem can be alleviated by reallocating the risk of inflation to the noncustodial parent through the use of a cost of living adjustment provision in the original order. The author concludes by proposing that a court-initiated cost of living adjustment provision tied to changes in the National Consumer Price Index and limited by actual increases in the noncustodial parent's income is a fair means of ensuring that both parents share the risk of devalued child support dollars.

D. ADDITIONAL RESOURCES

In addition to the materials listed above, the following secondary sources may be consulted for information on this topic:

10 C.J.S. Bastards §§18-20 (1938).

10 Am. Jur. 2d Bastards §§67-73 (1963).

24 Am. Jur 2d Divorce and Separation §§837-843, 854-861 (1966).

59 Am. Jur. 2d Parent and Child §§54-81 (1971).

15 Am. Jur. Proof of Facts Child Custody §§21-24 (1964).

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

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

Mother's Duty to Pay Child Support, 98 A.L.R. 3d 1149 (1980).

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).

Father's Liability for Support of Child Furnished After Divorce Decree Which Awarded Custody to Mother But Made No Provision for Support, 91 A.L.R. 3d 530 (1979).

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).

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

Wife's Possession of Independent Means as Affecting Her Right to Child Support Pendente Lite, 60 A.L.R. 3d 832 (1974).

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

Spouse's Acceptance of Payments Under Alimony or Property Settlement or Child Support Provisions of Divorce Judgment as Precluding Appeal Therefrom , 29 A.L.R. 3d 1184 (1970).

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

Adequacy or Excessiveness of Amount of Money Granted as Combined Award of Alimony and Child Support, 2 A.L.R 3d 537 (1965)

Adequacy of Amount of Money Awarded as Child Support, 1 A.L.R. 3d 324 (1965).

Excessiveness of Amount of Money Awarded as Child Support, 1 A.L.R. 3d 382 (1965).

SECTION III.
ESTABLISHMENT OF PATERNITY

A primary goal of the IV-D program is to establish paternity for children when this is necessary to assert their right to child support. This a particularly critical function because studies have shown that never-married mothers are least likely to be receiving child support on behalf of their minor children. Over the last decade, there have been significant constitutional advances in the rights of illegitimate children. Although these broad constitutional issues go beyond the scope of this bibliography, two excellent references are Stenger, Expanding Constitutional Rights of Illegitimate Children, 1968-1980, 19 J. Fam. L. 407 (1980-81) and Clark, Constitutional Protection of the Illegitimate Child? 12 U.C.D. L. Rev. 383 (1979). As a result of the IV-D program activity in this area and the expanding legal rights of illegitimate children, significant developments in the law relating to proof of paternity have taken place in recent years. The articles in this section discuss these recent developments. They include articles on: The Uniform Parentage Act, the use of scientific evidence in proving paternity, paternity statutes of limitation, and various defenses to paternity actions.

At common law illegitimate children were not entitled to paternal support. Today the right of illegitimate children to support from their fathers is recognized in all states. This right, however, is dependent upon proof of paternity. Each state now provides a judicial procedure for determination of paternity. In addition, depending upon the state, paternity may be recognized by other means. These include: formal acknowledgement by the natural father, conduct tending to show the father's voluntary acceptance of the child, or the parents' subsequent marriage.

The Uniform Parentage Act (UPA), adopted by The National Conference of Commissioners on Uniform State Laws in 1973 and the American Bar Association in 1974, declares as its primary principle that the parent-child relationship extends to "every child and ... parent regardless of the marital status of the parents." Thus, under this act no differences between legitimate and illegitimate children would be recognized once the father-child relationship has been established. The UPA provides several rebuttable presumptions which may be used to prove paternity. In most instances, no statute of limitations will bar a proceeding under the act and a child will have standing to sue and the right to an independent representative. The act further specifies permissible evidence, including blood test results to show the statistical probability of parenthood.

The use of scientific evidence or blood tests has long been permitted to disprove paternity. Early efforts to use such tests to prove paternity were subject to various constitutional questions including attacks on the basis of due process, privacy, self-incrimination, and whether blood tests were unconstitutional searches and seizures. More significantly, courts were disinclined to use test results to prove paternity because they were deemed unreliable. As the science of parentage testing has become more precise, the probability that the non-excluded person is the actual father is now generally well over 90 percent. As early as 1976, the AMA-ABA, in their Joint Guidelines Related to Serological Testing, had recommended "likelihood of paternity" be admissible evidence. While this was novel in 1976, today more and more states are admitting blood tests to prove paternity. By 1983, such tests, by statute or case law were admissible to prove paternity in a majority of states. The articles and books in this section, in addition to discussing the issue of using tests to establish parentage, and how such tests are introduced into evidence, describe the many different parentage tests, e.g., human leukocyte antigen (HLA or white blood cell), RBC antigen, electrophoresis, serum enzymes and serum proteins.

The OCSE is currently funding a project which is developing acceptable laboratory standards for procedures to perform genetic parentage testing and the certification of laboratories which wish to conduct IV-D related parentage tests. OCSE is also funding two projects which are conducting technology assessments of the paternity establishment process and developing cost-benefit models.

Several articles in this section address statutes of limitations in paternity laws. Prior to 1982, such limitations periods ranged from one year after the child's birth to no limitations at all. Short periods were often used on the grounds of preventing stale or fraudulent claims. In 1982, the Supreme Court held a Texas one year limitations period unconstitutional in Mills v. Habluetzel, 456 U.S. 91; one year later the Court struck down Tennessee's two year time period in Pickett v. Brown, 103 S. Ct. 2199 (1983). Both cases rested on equal protection grounds, holding that such short time periods merely create an illusion of equality with legitimate children, and were not substantially related to the state's interest in preventing stale or fraudulent claims. Indeed, in Pickett the Court recognized that more accurate blood testing alleviated many of the staleness concerns.

While the Supreme Court did not specify in either case what would be an acceptable statute of limitations, state legislatures and courts have followed up by generally applying

more generous time periods. For example, following Mills, the Texas legislature enacted a 20 year statue of limitations period. Under currently proposed federal legislation states would be required to permit establishment of paternity until at least a child's 18th birthday, although it is unclear as of this date whether this provision will be in the final federal legislation.

A. PROOF OF PATERNITY

N. Bryant, Disputed Paternity: The Value and Application of Blood Tests (1979).

This book is designed for use by those in both the medical and legal professions. For lawyers, the author's aim is to provide sufficient material on the use of blood testing to enable them to adequately defend a client in a disputed paternity case. The author presents a basic discussion of the principles of heredity, explains the various blood group systems, including a description of the test procedures and a discussion of what the results reveal with respect to the likelihood of paternity, and reviews a variety of legal issues that may arise in paternity testing. The legal aspects addressed include the possibility of medical malpractice suits against the professional performing the test, proper identificaton of all the parties involved, consent forms, judicial notice of test procedures, the appearance of the pathologist as an expert witness, and confidentiality.

Center for Health Services Research, University of Southern California, Paternity Determination Techniques and Procedures to Establish the Paternity of Children Born Out of Wedlock (Office of Child Support Enforcement, Dep't of Health, Educ., and Welf., 1977).

This study examines paternity determination procedures with a focus on three main topics: (1) paternity case processing systems, (2) paternity verification techniques, and (3) the role of uniform acts. The discussion of processing systems identifies the critical steps leading up to adjudication and presents flow charts illustrating the procedures in four representative systems. The chapter on verification techniques discusses the use of blood and polygraph testing and their judicial acceptance. Several tables are included that present the results of a survey of the judiciary on their willingness to admit these test results into evidence. The final section describes two uniform acts relating to the establishment of paternity. In addition to encouraging more states to adopt a uniform act in this area, the study also makes recommendations such as increasing the speed with which a paternity case is pursued; using blood testing for exclusion, inclusion and probability of paternity as an integral part of all paternity determinations; and providing for the admissibility of such blood test evidence in state law.

Center for Policy Research, Using Blood Tests to Establish Paternity (Office of Child Support Enforcement, U.S. Dep't of Health, Educ., & Welf. 1977).

Title IV-D of the Social Security Act requires the establishment of paternity in connection with AFDC payments. Because this requirement will likely lead to an increase in the number of paternity tests conducted each year, the authors of this study sought to evaluate the paternity-determination capabilities of laboratories in the United States. The authors' survey revealed a wide variation among the practices and procedures of the laboratories involved in paternity testing. This report lists the small number of laboratories found to be qualified. Based on the results of their study, the authors present a series of recommendations for improving the use of blood testing to determine paternity. These suggestions include: authorizing a small number of high-quality laboratories to handle all paternity testing under Title IV-D; permitting the use of blood test evidence for establishing both the probability of non-paternity and the probability of paternity; and utilizing in all states a standard for paternity testing capability based upon the recommendations of the AMA and the ABA.

Comment, Constitutional Law - The Right of Indigent Putative Fathers to State Paid Blood Tests - Little v. Streater, 101 S. Ct. 2202 (1981), 16 Suffolk U. L. Rev. 143 (1982).

This case comment analyzes the holding in Little v. Streater, 452 U.S.1 (1981), which invalidated on due process grounds a Connecticut statute requiring an indigent paternity defendant to bear the cost of blood-group testing. The comment criticizes the limitation of this holding to state-initiated actions for recovery of public child support payments, and argues that, because of the determinative nature of blood test results, due process requires public funding of such tests in any paternity proceeding involving an indigent defendant.

Comment, Paternity Testing With the Human Leukocyte Antigen System: A Medicological Breakthrough, 20 Santa Clara L. Rev. 511 (1980).

This comment gives an overview of the relevant state and federal statutes that govern paternity proceedings and it reviews the mechanics of the HLA testing system. The comment focuses on the admissibility and evidentiary weight of blood

test results that fail to exclude a putative father. The author concludes by urging the California legislature and judiciary to modify the Evidence Code in order to allow HLA paternity testing to be admitted as scientific evidence of paternity.

Ed. note: California courts have accepted HLA tests; Cramer v. Morrison, 88 Cal. App. 3d 873, 153 Cal. Rptr. 865 (1979). The legislature has now amended Cal. Evidentiary Code §621 to admit blood tests as proof of paternity.

Comment, Privity, Preclusion and the Parent-Child Relationship, B.Y.U. L. Rev. 612 (1977).

This comment discusses preclusion, the modern term encompassing the doctrines of res judicata and collateral estoppel, as a means of preventing relitigation of a finally determined claim, and privity, the doctrine of stating that a non-party whose interests are identical to a party who has had his day in court, may not be deprived of relitigating his claim. The author analyzes these doctrines in the framework of paternity and child support actions. He illustrates how the judicial practice of refusing to apply preclusion on the grounds of privity to the parent-child relationship leads to harassing litigation and inconsistent judgments. Adoption of the Uniform Parentage Act may remedy this problem.

Comment, Requiring an AFDC Applicant to Name Her Child's Father: Are the Rights of the Putative Fathers Being Protected?, 23 S.D.L. Rev. 379 (1978).

This comment discusses the rights of the putative father in a paternity action in light of the strong pressure exerted on mothers receiving AFDC assistance to name the child's father. Because of this pressure, the author believes the named father may not always be the correct one. He describes what measures AFDC mandates at the state level and the nature of a paternity proceeding in South Dakota. He cites: (1) judge and jury prejudice; (2) misapplication of the burden of proof; and, (3) the use of non-corroborated unscientific evidence as tipping the scales of justice against the putative father.

Comment, The Use of Blood Tests in Actions to Determine Paternity, 16 Wake Forest L. Rev. 591 (1980).

This comment examines paternity actions and the need for objective evidence, particularly the use of blood tests, as a method by which the putative father can be excluded. The author also gives an overview of the history of blood testing to calculate the likelihood of paternity and the problems that type of testing entails. The author believes that HLA blood tests provide the courtroom with much-needed objective evidence on the volatile issue of paternity.

Comment, Use of Supervisory Power to Order Counsel for Indigent Paternity Defendants: Hepfel v. Bashaw, 279 N.W.2d 342 (Minn. 1979), 64 Minn. L. Rev. 848 (1980).

This comment discusses the Minnesota Supreme Court's decision in Hepfel v. Bashaw, in which the court, sitting en banc, affirmed its earlier decision, holding that as an exercise of its supervisory power a court may provide counsel for an indigent paternity defendant when the state has already supplied counsel for the plaintiff. The author suggests that the court's exercise of its supervisory powers was done to establish a general standard of procedural fairness for situations like paternity actions in which safeguards have proved inadequate. In conclusion, the author supports the court's decision in Hepfel, and he recommends that the Minnesota legislature provide statutory protection for indigent fathers faced with a paternity suit by making counsel available to them by statute.

Comment, Washington Parentage Act: A Step Forward for Children's Rights, 12 Gonz. L. Rev. 455 (1977).

This comment salutes Washington's adoption of its version of the Uniform Parentage Act [Wash. Rev. Code Ann. §§26.26010-.905], the purpose of which is to give full equality to illegitimate children and to recognize their right to parental support. The central theme of the act is to allow for the identification of fathers in a manner that maximizes the rights of the child. This is accomplished through implementation of limited arrest procedures (e.g. where there is reasonable cause to believe defendant is the father and will flee the state), allowing a broad range of persons to initiate the action, amending Washington's long arm statute, setting forth a list of presumptions of paternity, allowing the courts

to rule on issues other than paternity bearing on the child's welfare, such as reimbursements of support, providing for costs and attorneys' fees, and, permitting use of all relevant evidence. However, the author concludes that further fine tuning of the act is needed.

Cowherd, Rights of Illegitimate Children in Missouri, 40 Mo. L. Rev. 631 (1975).

This comment examines the actions presently available in Missouri against the father of an illegitimate child. The author divides the actions into two categories: those which accrue during the father's lifetime and those which arise upon his death against his estate. Each cause of action is examined separately so that the requirements of and obstacles to the use of the action is discussed in depth. The author concludes that while the potential actions discussed do not provide an illegitimate child in Missouri true equality with a legitimate child, the trend in Missouri and other states is toward requiring the father of an illegitimate child to be more responsible for the necessities of the child.

Ed. note: Missouri appears to be solicitous to the rights of illegitimate children. It is one of the few states that make clear by law that paternity may be established by "clear and convincing proof" after the father's death. Mo. Ann. Stat. §474.060(2) (Vernon Supp. 1983). For a recent federal court of appeals case on this subject see Handley v. Schweiker, 667 F.2d 999 (11th Cir. 1983).

Ellman & Kaye, Probabilities and Proof: Can HLA and Blood Group Testing Prove Paternity?, 54 N.Y.U. L. Rev. 1131 (1979).

This article is a critical analysis of the use of probability calculations in paternity cases. Though the authors believe that the statistical information derived from HLA testing should be admissible in paternity cases, they do not believe that any expert can correctly testify to any quantified probability that the defendant, in a particular case, is indeed the father. In conclusion, the authors propose more suitable alternatives to the current methods being used to prove paternity.

Havighurst, Settlement of Paternity Claims, 1976 Ariz. St. L. J. 461.

This article discusses five provisions that frequently appear in paternity statutes which authorize judicial approval of paternity settlements. More specifically, the author examines the important variations that are revealed in the legislative and judicial treatment of the following matters: (1) limitations upon judicially-approved agreements with respect to the party who is to make the payments, (2) necessity of filing suit on the claim of paternity, (3) time for obtaining approval, (4) effect of an approved agreement in barring subsequent suits against the alleged father, and (5) enforceability of an unapproved agreement. The author concludes by urging the passage of the Uniform Parentage Act.

Herzog, The HLA Test: New Method for Resolving Disputed Paternity Cases, 55 N.Y. St. B. J. 34 (May 1983).

This article examines the 1981 amendments to the New York Family Court Act which permits the admission into evidence of HLA test results to affirmatively prove paternity. The author briefly discusses the arguments favoring and opposing affirmative use of the HLA test. The statutory provisions [N.Y. Fam. Ct. Act §§418, 532 (McKinney Supp. 1981-82)] are analyzed and the author gives special mention to the requirement that the cost of the HLA test and other blood tests always be borne by the respondent if he is financially capable. Because affirmative use of HLA tests may be injurious to the respondent's pecuniary interests, unlike other blood tests which are only admissible to show exclusion and thus can only benefit the putative father, the author argues that these gender-based payment provisions may be subject to a constitutional attack on equal protection grounds. The article also describes the procedures for admitting blood test evidence; in the absence of specific statutory procedures he avers the business records exception to hearsay is the proper course of action.

Inclusion Probabilities In Parentage Testing (R. H. Walker, M.D. ed., American Association of Blood Banks 1983).

This book, prepared under a grant from the Office of Child Support Enforcement, is the result of a 1982 conference hosted by the Committee on Parentage Testing of the American Association of Blood Banks. A major objective of the

conference was the development of guidelines for parentage testing to be used by laboratories in the United States. The format for achieving this goal was the presentation of papers on selected, relevant topics and the use of a test case, provided to participants in advance, to supply a focus for comparison. The book consists of the proceedings of the conference, with three supplementary articles that were not a product of the conference, as well as a glossary of terms. The 53 articles included in this book are categorized as follows: concerns and issues; concepts, logic and methods; legal topics; variables, errors, power of exclusion; extent of testing; expressions of likelihood; medical-legal applications in England, Scandinavia and Europe; special problems; HLA reporting; paternity test analysis; and conclusions and recommendations.

Jaffee, Comment on the Judicial Use of HLA Paternity Test Results and Other Statistical Evidence: A Response to Teraski, 17. J. Fam. L. 457 (1979).

This article is a comment on a recent article in the same journal by Dr. Paul I. Teraski on the reliability of HLA paternity testing. The author agrees with Dr. Teraski that HLA testing is far superior to ABO testing in determining the nonpaternity of a putative father. However, the author does question whether HLA testing can be legally relevant independent of evidence that a certain man fathered a certain child. The author favors the use of HLA blood testing in limited circumstances where the test result is one of many factors supporting an expert's opinion on paternity. But he argues against the admission of HLA test results when it is the principal basis for proof of paternity.

R. Keith, Resolution of Paternity disputes By Analysis of the Blood, 8 Fam. L. Rep. (BNA) 4001 (Nov. 24, 1981).

This monograph discusses the use of blood testing in the determination of paternity. The author emphasizes that blood test evidence both enhances the accuracy of paternity determinations and reduces the likelihood that fraudulent claims will be asserted. Appended to the monograph are sample instructions for submitting blood specimen for paternity exclusion studies from a Minnesota blood bank and a form for a stipulation regarding blood tests from an Iowa district court.

Knisely & Spivey, Paternity Determinations in Texas: Five Years Under Chapter 13 of the Texas Family Code, 20 S. Tex. L. J. 405 (1981).

This article provides a general survey of Texas paternity law, with particular focus on Chapter 13 of the Texas Family Code and the case law which has interpreted that statute. The author concludes that the enactment of Chapter 13 has greatly enhanced the cause of illegitimate children in Texas.

S. Kolko, Admissibility of HLA Test Results to Determine Paternity, 9 Fam. L. Rep (BNA) 4009 (Feb, 15, 1983).

This monograph examines the status of the HLA test's admissibility into evidence in the 50 states and D.C. as of January, 1983. The author analyzes the blood testing statutes of each state and also provides several tables listing the statutes according to their evidentiary usage. The tables graphically demonstrate the overwhelming trend toward the use of permitting blood tests as affirmative proof of paternity.

Mettler, The Irrebuttable Presumption of California Code Section 621, 12 U.C.D. L. Rev. 452 (1979).

This article examines section 621 of the California Evidence Code which establishes an irrebuttable presumption of paternity in certain circumstances. The author submits that as a consequence of section 621's irrebuttable presumption, a child's natural father, when he is not the husband, cannot establish paternity. He is, therefore, prevented from establishing a legal father-child relationship which is the basis for familial rights such as custody and visitation. The author believes this presumption may violate his due process rights as well as violate the equal protection clause. In conclusion, the author recommends the abolition of section 621 and the initiation of the use of blood testing to prove paternity.

Ed. note: §621 has been amended and now includes a subsection which allows for blood testing to prove paternity.

Note, Bastards-Limitations-Uniform Parentage Act Held to be Applicable to Action Commenced After the Effective Date of the Act, to Establish the Legal Paternity of a Child Born Prior to the Effective Date of this Act, 55 N.D.L. Rev. 86 (1979).

This note examines the North Dakota Supreme Court's decision in In the Interest of W.M.V., 268 N.W.2d 781 (N.D. 1978) in which the court held that the Uniform Parentage Act [N.D. Cent. Code §§14-17-01 - 14-17-26 (Supp. 1977)] is retroactive in operation and was the applicable law to use in determining the legal paternity of W.M.V., although W.M.V. was born prior to the passage of the act. The author believes the North Dakota legislature, by enacting the Uniform Parentage Act, has recognized the expanded rights of the illegitimate child by making it retroactive in operation and by creating an independent cause of action on behalf of the child.

Note, Blood Test Evidence in Disputed Paternity Cases: Unjustified Adherence to the Exclusionary Rule, 59 Wash. U. L. Q. 977 (1981).

This note argues that rules rendering nonexclusionary blood test evidence inadmissible have become obsolete due to the accuracy of HLA and enzyme-protein testing. Because blood test evidence can now exclude a nonfather in more than 99% of all cases, the author asserts that evidence of failure to exclude is highly probative on the issue of paternity. He also argues that the jury should be allowed to consider the probability of paternity, the calculation of which provides the best explanation for failure of the tests to exclude the accused putative father. To introduce his thesis, the author provides explanations of the blood tests used in paternity testing: red cell antigen, HLA, and enzyme-protein. The article also briefly discusses the Uniform Act on Paternity and the Uniform Act on Blood Tests to Determine Paternity, both of which would allow the judge discretion in the admission of nonexclusionary test evidence.

Note, "Children Born of the Marriage" Res Judicata Effect on Later Support Proceedings, 45 Mo. L. Rev. 307 (1980).

This note discusses the effects of the Missouri Court of Appeals decision in LAJ v. CTJ, 57 S.W.2d 151 (1979). The court held that the husband who had been served only by publication in the earlier divorce action, and had no opportunity to litigate the issue of paternity, was not bound

by the recital in the divorce decree that the children were "born of the marriage," and he could defend himself in the subsequent support hearing by denying the parentage of the child. The author concludes that this decision clearly establishes a father, either presumptive or putative, must have an opportunity to litigate the paternity of the child, and any paternity proceeding to be res judicata, must be based on personal service.

Note, Clarkston v. Bridge: Paternity Determination in Oregon URESA Proceedings, 12 Williamette L. J. 643 (1976).

This article examines Clarkston v. Bridge, 273 Or. 68, 539 P.2d 1094 (1975), which held that paternity can be determined in interstate support enforcement proceedings under URESA. The author presents the facts of the case and the background of URESA leading to its application in the Clarkston case. The article analyzes the court's holding and its implications for future interstate paternity actions. The article concludes that the Clarkston decision, balancing the respondent's interest in full procedural safeguards, against the URESA goal of availability of simplified, low-cost, interstate enforcement actions, will result in unequal treatment for putative fathers responding to out-of-state petitioners and that the Oregon putative father answering an interstate URESA complaint faces very real procedural uncertainties in this regard.

Ed. note: The Revised Uniform Enforcement of Support Act permits responding states to litigate paternity under certain conditions, including that both parties be present unless "the case indicates that the presence of either or both parties is not necessary." Revised Uniform Enforcement of Support Act §27.

Note, Constitutional Law - In Paternity Proceedings In Which The State Appears as a Party or On Behalf of the Mother or Child, Indigent Defendants Are Constitutionally Entitled to Appointed Counsel, Salas v. Contez, 24 Cal. 3d 22, 593 P.2d 226, 154 Cal. Rptr. 529 (1979), cert. denied, 48 U.S.L.W. 3237 (1979), 18 J. Fam. L. 415 (1980).

This note analyzes the California Supreme Court's decision in Salas v. Contez, in which the court concluded that the state owes a duty to the child to ensure an accurate determination of parentage be made and that appointment of counsel for the defendant would serve that interest. The author believes that the court's decision in Salas may indicate that it will find a right to counsel in other civil cases.

Note, Louisiana's Presumption of Paternity: The Bastardized Issue, 40 La. L. Rev. 1024 (1980).

This note criticizes the Louisiana Supreme Court's decision in Tenneco Oil Co. v. Houston, 372 So.2d 1194 (1979), in which the court held that one of the parties in the suit could not claim ownership of oil and gas royalties because that party was an illegitimate child. The author contends that the court's decision is a radical departure from prior Louisiana law on the issue of legitimacy. Louisiana law presumes that all children born during a marriage are the offspring of the married couple. Though the children here were born while their parents were married, the court found that their birth was the product of an adulterous relationship. The author concludes that this decision will not have lasting value, since it is in conflict with prior decisions concerning paternity and legitimacy.

Note, Paternity - The Right of An Indigent Putative Father to Counsel in a Paternity Action, Hepfel v. Bashaw, 279 N.W.2d 342 (Minn. 1979), 6 Wm. Mitchell L. Rev. 208 (1980).

This note discusses the case of Hepfel v. Bashaw, in which the Minnesota Supreme Court held that an indigent defendant in a paternity suit is, in certain circumstances, entitled to court appointed counsel. The author argues that the court's decision provides a putative father with additional safeguards in a proceeding that is often lacking in minimal due process guarantees. The author believes the decision will prompt the Minnesota legislature to adopt the Uniform Parentage Act which contains a provision requiring the court to provide an indigent party with counsel.

Note, The Legal Implications of HLA Testing for Paternity, 16 J. Fam. L. 537 (1977-78).

This note introduces a subsequent article on the scientific basis for HLA blood testing, Terasaki, Resolution by HLA Testing of 1000 Paternity Cases Not Excluded by ABO Testing, 16 J. Fam. L. 543 (1977-78). The purpose of the introduction is to discuss the admissibility of blood tests in paternity actions under court decisions, the Uniform Act on Blood Tests to Determine Paternity, and the AMA-ABA Guidelines. The author notes that the increased scientific accuracy of HLA blood tests reported in the Terasaki article may be the means for making paternity actions more respectable.

Note, Use of Human Leukocyte Antigen Test Results to Establish Paternity, 14 Ind. L. Rev. 831 (1981).

This note focuses on the growing acceptance of HLA tissue typing as an effective means of establishing paternity. The 1980 amendment to the Indiana code, which makes HLA test results admissible, is used as a basis for this discussion. As this statute does not specify whether the tests may be used to demonstrate paternity, in addition to non-paternity, the author notes that it may open the door for the use of these tests as positive proof of parentage. The Indiana statute is compared with several uniform parentage acts. An analysis is also given of the arguments favoring and disfavoring the use of HLA tests as affirmative evidence. The author concludes that, with proper safeguards such as advance notice to the adversary and cautionary jury instructions, HLA test results should be admissible as affirmative evidence of paternity.

Peterson, A Few Things You Should Know About Paternity Tests (But Were Afraid to Ask), 22 Santa Clara L. Rev. 667 (1982).

This comprehensive article aims to familiarize attorneys involved in paternity cases with genetic tests and probability calculations used in paternity testing. The author provides basic background information on genetics, describes the various tests (red cell antigens, red cell enzymes, serum proteins, and HLA), and explains and illustrates various statistical calculations. The author also discusses the use of statistical information by courts in paternity cases.

Phannenstill, Usefulness of Polygraph Results in Paternity Investigations When Used in Conjunction with Exclusionary Blood Tests and a 60-Day Conception Period, 21 J. Fam. L. 69 (1982).

This article reports the results of a study of the usefulness of polygraph examinations when used in conjunction with exclusionary blood tests in paternity proceedings. The author asserts that the data presented supports the hypothesis that the use of exclusionary blood tests, administered independently and prior to a complainant's polygraph examination, yields a significantly greater number of cases in which polygraphs can assist the court in establishing paternity. He notes, however, that the increasing use of HLA tissue typing will likely reduce the role of the polygraph in paternity proceedings.

Recent Cases, Parent and Child-Support of Dependents - Illegitimacy - When a Woman Pregnant by One Man Contracts Marriage with Another Who Knows Her Condition, The Husband Consents to Standing in Loco Parentis and to Being Father to the Child and the Biological Father Cannot be Held for Support of the Child - Hall v. Rosen, 50 Ohio St. 2d 135, 363 N.E.2d 725 (1977), 46 U. Cin. L. Rev. 1010 (1978).

The Supreme Court of Ohio in Hall v. Rosen, held that when a woman, pregnant by one man, marries another, who knows her condition, the husband consents to standing in loco parentis and to being father to the child, thus the biological father cannot be held for support. This holding is based on the century old rule of Miller v. Anderson, 43 Ohio St. 47313 N.E. 605 (1885), peculiar only to Ohio and Iowa. The author traces the Ohio case law in the area from Miller to Hall and criticizes it as inequitable, anachronistic, and possibly unconstitutional.

Reisner & Bolk, A Layman's Guide to the Use of Blood Group Analysis in Paternity Testing, 20 J. Fam. L. 657 (1982).

This overview of the use of blood group analysis includes discussions of the major blood group systems used for paternity testing: red cell, HLA, serum proteins, and red cell enzymes. The author also explains terminology necessary to understand and evaluate statistical paternity testing data. A brief summary of basic genetic principles is also given.

Sass, The Defense of Multiple Access (Exceptio Plurium Concubentioum) in Paternity Suits: A Comparative Analysis, 51 Tul. L. Rev. 469 (1977).

This article analyzes how foreign and U.S. laws have treated, in paternity actions, the defense that the mother had multiple sexual relations at the time of conception. In most U.S. jurisdictions, the author concludes that multiple sexual relations is an absolute bar to the adjudication of paternity. He also discusses the extent of utilization of scientific evidence in paternity proceedings and the solutions provided by the Uniform Parentage Act.

Seider, Who is the Father?, 3 Fam. Advoc. 12 (Fall 1980).

This article addresses the inherent problems of most paternity proceedings. The author argues that because of the lack of uniformity and wholly objective evidentiary standards, paternity can be established by the most minimal testimony of the petitioner, testimony that does not require corraboration. A putative father, on the other hand, must corroborate any testimony he gives concerning other men who may have had sexual access to the petitioner. The author proposes that the question of paternity can be answered more equitably determined through the use of HLA blood testing. In conclusion, the author believes that the time is ripe for the states to adopt uniform blood testing statutes in an effort to remedy the paternity issue.

Terasaki, Resolution by HLA Testing of 1000 Paternity Cases Not Excluded by ABO Testing, 16 J. Fam. L., 543 (1977-78).

This work describes the use of HLA blood testing both to prove and disprove paternity. It argues that HLA testing is extremely reliable affirmative proof of paternity, far superior to ABO testing.

B. PATERNITY STATUTES OF LIMITATIONS

Casenote, Time Limitations on Paternity Actions Held Constitutional. Cessner v. Montgomery, Malone v. Dunlap, 63 Ill. 2d 71, 344 N.E.2d 447 (1976), 15 J. Fam. L. 611 (1976-77).

In two actions consolidated on appeal, the Supreme Court of Illinois held: (1) the two year limitation on paternity actions did not deny illegitimate children constitutional equal protection or due process, (2) the legislature could reasonably require only the mother to bring the action, (3) the putative father may be estopped from pleading the two year limitation where he caused the delay, and (4) paternity suits need not be brought in the name of the state, but may be commended by the mother in a private suit.

Ed. note: This case is clearly overruled by the Supreme Court's decision in Miller v. Habluetzel and Pickett v. Brown, discussed in the introduction of this section, supra.

Comment, Constitutional Law-Equal Protection-Statute of Limitations For Paternity Suits Does Not Deny Illegitimate Children the Equal Protection of the Laws - State v. West, No. 53/23, 23 Fla. L. W. 265 (Sup. Ct. June 7, 1979), 7 Fla. St. U. L. Rev. 581.

This comment critiques the Florida Supreme Court's decision in State v. West, 378 So. 2d 1220 (1979) which upheld the constitutionality of Florida's four-year statute of limitation for paternity action despite an equal protection challenge. The author argues that the Court improperly used a rational basis standard of review to determine the law's constitutionality when a strict scrutiny test was required by the court's earlier decisions. Furthermore, even if a rational basis test is applied to the statute, the author submits there is no rational relationship between the passage of time and the stated legislative goal of preventing fraudulent paternity suits. Instead, the Florida statute arbitrarily determines that paternity may only be proved within four years of a child's birth. The author concludes that the state's legitimate interest in avoiding spurious paternity suits would be best served by legislation focusing on the available evidence, not on arbitrary time limits.

Ed. note: The two U.S. Supreme Court Cases which address this issue (see introductory materials to this section) and decided subsequent to this case used a rational relationship standard.

Comment, Statutes of Limitations in Paternity Proceedings: Barring An "Illegitimate's" Right to Support, 32 Am. U.L. Rev. 567 (1983).

This comment analyzes the role of statutes of limitations in disputed paternity proceedings. The author reviews pertinent state law and discusses the effect of various statutes of limitations on the rights of illegitimates. Also included is an examination of Mills v. Habluetzel, 456 U.S. 91 (1982), in which the Supreme Court held that the Texas one-year statute of limitations violated the equal protection rights of illegitimate children. Because Texas had one of the shortest periods for suit in the country, the author argues that Mills is unlikely to have a significant impact on existing state law. The author concludes by encouraging wider adoption of the Uniform Parentage Act, a comprehensive statutory scheme through which illegitimates may enforce their right to support against their natural father. Because of the availability of blood and genetic testing procedures, the author argues that restrictive statutes of limitations are no longer essential to the protection of defendants' procedural rights or to an accurate determination of paternity.

Ed. note: Notwithstanding the author's concern, since Mills and Pickett the trend has been towards longer statute of limitations periods.

Note, Constitutional Law -- Fourteenth Amendment -- Equal Protection -- Illegitimate Children -- Paternity Suits, 21 Duq. L. Rev. 529 (1983).

In Mills v. Habluetzel, 456 U.S. 91 (1982), the Supreme Court held that a Texas statute requiring an illegitimate child to bring an action within one year from the date of birth violated the equal protection clause. This casenote analyzes the decision and includes discussion of both the majority and concurring opinions. Although Mills struck down the Texas statute, one of the most restrictive of its kind, the Court did note that a state's interest in avoiding stale or fraudulent claims could be a valid justification for the use of a statute of limitations in paternity actions. The author of this note criticizes the continued reliance on this rationale and contends that there is an emerging consensus that the countervailing state interest in ensuring that bona fide child support claims are satisfied overrides any interest the state may have in avoiding stale or fraudulent claims.

Note, Family Law-The One Year Statute of Limitations for Initiating Paternity Suits in Texas Is Not Unconstitutional, Texas Department of Human Resources v. Chapman, 570 S.W.2d 46 (Tex Civ. App.-Dallas, 1978, writ ref'd n.r.e.), 10 Tex. Tech. L. Rev. 1134 (1979).

This note analyzes the case of Texas Department of Human Resources v. Chapman in which the Texas Court of Civil Appeals held that the one year statute of limitations for initiating a paternity suit did not deprive an illegitimate child of his constitutional rights to due process and equal protection under the U. S. or the Texas Constitution. The note argues that the court should have used a more stringent standard of review than the rational basis test employed by the court. The author contends that if the court had reviewed the statute more closely, it would have been declared unconstitutional.

Ed. note: Three years later the U.S. Supreme Court, using the rational basis test, struck down the Texas one year statute of limitations in paternity suits.

Wills, Paternity Statutes: Thwarting Equal Protection For Illegitimates, 32 U. Miami L. Rev. 339 (1977).

This article compares Florida's paternity statute with (then-current) statutory and case law throughout the United States, and with evolving U.S. Supreme Court standards for equal protection of illegitimate children, recommending that Florida adopt the Uniform Parentage Act. In the specific area of child support for illegitimate children, the author claims that a broad reading of the case of Gomez v. Perez, 409 U.S. 535 (1973), requires "identical treatment for illegitimates in the amount and duration of parental support." She then goes on to describe the "rational" standards for support awards to legitimate children, and argues that they must apply equally to illegitimates. The article does not address the normative question of how support should be allocated between parents, but rather attacks as unreasonable the bases for various courts' and legislatures' failure to treat illegitimate children as equally deserving of support. The author contends that, if a legislature does not require reasonable support and compensation for the child's burden of illegitimacy from the father, it has failed to meet its stated purpose of promoting the welfare of the child. The failure of Florida's and other states' legislatures to do so in their paternity statutes is particularly pointed out. Finally, universal adoption of the Uniform Parentage Act is recommended because a determination of paternity made under the act is binding for all aspects and

purposes of the parent-child relationship, including support awards.

Ed. note: By 1980, the UPA "had been enacted in nine states and had left its mark on reform legislation in others." H. Krause, Child Support In America: The Legal Perspective 211 (1981). Several states have since enacted it.

C. ADDITIONAL RESOURCES

In addition to the materials listed above, the following secondary sources may be consulted for information of this topic:

10 C.J.S. Bastards §§3-16 (1938).

10 Am. Jur. 2d Bastards §§10-44, 74-132 (1963).

23 Am. Jur. 2d Desertion and Nonsupport §§131, 141, 142 (1965).

24 Am. Jur. 2d Divorce and Separation §§876-878 (1966).

2 Am. Jur. Proof of Facts Bastards 445, 615 (1959).

10 Am. Jur. Trials Disputed Paternity Cases 653 (1965).

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

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

SECTION IV.
MODIFICATION OF SUPPORT

Child support obligations typically last until the child reaches the age of majority, and in some cases, beyond. Thus, support levels, set at the time of the initial support determination, often prove inadequate over the long term. Inflation and the increased needs of the child on the one hand, and the changing income level of the obligor on the other, as well as other changes in circumstance, may eventually require a modification in the amount of the support award.

In all jurisdictions, child support awards are modifiable by a further court order. Modification typically depends upon a change of circumstances, generally the child's changing needs and parent's changing ability to pay. Several of the articles annotated in this section deal with this standard for modification.

Two other issues addressed by articles in this section deal with the extension and termination of the support obligation. The extension articles deal with parental support obligations which may be extended beyond the child's age of majority. Most courts today liberally interpret their state's support laws and grant such extensions where the child is physically or mentally unable to support himself, the child is still a full-time student, or a parent has promised the extended support.

Premature termination of support usually deals with one of two issues. The first is what factors, such as legal emancipation, terminate the parent's support obligation. The second issue is one of declining significance: the effect of laws that lowered the age of majority on pre-existing child support agreements or decrees. Since many state laws were enacted in the early 1970's lowering the age of majority, generally from 21 to 18 years of age, newer child support cases are less likely to involve this controversy.

In a related matter, a few articles in this section discuss whether a custodial parent's interference with a noncustodial parent's visitation rights affects the existing support obligation. The majority view is that visitation and support are not interrelated; children are not be be punished (either by denial of support from or contact with their noncustodial parents) for the misdeeds of their parents. Rather, independent court actions, such as contempt, may be pursued to compel compliance with a support or visitation provision. This is the viewpoint expressed in URESA and in several state laws.

The minority position is that support and visitation obligations are dependent. New York state is the leading proponent of this opinion. Its advocates argue that the "modern woman" is more economically self-sufficient and able to provide for her child. Furthermore, the importance of a child maintaining close relationships with a noncustodial parent has received greater acceptance by the courts. Under this theory, support may be withheld unless it will adversely affect the child. Another often cited exception to this view is that it should not apply in welfare cases: the public would be deprived of the support revenue and the custodial parent has no financial pressure to relent.

Annual Survey of Developments in Virginia Law 1978-79: Domestic Relations, 66 Va. L. Rev. 281, 286-287 (1980).

This survey of developments in Virginia domestic law contains a brief section dealing with child support. The case discussed concerns the effect on child support agreements of lowering the age of majority from 21 to 18 years.

Case Note, Support-Voluntary payment of increased child support does not raise estoppel against a father to deny consent to an increase in obligatory payments under previous judgment of divorce. Severson v. Severson, 71 Wis. 2d 382, 238 N.W.2d 116 (1976), 15 J. Faml L. 629 (1976-1977).

In the Severson case, the Wisconsin Supreme Court decided two issues: (1) whether an automatic reduction of support payment upon a child's attainment of majority or other status violates public policy, and (2) whether conditional consent coupled with voluntary additional payments by the father creates estoppel against his claiming error as to an ordered increase in payment. As to issue (1), the court found no violation of public policy. As to issue (2), the court found that the father was not estopped to object to the increase on the grounds that such a rule would discourage noncustodial parents from voluntarily making additional payments.

Comment, Domestic Relations-Separation Agreement Provision For Child's College Education Held Binding in An Action for Child Support - Boden v. Boden, 27 Buffalo L. Rev. 411 (1978).

This comment is a critical analysis of the New York court's treatment of child support modification in Boden v. Boden, 42 N.Y.2d 2101, 366 N.E.2d 791 (1977). This case involves a plaintiff's (mother) petition to increase child support payments fixed by a separation agreement, not incorporated into the divorce decree. The original decree called for college education payments which the plaintiff asserted were inadequate. The Court of Appeals, reversing the Appellate Division, held for the defendant, stating that modification is not warranted without a showing of unforeseen change in circumstances or that the original agreement was unfair. The author criticizes the court's application of the law to the facts as paying only lip service to the notion of changed circumstances, and concentrating solely on the equities at the time the agreement was executed.

Comment, The Effect of the Change in the Age of Majority on Prior Divorce Decrees Providing for Child Support, 8 Akron L. Rev. 338 (1975).

This article considers the effect of the statutory change in the age of majority on the construction and enforcement of support orders entered prior to the effective date of Ohio's new stature changing the age of majority. The author's objective is to provide the domestic relations practitioner with a shorthand guide on how these issues have been decided in Ohio and in other states and, finally, to provide an analysis of these decisions.

Ed. note: Since this article the Ohio Supreme Court has held that child support obligations extend to age 21 when, at the time of the decree, this was the age of majority in Ohio. Nokes v. Nokes, 47 Ohio St. 2d 1, 351 N.E. 2d 194 (1976). Nationally, there is a split of authority over this issue.

Crown, Interrelation of Visitation and Support, in Current Developments in Child Custody (H. Foster & D. Freed eds., Law Journal Seminars-Press, Inc. N.Y. 1978).

The article traces the history of the relationship between visitation and support with extensive case citations. Included are cases which address visitation interferences due to the custodial parent's move to another state. It notes that courts are split over the effects of visitation denials on support, but concludes that they "are becoming more closely related."

Nakagawa, Termination of Parental Rights and the Child Support Obligation In Re Marriage of O'Connell, 80 Cal. App. 3d 849, 146 Cal. Rptr. 26 (3d. Dist. 1978), 12.U.C.D. L. Rev. 632 (1979).

This article discusses the decision of the California Court of Appeals In Re Marriage of O'Connell, in which the court held that an obligation for child support could survive even the complete termination of parental rights. The author criticizes the decision for its failure to provide guidance on the issue of child support where termination of parental rights is not followed by adoption of the child by another person who then assumes the financial support of the child. The article concludes by recommending that parental custody should not be dispositive in determining the extent of a child support obligation.

Note, Domestic Relations: Kansas Adopts Automatic Reduction of Child Support, 19 Washburn L.J. 175 (1979).

This note addresses the issue of automatic reduction in child support as it was resolved in Brady v. Brady, 225 Kan. 485, 592 P.2d 865 (1979). The Kansas Supreme Court held in Brady that child support payments for two or more children should be reduced proportionally when a child dies, reaches the age of majority, or goes to live with the other parent unless the trial court specifies differently. The author points out that this decision represents the minority view among the jurisdictions, with the majority favoring a court-ordered modification in support. The author believes the court will have to modify aspects of the opinion before it can be uniformly applied.

Ed. note: For recent cases holding that the emancipation of an older sibling does not automatically reduce a lump sum child support order, see, Torma v. Torma, 645 P.2d 395 (Mont. 1982); Calcagno v. Calcagno, 391 A.2d 79 (R.I. 1978).

Note, Domestic Relations - Post-Minority Child Support in Dissolution Proceedings, Childers v. Childers, 89 Wash. 2d 592, 575 P.2d 201 (1978), 54 Wash. L. Rev. 459 (1979).

This note explores the Washington Supreme Court's decision in Childers, where the court held that the 1973 Dissolution Act authorizes trial courts to order parental support to continue after a child reaches the age of majority. Though the author believes the court's decision raises questions about the degree of control a noncustodial parent may exercise over a child he is obligated to support, he welcomes the decision as a just accommodation of parental responsibilities and the rights of their children following dissolution proceedings.

Note, Family Law-Child Support Modification-Voluntary Reduction in Income Held Inadequate Reason to Deny Child Support Modification Absent Bad Faith, 25 Wayne L. Rev. 951 (1979).

This note discusses the Michigan Court of Appeals decision in Moncada v. Moncada, 81 Mich. App. 26, 264 N.W.2d 104 (1978) in which the court held that a child support award can be modified even though the father voluntarily reduced his income. The author argues that the court's decision is a clear departure from prior Michigan law and from the majority view

elsewhere which equates voluntary reduction of income with bad faith. In conclusion, the author recommends that the court establish a strict good faith standard in these cases.

Ed. note: The majority view does not permit child support modification where an obligor's reduced income represents a disregard for the support obligation. In such cases, the court will normally look to the obligor's earning capacity. Vetternack v. Vetternack, 334 N.W.2d 761 (Iowa 1983).

Note, Finn or Kern? Does a Florida Dissolution Court Possess Authority to Compel Child Support of Healthy, Majority-Age Children Who Are Attending College?, 9 Fla. St. U.L. Rev. 107 (1981).

This note analyzes numerous Florida cases dealing with the duty of divorced parents to provide their children with a college education. At issue is a Florida statute which provides that a court may require support for a "dependent person" over age 18. The note argues that this legislation enables a dissolution court to order support of adult, college-bound children, and criticizes several cases that have held to the contrary.

Note, Graduate School Support: One Last Dip Into the Proverbial Parental Pocketbook, 56 Ind. L. J. 541 (1981).

This note argues that graduate school support cases should be analyzed from the same policy perspective as the college support cases and that similar tests should be applied. It focuses on the underlying policy of avoiding prejudice to the child as a result of the divorce, and discusses factors relied on by the courts such as pre-divorce plans to support the child in college and the "average family" factor, where courts examine the level of support provided by average, similarly-situated, intact families. The note concludes that, where it can be shown that parents would have supported the child in graduate school but for the divorce, an award of support should be made to avoid prejudice to the child.

Note, Guidelines for Modification of Child Support Awards: Spingola v. Spingola, 91 N.M. 737, 580 P.2d 958 (1978), 9 N.M. L. Rev. 201 (1979).

This note addresses the New Mexico Supreme Court's decision in Spingola v. Spingola, where the court ruled that an increase in the supporting parent's income may justify an upward modification of child support. The author also discusses a subsequent case, Barela v. Barela, 91 N.M. 686, 579 P.2d 1253 (1978) where the Spingola guidelines were applied to terminate the support obligation of a father who was denied visitation rights by his former spouse. The author discusses the relationshop of these cases as they pertain to support obligations and visitation rights. In conclusion, the author views the Spingola decision as furthering the best interest of the child by assuring that all factors relevant to the issue of support are evaluated in a modification proceeding.

Ed. note: Spingola held that child support payments could be reduced or terminated if the custodial parent interferes with the noncustodial parent's relationship with the child. In Barela, the wife interfered with the husband's visitation rights; the court relieved him of his support obligation so long as the wife could support the family on her own income.

Note, Modification of Child Support Decrees in the 1980's: A Jurisprudential Model, 21 J. Fam. L. 327 (1983).

This note examines some of the issues that are raised in petitions to modify child support decrees. The author argues that the objective of child support payments should be to place the child in a position equal to what the child would have attained had his parents not divorced, and discusses various reasons for modification of support orders in the context of this preferred result. Specific examples are given for six common reasons underlying petitions for modification: change in income of the noncustodial spouse, remarriage, death of a parent, disputes in custody and visitation, inflation, and education expenses.

Note, Post-Majority Support in Florida: An Idea Whose Time Has Come? 5 Nova L. J. 271 (1981).

This note examines the issue of post-majority support for college students. Although Florida law permits a court to

order support for a dependent person beyond the age of majority, no court to date has based an order of support upon a finding that a full-time college student is a dependent. The author discusses cases from other jurisdictions that have allowed courts to order divorced parents to provide support beyond majority for educational purposes, and argues for the recognition by Florida courts of this growing trend toward post-majority support, enabling children of divorced parents to obtain a college education as children in intact families are able to do.

Note, The Effect of the New Age of Majority on Preexisting Child Support Settlements, 5 Fordham Urb. L. J. 365 (1977).

This note discusses the effect of lowering the age of majority on existing support settlements. The author points out that, where the settlement derives from a divorce decree, the courts tend to extend the obligation until the child reaches 21. Where the settlement results from a private agreement, courts examine the contract for express intent to extend the duration of support. Where private agreements have been incorporated into divorce decrees, courts have limited the obligation to the child's attainment of 18 years. The author concludes by suggesting that courts consider the 18-year-old's limited financial capabilities and need for further education.

Samuelson, Interrelation of Visitation and Support, in Current Developments in Child Support Custody (H. Foster & D. Freed, Law Journal Seminars-Press Inc., N.Y. 1978).

This article, focusing principally on New York law, looks at the effects of the custodial parent's interference with visitation on the support obligation. It reports that, absent language to the contrary, covenants in a separation agreement for visitation and support are dependent. It also looks at rights stemming from a divorce decree and concluded that courts "will consider the equities involved where a mother has interfered with the father's visitation rights." The article also contains a section on the appropriate relief, procedures, and methods of enforcement.

Short & Little, Modification-Support and Conservatorship, 45 Tex. B. J. 80 (1982).

This short article is a practice note for attorneys. It is premised on the fact that modification suits have "mushroomed" and that "the judiciary tends to view modification with some disdain." The authors address the Texas law [Tex. Fam. Code §14.08] for modification and the burden of proof which must be met under it. Included are factors which constitute change of circumstances and defenses.

ADDITIONAL RESOURCES

In addition to the materials listed above, the following secondary sources may be consulted for information on this topic:

27B C.J.S. Divorce §§322, 323 (1959).

24 Am. Jur. 2d Divorce and Separation §§844-853 (1966).

1 Am. Jur. Proof of Facts 2d Change in Circumstances Justifying Modification of Child Support Order 1 (1974).

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).

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).

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

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).

Income of Child From Other Source as Excusing Parent's Compliance With Support Provisions of Divorce Decree, 39 A.L.R. 3d 1292 (1971).

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).

SECTION V.
ENFORCEMENT OF CHILD SUPPORT

The nonpayment of support awards ordered by the courts is a recurrent and constant problem. Congress, in enacting the IV-D child support enforcement program, chose to require states to provide enforcement services to both AFDC and non-AFDC clients as a major component of that program. Partly as a result of there having been a public program in each state with a focus on support enforcement, a good deal of attention has been focused on enforcement remedies in recent years through litigation, legislation and scholarly writings. This section of the bibliography provides information on the latter.

At present, the most common state child support enforcement remedies include: criminal nonsupport statutes, civil contempt, liens on property, posting of a security or bond, garnishment or withholding of wages, and attachment of or set-off against other income (e.g., pension benefits, income tax refunds, unemployment insurance, worker's compensation). Under legislation presently pending in Congress all states would be required to institute mandatory wage withholding and other enforcement provisions.

The federal government, too, has a role in enforcement of support orders. Congress has provided for the attachment of federal employees wages for collection of child support and permits the IRS to intercept federal income tax refunds in AFDC cases for reimbursement of support costs to the states. In addition, recent litigation has established that federal law on employee pension benefits, ERISA, does not prohibit attachment of pension payments for collection of child support.

A number of the articles annotated in this section address particular enforcement techniques or issues that arise in their use. Some focus on constitutional concerns, for example, whether defendants are entitled to counsel in contempt actions. Other authors advocate for the use of a particular remedy in their state. Income or wage withholding and assignment heads the list of suggested reforms. Increasingly, this technique is suggested as the single most efficient enforcement tool. Not surprisingly, therefore, nearly every state has adopted some form of income withholding or assignment, although the type of withholding provision has a great effect on its usefulness. Such withholding or assignment may take on any of several forms: mandatory wage assignment at the time of the original court order that goes into effect at once without a requirement of arrearages; mandatory wage assignment at the time of the original court decree to go into

effect automatically upon default; mandatory assignment at the time of the default; wage assignment at the discretion of the court; and voluntary withholding or assignment at the request of the obligor.

As state IV-D programs have become more experienced and the child support problem better documented, state legislatures have enacted new kinds of enforcement remedies. For example, the most recent Office of Child Support Enforcement annual report to Congress (September 30, 1982) indicated that just in the previous year 16 states had passed laws related to withholding of unemployment benefits; 9 had enacted laws related to state tax offset programs; and 9 had passed laws concerning wage assignment, income withholding and garnishment. A 1983 State Legislative Report on Child Support Enforcement by the National Conference of State Legislatures indicates that 1983, as indicated by the passage of child support legislation, was an even more active year. At the time of this writing both Houses of Congress have unanimously passed comprehensive child support bills which would, among other things, require states to enact mandatory wage withholding.

A. GENERAL

Comment, Enforcement of Unpaid Child Support Payments Against a Decedent's Estate, 32 Baylor L. Rev. 269 (1980).

This comment examines recent decisions of the Texas courts that have allowed beneficiaries of child support payments to bring a claim against a deceased parent's estate for unpaid payments. The author believes that these judicial interpretations indicate a trend in the Texas courts toward strengthening the provisions for enforcement of these claims against decedents' estates.

Constance, Enforcement and Support Under the Missouri Dissolution Act, 44 UMKC L. Rev. 416 (1976).

This article examines Missouri law regarding the enforcement of support orders before and after passage of the Missouri Dissolution Act in 1973. The author focuses on the first of the two new enforcement mechanisms provided by the act: civil contempt proceedings and assignment of future wages. The article further discusses the three landmark cases in which the act's contempt proceedings were first applied and continues to describe two Missouri counties' step-by-step practice and procedure for enforcing support orders resulting in contempt proceedings. Finally, the author discusses federal legislation and the future of the enforcement of support obligations in Missouri.

Garrett, Alimony and Child Support Enforcement, 1 Fam. Advoc. 18 (Spring 1979).

This article provides an overview of the available state and federal child support enforcement statutes. The author reviews common law enforcement procedures, URESA, criminal sanctions, judgement of foreign nations, state and federal remedies, attorney's fees and jurisdictional questions. The author concludes that effective enforcement of child support is possible; the states and federal government must exert the will to accomplish that goal.

Lee, District Attorney Collection of Child Support: The Need for Reform, 55 Cal. St. B. J. 156 (1980).

This article examines the operation of the Child Support Enforcement Program in California and the dual role played by the district attorney's office as both litigator of civil paternity and child support obligations and criminal enforcer of those same obligations. The author argues that the fusion of these traditionally separate roles in a single agency has been the source of serious abuse of the prosecutor's power. The author cites case histories to illustrate how the district attorney has threatened non-paying parents with criminal prosecution to coerce money from them. The author recommends that the child support collection should be turned over to private collection agencies.

McClelland & Eby, Child Support Enforcement: The New Mexico Experience, 9 N.M. L. Rev. 25 (1978-79).

This article traces the history of federal legislation in the area of child support; assesses child support enforcement in New Mexico in light of Title IV-D of the Social Security Act; and suggests improvements in the programs and legislation of New Mexico aimed at more effective enforcement. The authors illustrate the changes brought on by IV-D and how New Mexico has implemented them through creation of the Child Support Enforcement Bureau and enforcement protocol. The article concludes with proposed legislation and changes in protocol aimed at reducing judicial discretion, giving child support issues independence from divorce issues, limiting delay, encouraging consistent results throughout the state, and permitting wage garnishment.

Neepo, Domestic Relations, Three Special Defenses to Contempt, 52 Fla. B. J. 186 (1978).

This article describes the three defenses to paying child support and alimony arrearages under Florida Law: (1) laches, (2) waiver by acquiescence (whereby a spouse accepts a lower support or alimony payment and is deemed to have waived the right to obtain a vested property interest in the unpaid portion), and (3) post-judgment agreements. It is only under extraordinary circumstances that a court will refuse to enforce payment of support arrearages.

Note, Delinquent Child Support: Remedies, Limitations and Laches, 28 Baylor L. Rev. 197 (1976).

The author examines the 1974 enactment of the Texas Family Code and its pros and cons as it applies to remedies for unpaid child support. The article points out that the code is silent as to what lapse of time will bar the remedy asserted by the obligee. The author considers the application of the statute of limitations to: a reduction of judgment; a suit on a contract for support; and citation for contempt, as well as the application of laches as a bar to recovery of unpaid support payments. The author concludes that the risk of fine and imprisonment, as well as choice of remedy that lies in the hands of the obligee, suggests a stricter statute of limitations is needed on the power of contempt enforcement than for other methods of enforcement.

Note, Due Process in the Civil Nonsupport Proceeding: The Right to Counsel and Alternatives to Incarceration, 61 Tex. L. Rev. 291 (1982).

Through a due process analysis, the first part of this note concludes that a right to counsel should attach to a civil nonsupport contempt proceeding. The second part focuses on less restrictive alternatives to civil confinement for nonpayment of support and describes various methods of dealing with defaulters such as garnishment, voluntary wage assignments, liens and security deposits, tax refund setoffs, and criminal nonsupport statutes. Thirdly, the author proposes a graduated support enforcement scheme which moves from the least restrictive to most restrictive alternative in accordance with the severity of the offense as a means of more effectively and equitably securing compliance with support orders.

Ed. note: A recent federal court opinion, interpreting Texas law held that an indigent defendent in a contempt action for nonsupport faces a direct threat of imprisonment and is thus constitutionally entitled to counsel. Ridgway v. Baker, 720 F.2d 1409 (5th Cir. 1983).

Note, Enforcement of Family Support Obligations in Virginia, 21 Wm. & Mary L. Rev. 881 (1980).

This note examines legal and equitable remedies available in Virginia for the enforcement of both child and spousal support orders, and describes the operation of RURESA in the

interstate enforcement of such orders. The remedies discussed include: civil and criminal contempt, execution of the judgment, garnishment, the judgment lien, the impressed lien on specific real estate, recognizance or security, and attachment. The note then focuses on the federal role in child support enforcement under Title IV-D of the Social Security Act, and the implementation of this legislation's mandate through the Virginia enforcement program.

Note, The Admissibility of Criminal Convictions as Collateral Estoppel in Subsequent Civil Actions, 13 Wake Forest L. Rev. 445 (1977).

This note explains how the doctrine of collateral estoppel has been used to thwart efforts to collect child support arrearages in civil actions where defendants have been tried previously and convicted of criminal nonsupport. By a narrow interpretation of the requirements of collateral estoppel, one court held that because the plaintiff was neither a party to the criminal action, in privity with a party to the criminal action, or bound by the conviction, she could not introduce the criminal court's finding of paternity in the subsequent civil action. The author criticizes this approach as an undue burden on the judicial system. He suggests that courts should consider whether the defendant has a full and fair opportunity to litigate the issues in question, and fairness under the circumstances, instead of relying on technical collateral estoppel principles.

Recent Cases, Recovery of Attorney's Fees in an Action for Overdue Child Support Payments - A "New" Exception to the General Rule?, 22 Loyola L. Rev. 366 (1976).

This article examines the general rule in Louisiana regarding attorney's fees: attorney's fees are not recoverable by the successful party in a lawsuit unless specifically authorized by statute or contract. Following Louisiana case law, the author cites factors influencing the "almost unquestioned adoption of this rule in Louisiana" and the development of exceptions to the rule. Finally, since it is

the author's belief that the "exceptional" case holding that attorney's fees could be recovered will be overruled, he urges the intervention of the state legislature to remedy the situation.

Ed. note: The "exceptional" case, Gauthreaux v Gauthreaux, 315 So.2d 402 (La. Ct. App. 1975), has not been overruled.

Walsh, Enforcement - Some Practical Suggestions for an Age-Old Problem, 52 Fla. B. J. 210 (1978).

This article is a how-to manual for enforcing support obligations in Florida. The author briefly sets out the applicable legal rules for contempt, garnishment, judgment for arrearages, sequestration and ne exeat. He also discusses the state and federal assistance that is available. This article might be a good starting point for a practitioner unfamiliar with the basic problems involved in enforcing support orders. The author's underlying contention is that one must always expect enforcement problems to arise.

B. CONTEMPT PROCEEDINGS

D. Chambers, Making Fathers Pay: The Enforcement of Child Support (1979).

In this book, the author reports on the findings of his study of the Michigan Friend of the Court system. The focus of this study was the use of jailing as an enforcement measure in child support cases. Though Chambers strongly opposes jailing, he found that the evidence strongly indicates that the use of jailing, along with a well-organized enforcement system, can be effective in producing payments both from men who are jailed and from those who are not. Chambers argues that jailing in the case of nonpayment of support exceeds the crime, that it is impossible to administer in an even-handed manner, and that the prospect of jailing could have an adverse effect on the parent-child relationship. Therefore, he argues that less restrictive but still effective alternatives be developed to replace jailing for contempt as a technique for enforcing support. In his conclusion, Chambers discusses such new approaches as mandatory wage deductions and a variety of insurance schemes.

Ed. note: This book has been the subject of at least two reviews. Mnookin, Book Review, 48 U. Chi. L. Rev. 338 (1981); Bladus, Father in Jail, 78 Mich. L. Rev. 750 (1980). Chambers also presented his findings in an earlier article, Men Who Know They Are Watched: Some Benefits and Costs of Jailing for Nonpayment of Support, 75 Mich. L. Rev. 900 (1977).

Case Note, Civil Contempt for Failure to Support - Limitation on Use of Pennsylvania Procedural Support Law in Incarceration of Indigent Defendants. Barrett v Barrett, 470 Pa. 253, 368 A2d 616 (1977), 81 Dick. L. Rev. 851 (1977).

This note examines the Pennsylvania Supreme Court's treatment of civil contempt as a means of enforcing child support orders. The author discusses recent case law and takes issue with the court's holding in Barrett that an indigent party may never be imprisoned for civil contempt when his release is conditioned on financial criteria. He argues that, where a defendant's indigency is caused by his willful failure to seek or hold employment, imprisonment for contempt may be proper. The author concludes that, unless willful inability to ay is deemed punishable, Pennsylvania's support law is impotent.

Ed. note: In Barrett, the court added this inability to pay as the sixth element to a civil contempt adjudication in a support context. The other five are: 1) rule to show cuase why an attachment should not issue, 2) an answer and hearing, 3) a rule absolute (arrest), 4) hearing on the contempt citation, and 5) an adjudication of contempt.

Note, Florida's Use of Contempt Proceedings to Enforce Child Support Arrearages: Imprisonment for Debt? Lamm v. Chapman, 413 So. 2d 749 (Fla. 1982), 12 Stetson L. Rev. 526 (1983).

This note examines critically the Florida Supreme Court's holding in Lamm v. Chapman, 413 So. 2d 749 (Fla 1982), that the state may use contempt proceedings against the responsible parent to recover money given to the family under AFDC. The note argues that only the custodial parent should be allowed to use contempt proceedings to enforce a child support obligation. The state, as an ordinary third party litigant seeking to recover a debt, should be limited to the same remedies available to private litigants in order to avoid violation of Florida's constitutional prohibition against imprisonment for debt.

Note, Right to State Paid Counsel Must Be Afforded in All Cases Involving the Loss of Liberty. Tetro v. Tetro, 86 Wash. 2d 252, 544 P.2d 17 (1975), 12 Gonz. L. Rev. 537 (1977).

This note surveys case law on the right to counsel in child support proceedings in Washington state. In Tetro, the court held that indigent defendants have a statutory and constitutional right to state-paid counsel at a contempt hearing whenever such hearings may result in incarceration. Previous case law established a right to counsel based on whether an individual could be deprived of liberty, but has never before applied this standard to child support proceedings. In State v. Walker, 87 Wash. 2d 443, 553 P.2d 1093 (1976), the court declined to extend this right to filiation proceedings based on the same rationale. However, the Michigan Supreme Court has extended the right to counsel to defendants in filiation actions on the theory they are "quasi-criminal." The author notes that the Washington court could reach the Michigan result on the grounds of fundamental fairness because plaintiffs are often provided with state funded counsel in such proceedings.

Ed. note: Courts are divided on the issue of the indigent defendant's right to counsel in civil contempt cases for nonsupport. The majority of courts have however recognized the right. In addition to Tetro, see, e.g., Rutherford v. Rutherford, 296 Md. 347, 464 A.2d 228 (1983) and cases cited therein. For a contrary view see Andrews v. Walton, 428 So. 2d 663 (Fla. 1983) in which the court held there was no right to counsel since an indigent defendant is by definition unable to pay support and therefore could not be jailed.

C. GARNISHMENT AND WAGE ASSIGNMENT

Boyle, Garnishment of Pension Benefits After ERISA, 34 Bus. Law 501 (1979).

This article analyzes the legal issues raised by a post-ERISA (Employment Retirement Income Security Act) attempt to garnish pension benefits. The author devotes a section of the article to the preferred status accorded familial support by some states, and he concludes that while most creditors' claims against pension benefits will be prohibited by ERISA, claims for child support will be subject to enforcement by levy on pension benefits.

Case Note, Creditor's Rights - Garnishment - Reducing Past-Due Child Support to Final Money Judgment: The Vanishing Exception to Wage Exemption - Sokolsky v. Kuhn, 405 So.2d 975 (Fla. 1981), 10 Fla. St. U. L. Rev. 301 (1982).

Florida generally exempts the wages of a head of household from garnishment; however, there is a statutory exception to this rule. The wages of a household head may be garnished to collect child support and alimony obligations. In Sokolsky v. Kuhn, this exception for alimony and child support was held inapplicable where the former wife had reduced child support arrearages to a final money judgment. This case note criticizes that holding, which was based on a narrow statutory construction, because the result was to relieve the former husband of his obligation to support his former wife and children and because it reversed a prior judicial policy favoring enforcement of support obligations.

Comment, ERISA: Does it Prohibit a State Court From Attaching Plan Benefits, 40 U. Pitt. L. Rev. 47 (1978).

This comment discusses whether ERISA preempts a state law which authorizes the attachment of a participant's pension plan benefits. The author highlights the following: the Pennsylvania court's approach (which essentially is that ERISA does not preempt Pennsylvania statutes and permits attachment of pensions where the interest of the family outweighs the interests of the employer), the consequences in community property states, and the Michigan and New York courts' contradictory interpretations. The author concludes that state courts are preempted from attaching ERISA benefits. He suggests, however,

that the courts accept this prohibition and focus on retaining jurisdiction and attaching assets once distributed to ensure equitable results.

Ed. note: Since this 1978 comment, several federal courts have held that ERISA does not preclude garnishment of pension benefits for child support. See e.g., Pension Trust Fund v. Zamborsky, 650 F.2d 197 (9th Cir. 1981); American Telephone & Telegraph Co. v. Merry, 592 F.2d 118 (2d Cir. 1979); Central States, Southeast & Southwest Areas Pension Fund v. Parr, 480 F. Supp 924 (E.D. Mich. 1979); Senco of Fla., Inc v. Clark, 473 F. Supp 924 (M.D. Fla. 1979).

Comment, Federal Wage Garnishment: Inadequate Protection for Wage Earners' Dependents, 64 Iowa L. Rev. 1000 (1979).

This comment focuses on the current state of garnishment law with emphasis on recent amendments to the Tax Reform and Simplification Act of 1977. The author identifies three problem areas in the operation of these statutes: a maximum level of support garnishment that ignores the individual's ability to pay; a failure to include lump sum settlements to satisfy support obligations; and a lack of an equitable method for prioritizing multiple garnishors. The author proposes three amendments to resolve these problems and suggests that their adoption would force garnishment law to operate in a manner more consistent with its professed goals, the most important of which is the assurance of support for dependents.

Comment, The Right of Federal Officers to Remove Garnishment Proceedings Instituted to Support Child Support Decrees, 37 Md. L. Rev. 779 (1978).

This comment considers whether any federal interest justifies allowing a federal officer to remove to federal court a suit for garnishment of federal wages to satisfy child support arrearages. The author traces the legislative history of the right of removal, the U.S. Supreme Court's interpretation of federal officer removal under 28 U.S.C. §1442, and the right under §459 of the 1974 Social Security Amendment to garnish a federal employee's wages. He concludes that removal should not be allowed for two reasons: the federal officer is not threatened with liability based on his performance of official duties, and removal would interfere with substantial state interests.

Corrigan, Garnishment of Federal Income for Child Support and Alimony Obligations in Texas, 41 Tex. B. J. 245 (1978).

This article describes the Federal Garnishment Act and the Texas law on garnishment as it applies to family law. The author concludes that federal retirement pay in Texas can be garnished for child support arrearages, however, garnishment of current wages is generally unavailable.

Ed. note: Until 1983, the Texas State Constitution did not permit garnishment of wages. In November of that year, a Proposition amending the Constitution was passed, and subsequent legislation implemented voluntary wage assignment provision. Tex. Fam. Code §14.091. Other 1983 improvements in the Texas system include a 20 year statute of limitations in paternity cases and the creation of a domestic relations office in large counties to establish and enforce court child support orders.

Ehrlich, A New National Family Law-Garnish the Feds-Use the U.S. Courts, 65 Ill. B. J. 70 (1976).

This article briefly describes some of the highlights of Part D to Title IV of the Social Security Act. The author heralds this law for its elimination of the federal protection against garnishment of salaries of U.S. employees, for its extension of services to non-AFDC families and for its promise of reducing welfare payments. Addressed to the practicing attorney, the article explains the function of two new federal services, the Parent Locater Service and the IRS collection service; lists the requirements imposed on the states by the law; and discusses the state's incentives to comply with the law, as well as the consequences of noncompliance. The article goes on to mention various important features that are incorporated in Title IV-D of the Social Security Act and, finally, discusses problems in implementation of the new law.

Note, Pension Law-Garnishment-Pension Funds Benefits Governed by the Federal Employee Retirement Income Security Act Are Subject to Court-Ordered Alimony and Child Support Payments, American Telephone and Telegraph Co. v. Merry, 592 F.2d 118 (2d. Cir. 1979), 7 Fordham Urb. L. J. 693 (1979).

In this note, the United States Court of Appeals for the Second Circuit's decision in AT&T v. Merry is examined as it

relates to the conflict between state court-ordered support payments and federal statutes which control pension plans. In Merry, the court held that the Employment Retirement Income Security Act of 1974 (ERISA) does not prohibit garnishment of pension plan benefits to satisfy alimony or child support payments. The author applauds the court's decision in Merry since it re-emphasizes one of the underlying purposes of ERISA, which is to protect the families of employees participating in pension benefit plans. Thus, garnishment of pension benefits to satisfy child support obligation is within the congressional intent behind ERISA.

Note, Remedies - Domestic Relations: Garnishment for Child Support, 56 N.C. L. Rev. 169 (1978).

This note describes how North Carolina's response to Title IV-D requirements has effected child support enforcement. The new state statute allows for garnishment of up to twenty percent of a responsible parent's monthly income upon a showing that the parent has been delinquent or erratic in paying. The employer may be a defendant in the garnishment action and subject to contempt. However, the author concludes that reluctance to sue a private employer and the burden imposed upon employers by a continuing garnishment order dampens the potential effects of the remedy.

Phillips & Dworak, The Federal Garnishment Statute: Its Impact in the Air Force, 18 A.F.L. Rev. 70 (Winter, 1980).

This article, while first giving an overview of the rationale behind the enactment of Part B to Title IV-D of the Social Security Amendments of 1974, focuses primarily on section 459 of Part B which deals with garnishment of wages of federal employees as a means of enforcing child support orders. In attempting to show the impact of garnishment on federal employees, and, more specifically, military personnel, the authors examine the legal and political history which prevented garnishment of federal employee's wages until 1974, the problems and procedures of section 459 as applied to the military, guidelines for settling military cases and the impact the garnishment provision has had on these cases. Finally, the authors conclude that while the garnishment provision has been effective, numerous amendments would ameliorate some of its deficiencies.

Weisman, Report on the Impact of Wage Assignment Legislation in the District Court Department, Trial Court of Massachusetts (Dep't Health and Human Serv. 1983).

This report describes the methods and results of a project to secure the implementation of Massachusetts' new withholding law in the district courts. The new legislation authorized voluntary wage assignments and gave the courts authority to order wage assignment on a four week arrearage. Methods used included on site visits to the courts by the project coordinator, assignments of specialized probation officers, use of monthly progress reports showing the collections and progress of each court in the state, the use of clerk-magistrates, and organized training efforts. During the two years of the project, support collections increased by 59% and the district courts collected $16.50 in support for every dollar spent in collection efforts.

D. ADDITIONAL RESOURCES

In addition to the materials listed above, the following secondary sources may be consulted for information on this topic:

27B C.J.S. Divorce §321 (1959).

24 Am. Jur. 2d Divorce and Separation §§862-875 (1966).

59 Am. Jur. 2d Parent and Child §§81-84 (1971).

Laches on Acquiescence as Defense, So as to Bar Recovery of Permanent Alimony or Child Support, 5 A.L.R. 4th 1015 (1981).

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).

SECTION VI.
INTERSTATE AND INTERNATIONAL CHILD SUPPORT ISSUES

In our mobile society, child support enforcement is made difficult by interstate, and even international travel. When an obligor parent lives in a different state from the custodial parent and child, it is often difficult to assert personal jurisdiction over the obligor in the state where the child lives. If the noncomplying parent does not voluntarily submit to the jurisdiction of the courts in the spouse's state, the custodial parent must find other means of reaching the obligor. The two principle means of doing so, described in the articles in this section, are by use of a long-arm statute, or by use of the Uniform Reciprocal Enforcement of Support Act (URESA) or its amended version, the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). These acts may be found at 9A U.L.A. 747 (1979) and 9A U.L.A. 647 (1979) respectively. Under these uniform acts, by cooperation between the custodial parent's state (the initiating state) and the obligor parent's state (the responding state), the latter state, which has personal jurisdiction over the respondent, will enforce the child support obligation. Although written before the cut-off date for this bibliography, an excellent work on these acts is W. Brockelbank and F. Infausto, Interstate Enforcement of Family Support (2d ed. 1971).

The articles in this section which focus on long-arm statutes examine whether or not they are constitutional under the rule that a party must have "minimum contacts" with the subject matter of litigation in the state before he may be subject to the jurisdiction of that state's court. Specifically, several articles examine and discuss the implications of Kulko v. California Superior Court, 436 U.S. 84 (1978), in which the Supreme Court found that "minimum contacts" did not exist when the defendant's chief contact with the plaintiff's home jurisdiction was that he sent his daughter there to live with the plaintiff.

Today, two types of long-arm statutes generally apply in situations involving the parent-child relationship. The first permits long-arm jurisdiction if, at any time, the marital domicile was within the state. The second, applicable to paternity actions and upheld in a few decisions, applies the tort provision of a general long-arm statute: the tortious conduct which implicates the statute is either the act of intercourse or the failure to pay child support. Although some courts have rejected this latter approach, a few states and the Uniform Parentage Act explicitly use it.

Every state has adopted some form of URESA or RURESA. The chief advantages of these acts is that they provide a procedure through which child support may be enforced or the obligation to pay support established, including establishing paternity, in another state without imposing on the custodial parent the hardship and expense of interstate travel. Essentially, they provide for a procedure under which the initiating court, where the custodial parent resides, submits a petition to the responding court, where the noncustodial parent resides. The responding state takes the necessary steps to serve notice on the noncustodial parent to offer him another opportunity to contest the claim. If the responding court finds that the obligor owes support, it may use any enforcement remedy available under the law of that state, such as liens on property or wage withholding. Amounts collected are transmitted to the initiating court. These acts also provide for two alternative but less frequently used procedures: registration of the support order and extradition. In addition to describing this process in greater detail, several of the articles discuss recurring issues under URESA: e.g., whether the responding court has jurisdiction over collateral issues in the proceeding to establish and enforce a support obligation and whether interference with visitation rights may be a defense to payment of support.

Finally, a few articles in this section discuss international enforcement of child support. These look at individual agreements between countries as well as more general international conventions on the subject.

Cavers, International Enforcement of Family Support, 81 Colum. L. Rev. 994 (1981).

This article deals with the problem of breaking through intra- and international jurisdictional boundaries to enforce child support awards. It points out that where claimants are poor, their governments become de facto parties in interest to their claims because noncompliance with support awards often leads to increased numbers of women and children on the public welfare rolls. The author asserts that governments also must become involved because it is their duty to provide access to justice for citizens of other states "whose lawful claims might otherwise be frustrated." The answer, according to the author, is international and interstate "machinery for cooperation."

The article next discusses various legal barriers to international enforcement of support orders, and various conventions and uniform laws promulgated to overcome these problems. The latter include the early Hague Conference Conventions on support obligations, the United Nations Conventions on Recovery Abroad of Maintenance Conventions, URESA, and the more recent Hague Maintenance Conventions (1973) to which the United States has not yet acceded. The author then discusses various constitutional issues that would arise upon ratification, referring to current Supreme Court law on long-arm jurisdiction.

Comment, Federal Courts Diversity Jurisdiction-Domestic Relations Exception to Diversity Jurisdiction Bars Suit in Federal Court to Enforce Child Support Provision of Separation Agreement, Solomon v. Solomon, 516 F.2d 1019 (3rd Cir. 1975), 7 Rut.-Cam. L. J. 603 (1976).

This comment analyzes the Third Circuit Court of Appeals decision in Solomon v. Solomon, in which the court held that the dispute fell within the domestic relations exception to diversity jurisdiction, referring to the exception as one that "has been judicially carved, beginning with and extending through a series of dicta in decisions of the U.S. Supreme Court" and adopted by the Third Circuit. After reviewing the reasons for applying the exceptin to Solomon, the author concludes that while the case should not have been entertained by a federal court, summary dismissal of claims that involve domestic relations issues only secondarily is too bold and unnecessary an extension of the exception.

Comment, Louisiana Adopts Uniform Law: The Revised Uniform Reciprocal Enforcement of Support Act of 1968, 24 Loy. L. Rev. 53 (1978).

This comment explains URESA as adopted in Louisiana and highlights the several changes made by its adoption in 1977. The author discusses how URESA has improved enforcement of support in the state and illustrates its application through a sampling of case law. He encourages adoption of additional uniform laws, such as the Marriage and Divorce Act, by the Louisiana legislature.

Comment, Securing Personal Jurisdiction Over Nonresidents in Spousal and Child Support Suits: Is California's Long-Arm Too Short?, 17 San Diego L. Rev. 895 (1980).

This comment explores California's approach to long-arm jurisdiction in child support cases. The author submits that the California courts have failed to consider adequately the full panoply of interests which are at stake when they have considered the constitutionality of exercising jurisdiction over nonresidents for support. Consequently, the author contends that the reach of California's long-arm statute has been unduly restricted. The author proposes that the courts fashion a new "familial relationship" basis for establishing jurisdiction over nonresidents in support actions.

Comment, Unified Jurisdictional Test-Applied to In Personam Jurisdiction, Kulko v. Superior Court, 436 U.S. 841 (1978), 1978 Wash. U. L. Q. 797.

In Kulko v. Kulko, the Supreme Court held that a nonresident's acquiescence in his child's desire to live with her mother in the forum state and his purchase for the child of a one-way plane ticket for that purpose is not sufficient contact to justify the assertion of in personam jurisdiction in a claim for increased child support. The author analyzes this decision in light of Pennoyer v. Neff, 95 U.S. 714 (1877) and International Shoe Co. v. Washington, 326 U.S. 310 (1945). The author concludes that Kulko's significance lies in its failure to extend the long-arm jurisdiction of state courts beyond previously set limits.

De Hart, Child Support Enforcement, 2 Fam. Advoc. 26 (Fall 1979).

This article examines the enforcement of support orders between the United States and foreign countries under URESA. The author looks at the experience of some states who have worked on reciprocity agreements with the United Kingdom, West Germany and Canada. In conclusion the author believes that the next major step in international enforcement of support orders would be accomplished if the United States would be a signatory to the New York Convention on Recovery Abroad of Maintenance which was held in 1956.

Fox, The Uniform Reciprocal Enforcement of Support Act, 12 Fam. L. Q. 113 (1978).

This article is a comprehensive evaluation of URESA and the changes made in the revised version, RURESA. The author describes in detail each of the 5 steps necessary to implement a support order under URESA: (1) identification of the support duty; (2) filing the petition; (3) initiating court review and locating the obligor; (4) the hearing in the responding court; and, (5) the issuance of the support order. He also provides a table illustrating the URESA variations in each state code. This article would be an excellent starting point in learning how to litigate a URESA action.

Ed. note: This material first appeared in 4 Fam. L. Rep. (BNA) 4017 (May 2, 1978).

Note, Counterclaims and Defenses Under the Uniform Reciprocal Enforcement of Support Act, 15 Ga. L. Rev. 143 (1981).

This note explains the operation of URESA and focuses on the propriety of permitting various counterclaims and defenses in URESA proceedings, in the context of both child and spousal support cases. The counterclaims and defenses discussed include: custody, visitation, divorce, and interference with custody or visitation. The note argues that limiting a URESA proceeding to the single issue of support sacrifices fairness to the parties to concerns for administrative efficiency. It concludes that URESA proceedings should not be limited to support issue where a substantial nexus exists between the duty of support and the subject matter of the counterclaim or defense.

Ed. note: §23 of URESA specifically forbids denials of visitation as a defense in a URESA action.

Note, Constitutional Law-Jurisdiction-A New Minimum Contacts Analysis-Kulko v. Superior Court, 12 Creighton L. Rev. 905 (1979).

This article analyzes the two-prong test for long-arm jurisdiction set out by the Supreme Court in Kulko v. Superior Court, 436 U.S. 84 (1978). First, the Court held that due process requires an inquiry into a nonresident defendant's "intent to initiate some purposeful contact with the forum state." Second, the Court imposed a "fairness" test in which the interests of the plaintiff, the defendant, and the state must be weighed to determine whether allowing the state to exercise its jurisdiction across state boundaries would be "fair" and "reasonable." The author concludes that the current trend of court opinions in this area indicates that "the concerns of the state and plaintiff will never outweigh the defendant's inability to foresee litigation within the forum."

Note, Interstate Enforcement of Support Obligations Through Long-Arm Statutes and URESA, 18 J. Fam. L. 537 (1980).

This note discusses two approaches for acquiring personal jurisdiction in the interstate enforcement of support orders: (1) The Uniform Reciprocal Enforcement of Support Act; and, (2) long-arm statutes. The note gives a step-by-step analysis of URESA with attention to the advantages and disadvantages of each step of the proceeding as well as the overall mechanism. Also included is an examination of various "garden-variety" long-arm statutes, and the potential due process problems raised by each one. The note recommends that these jurisdictional problems can be avoided by such devices as a "consent to jurisdiction" clause in separation agreements.

Note, Kulko v. California Superior Court: Has the Long Arm Extended Too Far?, 1979 Det. C.L. Rev. 159.

This article discusses Supreme Court decisions on the validity of long arm statutes through development of the "minimum contacts" doctrine. It then analyzes the Kulko case,in which the Court held that a state long-arm statute denied adequate protection to a nonresident father/defendant in a custody and child support suit. The father claimed that his former wife's (and later, children's) move to California did not establish that he had minimum contacts with that state. The Supreme Court reversed the California court's denial of his motion to quash service, a ruling the author interprets as

evidence of the Court's "reluctance to allow further extension of in personam jurisdiction by utilization of a long arm statute." The author agrees that the Supreme Court is correct in requiring greater protection of the individual nonresident defendant than of the corporate defendant. The article points out, however, that the Kulko decision provided no mechanistic guidelines, and takes this as a sign that the Court is encouraging case-by-case analysis. The Court has made it clear, however, that where another suitable forum exists, the plaintiff should be required to bring suit there, when this would not cause undue hardship.

Note, Nonresident Father Subjected to Personal Jurisdiction of State of Child's Residence. Kulko v. Superior Court of San Francisco, 16 J. Fam. L. 316 (1977-78).

The Kulko case presents the issue of how much contact a defendant parent must have with a state in order for that state to assert personal jurisdiction over him for the purpose of modifying a support agreement. The California Supreme Court held that although the defendant neither resided in California nor executed the support agreement there, the fact that he had caused an effect in California by an act which occurred elsewhere justified California's using its long-arm statute to assert jurisdiction over him. In this case the father had allowed his children to live in California and had purchased the plane tickets for their travel to California.

Ed. note: The U.S. Supreme Court overruled the California Supreme Court, with three Justices dissenting, holding that California's long-arm statute was ineffective in creating personal jurisdiction over the defendant because he had not "purposefully availed himself of the benefits" of California law and therefore did not cause an "effect" there. 436 U.S. 84 (1978).

Note, Uniform Reciprocal Enforcement of Child Support Act, 20 Washburn L. J. 409 (1981).

This note explains the operation of URESA and analyzes various state court interpretations of certain provisions in the act as an aid to practitioners in Kansas, where case law dealing with URESA has been meager. Topics discussed include: defenses, modification of decrees, and constitutional issues. The author notes that URESA has survived attacks on grounds of denial of the right to counsel, denial of the right to confront

witnesses, violation of the privileges and immunities clause, denial of due process, denial of equal protection and vagueness. However, the author argues that its modification of prior orders under Part III of URESA should not be allowed due to the lack of personal jurisdiction. The author further notes that differing interpretations given URESA by state courts have diminished the uniformity of the act.

Note, Uniform Reciprocal Legislation to Enforce Familial Duties of Support, 25 Drake L. Rev. 206 (1975).

This note focuses on the history, development and current (as of 1975) state of uniform reciprocal legislation to enforce familial duties of support. Specifically, the note gives a historical overview of the pre-URESA era including factors leading to its passage in 1950, and discusses subsequent amendments to URESA (1958), including RURESA (1968). The note goes on to survey Iowa state law and case law in relation to both URESA and RURESA and briefly addresses the 1975 federal child support legislation. The note concludes by urging the adoption of RURESA by all states in order to facililitate the effectiveness of child support agencies established as a result of the new federal legislation.

Weintraub, Texas Long-Arm Jurisdiction in Family Law Cases, 32 Sw. L. J. 965 (1978).

This article sketches the basic jurisdictional concepts relevant to many aspects of family law, including child support. The author concludes that under the recent decision in Kulko v. Kulko, 436 U.S. 84 (1978), personal jurisdiction by long-arm statutes is limited, so that personal service is preferable in family law adjudications. Because Kulko may not affect all situations, long-arm jurisdiction in Texas may still be a powerful tool and thus its long-arm statute [Tex. Fam.Code Ann. §11.051 (Vernon 1975)] should be improved to facilitate its use.

Ed. note: Most of these state long-arm statutes, to meet "minimum contacts," require either that parties had a marital relationship within the state at anytime or, in paternity cases, it is alleged that the conception occurred within the state. Courts may decline to assert jurisdiction if minimum contacts are inadequate. Bergdoll v. Whitley, 598 S.W. 2d 932 (Tex. Civ. App. 1980).

ADDITIONAL RESOURCES

In addition to the materials listed above, the following secondary sources may be consulted for information on this topic:

27B C.J.S. Divorce §§ 395-404, 413-431 (1959).

24 Am. Jur. 2d Divorce and Separation §§ 977-984 (1966).

SECTION VII.
TAX ASPECTS OF CHILD SUPPORT

The tax treatment of amounts paid for the support of dependent children is of significance both in negotiating separation agreements and in setting support awards.

As a general rule amounts paid as alimony are taxable to the recipient and deductible by the payor, while amounts paid as child support are neither deductible by the payor nor taxable to the recipient. However, under Commissioner v. Lester, 366 U.S. 299, 6 L.Ed. 306, 81 S. Ct. 1343 (1961) periodic payments which combine alimony and child support may be treated as alimony for tax purposes so long as the child support amount is not "fixed." As a result, significant tax consequences will result from whether payments for the benefit of children are designated as child support or are included with alimony in a single payment.

An additional significant factor is the determination of which parent is entitled to take the dependency exemption for the minor children. At present, the Internal Revenue Code generally permits the custodial parent to claim the exemption unless one of two exceptions applies. The first applies in cases in which the noncustodial parent pays at least $600 or more for the child in question and the agreement or decree grants him the right to claim the exemption. The second applies if the noncustodial parent pays at least $1200 per child per year in child support payments and the custodial parent cannot prove that he or she paid more. Only the parent who is entitled to claim the child as a dependent may take medical expense deductions with respect to that child. The ability to take child care deductions is also affected by the amount and kinds of support or household expenses furnished by the parents.

There is a substantial interrelationship among the various provisions as well. If amounts for the support of children are included in payments labeled "alimony" in order to make them deductible, they may not be counted as child support for purposes of calculating entitlement to the dependency exemption. Unless a parent is entitled to the dependency exemption, he or she may not claim a deduction for medical expenses for a child. A custodial parent may, in some cases, be able to obtain a favorable head-of-household tax rate even though not entitled to claim a dependency exemption for the children.

These various tax provisions, their interrelationship, and various practice techniques for dealing with them are discussed in the articles, specialized books on domestic relations tax issues, and general tax services annotated in this section of the bibliography.

In addition, practitioners should be aware that substantial changes may result from legislation currently being considered in Congress which would grant the custodial parent the dependency exemption at all times unless (s)he provides the noncustodial parent a written declaration to be attached to his (her) tax return, stating that (s)he will not claim the child as a dependent. The previous rules would continue to apply with respect to agreements entered into prior to January 1, 1984. In addition, these amendments, if passed, would treat a child as a dependent of both parents for purposes of claiming medical expense deductions.

Anglea, Grande, Hopkins, Loeb, O'Connell, Podell, Randall & Taggart, Divorce Taxation: Tax Aspects of Dissolution and Separation (Bureau of National Affairs, 1980).

This BNA divorce taxation handbook includes a section by James J. Podell on the tax aspects of dependency exemptions. The material is presented in outline form and includes numerous case citations.

Comment, Income Taxation: The Tax Reform Act of 1976 Changes the Treatment of the Individual Taxpayer's Alimony and Child Care Payments, 9 Cum. L. Rev. 177 (1978).

This comment discusses the impact of the Tax Reform Act of 1976 on alimony, child support, and child care expenses. The dependency exemption has been made more stringent by allowing the noncustodial parent to claim it by proving $1200 of support per child. Child care expenses have been changed from a deduction to a tax credit. The author discusses the requirements for dependency exemptions for custodial and noncustodial parents, the new tax credit program for child care expenses and their interrelation. He concludes that allowing only a tax credit for child care is unfair to the custodial parent in light of the availability of alimony deductions and standard deduction equivalents available to the parent in the higher income bracket.

H. Gutman & F. Sander, Divorce and Separation, 95-3d Tax Management Portfolios (BNA, 1975 and annual updates).

This tax planning guide for divorce and separation is part of the BNA Tax Management Portfolio series. It provides a detailed analysis of all the tax implications of divorce and separation along with numerous case citations and examples. With respect to child support, the authors discuss the following topics: the differences in the tax treatment of child support and alimony, the dependency exemption, the definition of support, and the deductiblity of a child's medical expenses. Update sheets indicate the changes and additions that should be made to the main text. A bibliography is also included.

Halpert, Planning for Shifting Taxable Income in Divorce and Separation, N.Y.U. 37th Ann. Inst. on Fed. Tax. 34-1 (1979).

This article examines the tax effects to be considered in divorce and separation and the methods of minimizing the tax liability of both parties. Under IRC §71, alimony payments are generally deductible by the payor and taxable to the recipient. The main focus of this article is on the requirements of §71 that must be met in order for that result to occur. In this context, the author also discusses child support payments, which under the Lester rule are treated the same as alimony unless the amount is specifically designated for child support. If the payment is "fixed" as child support in the agreement or decree, then it is taxable to the payor. The author also explains the allocation of the dependency exemption, both the general rule which gives the exemption to the custodial parent and its two exceptions.

Hjorth, Tax Consequences of Post-Dissolution Support Payment Arrangements, 51 Wash. L. Rev. 233 (1976).

This article gives an in-depth analysis of tax consequences of spousal and child support payments and the importance of categorizing such payments for the benefit of both former spouses. The article delves into such areas as: distinguishing deductible support payments from non-deductible purchases of property; consequences of categorizing payments as spousal and child support; and planning post-dissolution current payment arrangements. Finally, the author suggests some legislative changes, such as changing the maintenance and child care deductions to credits to allow low income taxpayers to obtain the same benefits already enjoyed by high income taxpayers.

Ed. note: Under current law, parents may take a credit for employment-related child care expenses up to $4800 for two or more children. The credit is $2400 for one qualifying child who is under age 15 if the parent is entitled to the dependency exemption. I.R.C. §44A(d).

Hoff, Allocation of the Dependency Exemption for Children of Divorced Parents: Equitable Division of the Divorce Bonus, 20 J. Fam. L. 43 (1981-82).

This article discusses the allocation of the dependency exemption under I.R.C. §152(e). The author explains the general rule, which gives the dependency exemption to the custodial parent, and its two major exceptions. These code

provisions are analyzed in the context of divorce in both a one-earner and a two-earner family. A summary of the legislative history of the income tax treatment of the separated family is also given. The author concludes by proposing two alternative rules that would allocate the exemption in a way which reflects relative financial sacrifice: (1) No distinction should be recognized for tax purposes between alimony and child support payments. Both would be deductible by payor and the custodial parent would get the dependency exemption; (2) If agreement or decree is silent, each parent could claim a percentage of the exemption deduction based upon a ratio of separate child support to separate adjusted gross income. Tax treatment under these proposed rules is illustrated with specific examples.

Horvitz & Eshelman, Defining a Dependent: An Analysis of the Support Test for a Noncustodial Parent, 7 Rev. Tax. Indivs. 47 (1983).

Section 152(e) of the Internal Revenue Code provides that a custodial parent is entitled to the dependency exemption for a child who receives over half his support during the year from his divorced or separated parents. This general rule has two exceptions: (1) when the divorce decree gives the exemption to the noncustodial parent, who in turn must provide at least $600 of support, the noncustodial parent is awarded the exception; and (2) when the noncustodial parent contributes more than $1,200 for support, the noncustodial parent is entitled to the exemption unless the custodial parent can rebut the presumption that this amount represents more than half the support by showing that he/she contributed more than the noncustodial parent. Through use of a hypothetical case, the authors illustrate the applications of the support test that has developed through case law to §152(e) and its exceptions. Examples are given of items arguably included in support such as lodging, life insurance premiums, medical insurance, and various other items such as furniture, automobiles and summer camp.

Lewis, Income Tax Planning at Divorce or Separation, 5 Okla. City U.L. Rev. 445 (1980).

This tax planning article contains a brief section on child support. The author explains the rule which holds that unless payments are expressly designated as child support, they are treated as a part of alimony which is deductible by the obligor and taxable to the recipient. She also discusses the

allocation of the dependency exemption, both the general rule and its two exceptions. The author notes that the identification of the party entitled to claim the dependency exemption is also important for purposes of the medical expense deduction for the unreimbursed medical expenses of dependents. She cautions that unless the party entitled to treat the child as a dependent actually pays the medical expenses, this deduction is unavailable.

D. Mahoney, A. Koritzinsky, & K. Olson, Tax Strategies in Divorce: A Planning and Analysis Handbook, (Professional Education Systems, Inc., 2d Ed. 1982).

The materials in this book are designed to assist the attorney in the preparation of a successful marital agreement. The authors explain the basic tax rules that effect child support such as the dependency exemption, the consequences of differentiating between alimony and child support, the head of household filing status, and the medical expense deduction for dependents. In addition the authors provide a section of sample tax-related clauses to be used in marital settlement agreements and numerous worksheets useful to the attorney in analyzing the case. Relevant IRC sections are also reprinted in the appendix as an aid to the reader.

Note, Federal Income Tax Consequences of Divorce and Separation, 16 J. Fam. L. 779 (1978).

This note examines changes in the 1976 Tax Reform Act that had a significant effect on the tax consequences of separation and divorce. With respect to child support, the author discusses changes that were made in the determination of the allocation of the dependency exemption. The general rule is that the custodial parent will be entitled to the exemption. There are, however, two exceptions: 1) Where the decree provides that the noncustodial parent is entitled to the exemption and that parent provides at least $600 for support of the child; and 2) where the noncustodial parent provides $1,200 or more in support for each child and the custodial parent cannot establish that he or she has provided more than half the support. Prior to the 1976 act, the noncustodial parent could claim the exemption provided he or she contributed $1,200 in support to all the children. Thus, the effect of this change is to make it more difficult for the noncustodial parent to claim the exemption if there are two or more dependent children. The author concludes that the best result occurs where the allocation of the dependency exemption is determined in the separation agreement or the divorce decree.

M. O'Connell, Divorce Taxation (1982)

This service, which is regularly updated, thoroughly covers all tax aspects of divorce. Among the issues discussed in depth are child support payments and their relationship to alimony, dependency exemptions, and other tax benefits such as deductions for medical expenses and child care expenses. The tax consequences of the use of trusts is also discussed. In addition to analysis of applicable sections of the Internal Revenue Code, the author provides a discussion of agreements, decrees, and tax practice and includes checklists and sample clauses and forms on such subjects as child support, educational expenses, dependency exemptions and medical expense deductions.

Quaglietta, Minimizing Taxes in Separation and Divorce, 58 Taxes 531 (1980).

The purpose of this article is to enable tax practitioners to advise their clients on the tax consequences of separation and divorce so that the overall tax burden of both the client and former spouse can be minimized. With respect to child support, the author explains the difference in tax treatments between an amount fixed as child support and child support included with alimony. Unlike alimony, an amount fixed for child support is neither deductible by the obligor nor taxable to the spouse. The author notes that where child support is fixed as part of the payment to be paid to the custodial spouse, any amount paid is first applied to child support. Thus, the author advises early enforcement of any arrearages as their collection could result in a substantial tax to the spouse when they are collected. The author provides several examples of computations showing tax savings that can be gained from the way payments are characterized as alimony or child support. With respect to the dependency exemption, the author discusses the special support test rules for children of divorced or separated parents. He provides a list of items that have been held to constitute support. In addition, he cautions that child support arrearages cannot be considered in determining eligibility for the dependency exemptions either in the year the payments are paid or the year they were due.

Rombro, Federal Income Tax Aspects of Conjugal Split-ups - A General Survey, 15 Law Notes 23 (ABA 1979).

This article provides a general overview of the tax aspects of divorce and separation most commonly confronted by attorneys. The author asserts that through careful tax planning, the financial impact of separation and divorce may be reduced. With respect to child support, the author explains the general rule that if payments are designated as child support they are then neither deductible by the paying spouse nor taxable to the receiving spouse. If not "fixed" as child support, such payments receive the same treatment as alimony. The author also describes the general rule which awards the dependency exemption to the custodial parent and the two exemptions and explains the support test that is used in conjunction with these rules. As a demonstration of the results of careful tax planning, the author presents a series of calculations that show how to obtain the most after tax dollars for both parties. If the paying spouse is in a higher tax bracket than the recipient, the author demonstrates that the best after tax result will be achieved by designating all payments as alimony.

F. Sander, Tax Aspects of Divorce (Nat'l Practice Inst. for Continuing Legal Educ. 1978).

This pamphlet contains material of an introductory nature on the major tax issues that arise from divorce or separation. It is presented in the form of an outline drawn from Foote, Levy and Sanders, Cases and Materials on Family Law (2d ed. 1976). References are to sections of the IRC and to cases dealing with the relationship between the dependency exemption and child support.

Tax Aspects of Marital Dissolutions: A Basic Guide for General Practitioners (California Continuing Education of the Bar, J. Walker ed. 1979).

Chapter two of this tax practice guide focuses on the income tax aspects of payments for support. The child support section of this chapter discusses the Lester rule, the allocation of the dependency exemption, the tax benefits which flow from being able to claim a child as a dependent, and the definition of support under the IRC. The guide includes numerous citations to cases, IRC sections, regulations, and revenue rulings.

ADDITIONAL RESOURCES

Taxation: Looseleaf Services

1) Federal Taxes (P-H)
   a) alimony: ¶¶7701-30
      1) payments in support of children: ¶7714
   b) exemptions for dependents: ¶¶9231-61
   c) medical expenses: expenses for dependents: ¶16, 393
   d) head of household: ¶3431

2) Standard Federal Tax Rep. (CCH)
   a) alimony: ¶¶814-20 et seq.
      1) child support: ¶¶820.09 et seq.
   b) exemptions for dependents: ¶¶1237-59 et seq.
   c) medical expenses: ¶¶2007-19 et seq.
   d) head of household: ¶438

3) Law of Fed. Inc. Tax. (Mertens)
   a) alimony: ¶31A.01-.06a
      1) child support: ¶31A.06
   b) exemptions for dependents: ¶32.14-.15
   c) medical expenses: ¶31A.07-.08e
   d) head of household: ¶2.06

4) Fed. Tax Coordinator 2d (RIA)
   a) alimony: ¶¶K-6000-69
      1) child support: ¶¶K-6158-6166
   b) exemptions for dependents: ¶¶A-3100-3175
   c) medical expenses: ¶¶K-2306-08
   d) head of household: ¶¶A-1400-1409

SECTION VIII.
THE EFFECTS OF BANKRUPTCY ON CHILD SUPPORT

Bankruptcy laws are intended to wipe the debtor's slate clean. As such, most of his or her debts are discharged, i.e., need not be paid. Because of overriding public policy concerns, however, maintenance, alimony and support for the debtor's former spouse and children are given special recognition in federal bankruptcy law. Under the Bankruptcy Act of 1978, bankruptcy "does not discharge an individual debtor from any debt...(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or property settlement agreement...." [11 U.S.C. §523(a)(5)]. It should be noted that pre-1978 bankruptcy law had a similar provision but did not expressly include alimony or support in connection with a property settlement. While the current provision goes on to make an exception for debts assigned to another entity, under a provision of the Social Security Act, "[a] debt which is a child support obligation assigned to a State is not released by a discharge in bankruptcy..." [42 U.S.C. §656(b)]. This latter provision had been repealed under the 1978 Bankruptcy Law but was reenacted under the Omnibus Budget Reconciliation Act of 1981.

The Bankruptcy Act lists another exception to the nondischargeability provision. Only "alimony, maintenance, or support" which is "actually in the nature of alimony, maintenance, or support" is nondischargeable. Thus, bankruptcy courts, notwithstanding the express agreement of the parties, may look to see if the obligation is in the nature of support. If not, it is dischargeable under the act. Furthermore, the legislative history to this act and the weight of case law makes it clear that what constitutes support for this purpose is a matter of federal law; however, the courts often look to state law to help identify post-divorce obligations.

Branca, Dischargeability of Financial Obligations in Divorce: The Support Obligation and the Division of Marital Property, 9 Fam. L. Q. 405 (1975).

This article has three facets. First, it discusses the general rules governing the treatment in bankruptcy of an obligation of spousal or child support, on the one hand, and a property division on the other. Second, it outlines the factors that have influenced the courts to find that a settlement at divorce falls into one or the other of these categories. The author uses a hypothetical property settlement agreement as a vehicle for analyzing these issues -- an analysis presented from the vantage point of the obligee spouse -- to illustrate the arguments that can be made when the practitioner is faced with the threatened bankruptcy of an obligor spouse. Finally, the article presents, from a policy standpoint, a proposed revision of the bankruptcy law to make support arising from property divisions nondischargeable.

Case Note, Bankruptcy Does Not Discharge the Obligation to Repay Public Assistance Funds Occasioned by a Divorced Parent's Failure to Pay Child Support. Williams v. Department of Social and Health Services, 529 F.2d 1264 (9th Cir. 1976), 12 Gonz. L. Rev. 569 (1977).

In the Williams case the court of appeals held that AFDC payments occasioned by a parent's failure to make required child support payments comprised "maintenance or support" within the meaning of the Bankruptcy Act, and thus the defendant parent's obligation to repay the state was not dischargeable in bankruptcy. The author points out that this laudable result is consistent with the objectives of state and federal welfare systems, the Bankruptcy Act, and Social Security Amendments.

Hoffman & Murray, Obligations That Cannot Be Erased, 5 Fam. Advoc. 18 (Winter 1983).

This issue of the Family Advocate is devoted to bankruptcy and divorce. It includes articles on "using bankruptcy as a negotiation tool," and "sample drafting settlements for nondischargeability in marital settlement contracts." This article examines the nondischargeability of alimony, maintenance or support under Section 523 of the Bankruptcy Code of 1978. The authors explain that once a court finds that an obligation is in the nature of spousal or child support, the court must find the debt nondischargeable under the Code. The authors stresses that it is not only the language but the

intent of the parties that determine the dischargeability of certain spousal obligations. Therefore, family lawyers must exercise care in drafting decrees and settlement agreements.

Note, Bankruptcy and Divorce, 9 Colo. Law 1181 (1980).

This note looks at alimony, support and maintenance from the perspective of property settlement problems. It also discusses the timing of bankruptcy in relation to the divorce process.

Note, Congressional Intent in Excepting Alimony, Maintenance, and Support from Discharge in Bankruptcy, 21 J. Fam. L. 525 (1983).

This note reviews the legislative history and analyzes the provisions of the current exception to discharge in bankruptcy for alimony, maintenance, and support. Previous statutory versions and judicial interpretations of this exception are also discussed.

Swann, Dischargeability of Domestic Obligations in Bankrupcty, 43 Tenn. L. Rev. 231 (1976).

The focus of this article is the first phase of section 17a(7) of the Bankruptcy Act which deems alimony, maintenance and support nondischargeable debts. The author describes in detail the difficulties that arise when it is unclear whether a decree is an order for alimony, support, and maintenance, or whether it is a property settlement agreement, which is traditionally dischargeable in bankruptcy. Attention is given to the development of case law with particular emphasis on cases decided following the 1970 amendment to the Bankruptcy Act and the 1973 promulgation of the Bankruptcy Rules. Details of unreported Tennessee cases, and of competing public policies and proposed legislation is also discussed to aid the practitioner in understanding the problems yet to be resolved.

Ed. note: Section 17a(7) has been replaced by §523(a)(5) under the new Bankruptcy Code.

Tucker, The Treatment of Spousal and Support Obligations under Chapter 13 of the Bankruptcy Reform Act, 45 Tex. B.J. 1359 (1982).

Using a question and answer format, this article examines the effect of the filing of a Chapter 13 bankruptcy petition on spousal and support obligations. The author discusses the ability of the debtor to provide for the modification of spousal and support claims in a Chapter 13 plan of debt adjustment, the effect of the automatic stay on proceedings to enforce spousal and support obligations, and protections and relief available to the spouse or dependent child under the Bankruptcy Reform Act. The author notes that the provisions of Chapter 13 may result in unprecedented federal court involvement in the enforcement of spousal and child support obligations.

Ed. note: In an earlier volume of the Texas Bar Journal is an article which succinctly reviews the changes in the nondischargeability of debt provision created by the 1978 Bankruptcy Act. Foltz, The Bankruptcy Act of 1978 and the Discharge of Texas Property Division Awards, 43 Tex. B. J. 873 (1980).

ADDITIONAL RESOURCES

In addition to the materials listed above, the following secondary sources may be consulted for information on this topic:

9 Am. Jur. 2d Bankruptcy §§72, 801-803 (1980).

8A C.J.S. Bankruptcy §515 (1959).

3 Collier on Bankruptcy ¶523.15 (L. King 15th ed. 1983).

1 Norton Bankruptcy Law and Procedure §27.26 (Hon. W. Norton, Jr. 1982).

Bankruptcy - L. Ed., Code Commentary and Analysis §§27:75-27:77, 7:18-7:20 (1983).

2 Bankruptcy Law Reporter ¶9231 (Commerce Clearing House 1979).

SECTION IX.
ALTERNATIVES TO JUDICIAL DETERMINATION AND ENFORCEMENT OF SUPPORT

Child support enforcement efforts have been hampered by congested court calendars. Studies have verified that 3 and even 6 month court backlogs are common in support matters, often additionally extended by continuances and rescheduling. Even where backlogs are not a problem, many commentators find fault with the judicial process of handling child support cases. Critics contend that its adversarial nature retards parental cooperation, that it is needlessly expensive, and that it is inefficient as a child support collection mechanism.

In response to these concerns, many states are turning towards alternatives to the judicial system for the handling of support cases. These include administrative or quasi-judicial proceedings, special child support clearinghouses, and mediation. The books and articles included in this section address such alternatives.

Administrative processes are created by state law. They may be established by statute for the purpose of both establishing and enforcing support or they may be used for a more limited purpose such as enforcement only. Depending on their purpose, the statutes must also provide the administrative tools to establish or enforce support. This would include, for example, administrative imposition of liens on property. Administrative proceedings are held before an administrative law judge or hearings officer. They must comport with due process requirements, e.g., notice to parties, and right to present evidence and confront witnesses. State administrative procedures acts often set forth these requirements.

Quasi-judicial proceedings are normally a part of the court. Pleadings are filed and commissioners, referees, magistrates, or masters hear the evidence and make findings and recommendations. These recommendations are submitted to the court for judicial approval, although in some jurisdictions their decisions are binding.

At present, a growing minority of states have chosen to utilize one or both of these alternatives to judicial determinations and enforcement. Recently proposed federal legislation requires states to make a reasonable effort to expedite the judicial process.

Child support clearinghouses are another promising tool to combat enforcement problems. They are usually an arm of the court and vary in responsibilities. Michigan's Friend of the Court, the most renowned example, is a state wide program which investigates cases and makes recommendations to the court on custody and support, and collects and disburses support payments. Under 1983 legislation, the Friend of the Court duties have been broadened; it now provides for domestic relations mediation, and automatic support enforcement upon a predetermined arrearage. A simpler clearinghouse operation is the public trustee. Under this scheme, a court clerk or agency will receive support payments from the obligor and be responsible for its proper disbursement. Under this plan, tracking of payments as an aid to enforcement is possible. Again, proposed federal legislation would promote the use of public agencies in this capacity (H.R. 4325).

Finally, mediating child support levels is becoming more popular. While early--1970's--domestic relations mediation focused on visitation and custody, leaving child support determination to the court, this distinction is less clear today. As mediation programs have expanded and received greater acceptance, they have delved into more complex issues, including post-divorce financial matters. While this has occurred, however, the literature has failed to adequately document special concerns of mediating child support. There were no articles identified which explicitly address mediation and child support. Rather, there is a wealth of materials on the broader issue of mediating domestic relations disputes. See, for example, J. Haynes, Divorce Mediation: A Practice Guide for Therapists and Counselors (Gardner 1981). Another excellent resource is Mediation Quarterly, a Journal of the Academy of Family Mediators.

Booz, Allen & Hamilton, Inc., Court Management Project, Bureau of Support Conceptual Design (1976).

This report was based on a study of support operations in Cuyahoga County, Ohio. The study found these operations to be fragmented among the Domestic Relations Division, the Clerk of Courts, the Juvenile Court, and the County Welfare Department. The report proposes a conceptual design for a Cuyahoga County Bureau of Support, under the aegis of the Domestic Relations Division of the Court of Common Pleas. In addition, the BOS would consolidate the handling of collection and disbursement of support and alimony and enforcement activities previously handled by several divisions and agencies.

Divorce Mediation Research Project, Directory of Mediation Services 1982 (Association of Family Conciliation Courts 1982) (copies may be obtained for $10 from the Divorce Mediation Project, 1720 Emerson St., Denver, Colo. 80218).

This directory lists public and private sector divorce mediation services. It also identifies mediation training services available to interested professionals. The mediation services are listed by state and identify type of service, format of mediation, and staff qualifications. While most programs identify divorce, child custody, visitation, and other domestic issues as the principle subjects for mediation, many do specify child support.

P. Leuzzi, In the Best Interests of the Child: A Study on the Friend of the Court (Mich. Women's Comm'n, 1979).

This study evaluates the operations of the Michigan Friend of the Court system, the statutory arm of the state circuit court for matters relating to the care, custody, support, maintenance, and visitation of dependent minor children. The first part of the study explains the duties and responsibilities of the Friend of the Court. The study then examines the system from a variety of perspectives. These include: funding of the system, the appointment process, functions of the office personnel, the quality of services provided, measures used in the enforcement of support orders, the decision-making process in the determination of custody, and the enforcement of visitation orders. For each of these areas, the study offers recommendations for specific structural changes in the present Friend of the Court system. Examples of suggested changes include: creating a central state administrative office, moving the budget appropriating body from the county to the state level, and developing enforcement procedures that would automatically be generated from the Friend of the Court.

Ed. note: In 1983 the enabling legislation for the Friend of the Court was repealed and replaced with new legislation which incorporated some of these recommendations.

Note, Administrative Adjudication of Child Support in Washington, 12 Gonz. L. Rev. 518 (1977).

This note criticizes the Support of Dependent Children-Alternative Method Act as violative of the Washington Constitution in several respects. This act allows all citizens to pursue child support administratively, through the Department of Health and Human Services instead of judicially, through the courts. The author challenges the act as it: fails to provide procedural safeguards necessary for a valid delegation of judicial power, and to guarantee the defendant parents' due process rights; constitutes an unconstitutional gift of public funds and violates the state's taxing power through a failure to limit the act to indigent parents and leaves parents who do not receive state aid uncertain as to the status of support payments in bankruptcy. The author suggests that these flaws may be corrected and would bring the act within the ambit of the Washington Constitution.

Ed. note: Washington had one of the first administrative procedure laws for child support enforcement. Wash. Rev. Code §74.20.040. Under court interpretation, a determination of paternity is not permitted under this process. Taylor v. Morris, 88 Wash.2d 586, 564 P.2d 797 (1977).

Pauley, Mandatory Arbitration of Support Matters in the Family Court, N.Y. St. B.J. 47 (1975).

This article primarily consists of a proposal to the Judicial Conference of the State of New York for an inexpensive method of resolving support (both spousal and child) disputes by mandatory arbitration. The author puts forth a proposal outlining such specifications as: matters to be handled under arbitration in family court, arbitrators, fees, scheduled hearings, involvement of the Arbitration Commissioner, defaults, applications for counsel fees, hearings de novo, and motions to vacate the award. The article goes on to list the rules and terms established by the Judges of the Monroe County Family Court, where the author hopes the Judicial Conference will accept his proposal as a pilot project.

Ed. note: By 1983, the New York State Temporary Commission to Recodify the Family Court Act, in its Fourth Annual Report, had looked at the issue of mediating family disputes but failed to make any recommendation for its implementation.

F. Silvester & D. Cooper, The Administrative Adjudication of Child Support Obligations (U.S. Dept. of Health and Human Services, Office of Child Support Enforcement 1981).

This monograph examines the application of administrative law to child support enforcement. It provides a review of the background and development of support obligations, with a discussion of child support adjudication. A model for the design and implementation of administrative rules is proposed. Because the administrative process is not a unitary approach, the concept of administrative process, rather than the rules of any particular state, is the focus for discussion. Subjects covered include: how the administrative process works, prerequisites to the enactment of administrative process laws, and the development and proposal of administrative process law. Suggested state legislation is set forth in the appendix, and a glossary of child support enforcement terms is also included.

Social Policy and Law Studies, Inc., A Study of Family Law Courts, Final Reports, (prepared for Office of Research and Statistics, Social Security Administration, SSA Contract Number 600-78-0133, April 28, 1980).

This study constitutes an initial inquiry into the role of the judicial branch of government in the operation of the child support enforcement program under Title IV-D of the Social Security Act. This inquiry included various discussions with judges and court personnel which suggest the following: (1) basic state child support decision-making systems are located in the court, although many courts use referees, hearing officers, masters, commissioners, and other quasi-judicial decision-makers and/or rely on informal settlements among the parties to keep caseloads at manageable levels; (2) a few states have systems heavily reliant upon judicial decision-makers in the administrative branch; (3) all states, in fact, use combinations of the two approaches with different names and titles; (4) only a couple of states do not rely to some extent on some administrative decision-making, usually for the purpose of creating greater efficiency. The study concludes that a mixed system appears most ideal when combining efficiency with protection of due process rights of all parties -- especially the children. The study points out that a good

deal of interest was expressed by even knowledgeable judges in having more educational and informational support in regard to IV-D and child support in general - at the local court level. The appendices include a literature review regarding family courts, recommendations for courts to visit in the National Family Courts Study, and suggested discussion topics for family court visits.

University of Southern California Center for Health Services Research, Comparative Analysis of Court Systems Procedures to Establish and Enforce Child Support Obligations (U.S. Dept. of Health, Education and Welfare, Office of Child Support Enforcement 1980).

This booklet sets forth the methodology and findings of a comparative study of administrative and judicial procedures for child support enforcement. Numerous charts illustrate the findings of this study, which generally support increased reliance on administrative procedures for support enforcement.

Young, Legislation: The Oregon Approach (Support Enforcement Division, State of Oregon Department of Justice, undated).

This booklet includes guidance on shepherding a proposal through the legislative process. It describes a number of statutory concepts which would aid in the collection of support payments including administrative establishment and enforcement of support orders, wage withholding orders, and seizure of state tax refunds. The author discusses at greater length Oregon's procedures for the administrative establishment and enforcement of support orders.

SECTION X.
TRAINING MATERIALS

This section primarily contains case books and state-specific manuals. For the most part, they are on the broader topic of domestic relations or family law. Each work, however, contains sections or chapters which discuss one or more child support issues, such as establishment or enforcement of support, or proof of paternity. A few works are specifically geared to child support practice.

The state-specific manuals are often a product of a continuing legal education program. They are thus geared for the domestic relations practitioner and often contain relevant local or state statutory materials, court rules and case citations. Many also include sample forms such as petitions to modify child support. Undoubtedly, many continuing legal education and other bar-related state or local manuals were not identified for inclusion in this section. The practitioners would be well advised to consult their state or local bar association to see if a manual covering child support practice is available.

C. Adams, D. Cooper, A. K. Kaye, A Guide for Judges in Child Support Enforcement (U.S. Dept. of Health and Human Services, Office of Child Support Enforcement, Nat'l Council of Juvenile and Family Court Judges, Nat'l Inst. for Child Support Enforcement, 1982).

This guide addresses questions raised by the judiciary concerning the Child Support Enforcement Program. Included within this guide are discussions of: (1) the child support problem in America; (2) the federal role in child support enforcement; (3) the state role in child support enforcement; (4) paternity establishment through blood testing; (5) judicial enforcement of child support orders; (6) the Uniform Reciprocal Enforcement of Support Act; (7) potential defenses in child support cases; (8) effective child support legislation; and (9) alternatives to court systems for child support enforcement. The appendix to the guide provides a legislative history of child support enforcement.

Adoption, Paternity and Other Florida Family Practice (Fla. Bar Continuing Legal Educ. Committee, 1979).

This practice manual for Florida attorneys includes among its selected family law topics a chapter dealing with paternity. The materials on paternity proceedings and proceedings to compel support of an illegitimate child discuss the use of blood test evidence to establish paternity. To aid attorneys seeking to obtain blood samples, a form is provided for a motion for physical examination. Also of interest to the practitioner are forms for a contract of support and for an admission of paternity.

J. Areen, Cases and Materials on Family Law (1978).

Chapter 5 of this family law casebook deals with a wide range of topics relating to child support. These include: standards for awarding support, modification of child support orders, jurisdiction over support awards, enforcement measures, and tax considerations. This material is presented through excerpts from cases, a variety of statutory materials, and textual comments by the author. Periodic update volumes are also issued.

California Family Law Practice and Procedure (C. Markey ed. Vols. 1-6, 1978-1983).

Volumes 2, 3 and 4 of this California practice manual contain discussions of child support issues. The issues covered include: jurisdiction to make awards, standards for making awards, modification, termination of support liability, and enforcement. Both substantive and procedural matters are covered.

Children in Court - Their Rights and Remedies (Advance Training Seminars, Continuing Legal Education, Family Law Section, State Bar of Wisconsin, 1979).

These materials prepared for a program presented by the Wisconsin Bar include 2 sections focusing on child support. The first is a varied set of materials along with several tables dealing with setting the level of child support. The second, in outline form, examines the following topics: establishment of the obligation, establishment of the amount, modification and termination, and enforcement. Citations are made to Wisconsin statutory provisions and cases.

H. Clark, Cases and Problems on Domestic Relations (3d ed. 1980).

This domestic relations casebook includes material on child support orders in divorce proceedings.

Dissolving a Marriage (Joint Committee on Continuing Legal Educ. of the Va. Bar Ass'n and the Va. State Bar, 1978).

These materials, in outline form, were developed in connection with a program presented by the Joint Committee on Continuing Legal Education of the Virginia Bar Association and the Virginia State Bar. The topics covered which relate to child support include the following: allocation of the dependency exemption, nondischargeability in bankruptcy of the support obligation, enforcement of decrees through contempt proceedings and garnishment, and RURESA. Title IV-D is also mentioned, with particular emphasis on the provision allowing the enforcement of support obligations through the garnishment of federal wages or retirement benefits.

S. Faber, Handbook of Family Law 2d: With Forms (1978).

This family law handbook with sample forms is designed for use by the California practitioner. The child support chapter includes a model petition for support of minor children. The chapters on modification and enforcement also provide sample forms for motions. The author refers throughout the book to relevant cases and statutes.

Family Law and Practice (Joint Committee on Continuing Legal Educ. of the Va. State Bar and the Va. Bar Ass'n, 1979).

This practice handbook for Virginia lawyers touches on several issues relating to child support in a chapter on conflicts of law. The author briefly discusses the following: jurisdiction over the child, the effect of foreign decrees, continuing jurisdiction by Virginia courts, and foreign enforcement of support through RURESA. Citations to relevant cases and Virginia Code sections are included.

L. Foley & T. McMillian, Family Law (Nat'l College of the State Judiciary 1976).

These materials on family law were prepared for the National College of the State Judiciary. Excerpts from a variety of articles discuss child support issues. These include guidelines for setting the amount of child support and tax considerations such as the allocation of the dependency exemption. A separate chapter focuses on URESA and the federal role in finding absent parents. Several forms are provided along with the textual material such as a complaint for support and a motion for contempt. The appendix includes several charts representing family support guidelines.

C. Foote, R. Levy, & F. Sander, Cases and Materials on Family Law (2d ed. 1976 and Supp. 1980).

This family law casebook includes material on enforcement of support orders and tax considerations. The second edition was updated with a supplement in 1980.

W. Garrett, Tennessee Divorce, Alimony and Child Custody (1978 and Supp. 1982).

This family law manual for Tennessee practitioners covers a wide spectrum of substantive and procedural matters relevant to cases involving child support issues. The topics discussed include: actions for support in general, criteria for determining the amount of support, methods of enforcing support orders, enforcement of foreign judgments, modification of support orders, and tax considerations. Citations to relevant cases and statutory provisions are provided throughout the text. The form section is comprehensive. The 1978 version of this manual was updated with a new supplement in 1982.

Horowitz, How to Settle a Support Case, 26 Prac. Law 27 (1980).

This article provides attorneys with some practical tips on how to initiate, conduct and eventually settle a child support dispute with the opposing parent. The author discusses various techniques and strategies an attorney can employ to ensure a favorable support settlement for his or her client. The author believes that settlement is always preferable to a courtroom battle.

N. Hurowitz, Pennsylvania Support Practice: The Complete Lawyer's Handbook of Successful Techniques (1980).

This practice manual guides an attorney through a support case, step by step, beginning with the first interview with the client and ending with the appeals stage. The focus throughout is on the various techniques and strategies the author has found successful. He includes numerous checklists, forms, illustrations of letters, phone conversations and dialogues, and sample questions for direct and cross-examination. In addition, the author presents a hypothetical, complicated support case. Pertinent to child support, the author provides, along with the sample letters, phone conversations and expense checklists, forms for a complaint for support, a petition to increase support, and a petition for contempt for nonpayment of support.

Internal Revenue Service, Child Support Enforcement Handbook (Publication 1105, May 1979).

This booklet is designed to guide child support enforcement

agencies in their use of services offered by OCSE and the IRS. For child support enforcement, the services are: (1) information from returns relating to filing status (but not address), number of dependents, and income information obtained directly from the IRS; (2) information from returns relating to gross income, names and address of payers of incomes, and names of dependents, also obtained directly from the IRS; and, (3) a collection service provided by the IRS for delinquent child support payments.

This booklet contains information about the means which must be used to protect the confidentiality of the information received. The handbook includes "general suggestions" for avoiding problems in using the services as well as a list of names and phone numbers of all IRS disclosure officers and OCSE regional representatives.

H. Krause, Family Law (2d ed. 1983).

In this casebook, the author discusses the following topics relevant to child support issues: enforcement, tax considerations, duration of support, effect of bankruptcy, ascertainment of paternity, and modification. In addition to the materials on enforcement, Krause also includes a discussion of the 1975 federal child support enforcement legislation.

R. Lee, 1-4 North Carolina Family Law (4th ed. 1979 - 1981).

This is a general treatise in four volumes surveying family law in North Carolina. This text's coverage of the major child support issues is comprehensive. Citations are provided to appropriate statutory provisions and cases. The cases are extensively annotated.

P. Liston, Parent and Child: The Law in Georgia (1979).

This book provides an overview of Georgia parent-child law for the general practitioner. A brief chapter explaining the Georgia code provisions and citing some case law pertaining to the support of children is included. The focus is primarily on procedural matters. The chapter primarily deals with the Georgia abandonment code and includes a discussion of the use of blood testing in paternity cases. Two short sections review the statutory requirements affecting child support in divorce proceedings.

L. Loynd, Handbook: Effective Enforcement Techniques for Child Support Obligations (Nat'l Inst. for Child Support Enforcement, Office of Child Support Enforcement, U.S. Dep't of Health and Human Services, 1981).

This book is the text for a course on effective enforcement techniques for workers in IV-D agencies. Topics include: background of child support enforcement, case preparation, effective monitoring and collections, initial enforcement techniques, judicial enforcement techniques, judicial defenses, use of the Internal Revenue Service, alternative court systems for child support enforcement, arrearage collections, prioritization of cases, and privacy.

L. Loynd & D. Cooper, Establishing an Enforceable Case (Nat'l Inst. for Child Support Enforcement, Office of Child Support Enforcement, U.S. Dep't Health and Humam Services, 1981).

This is an instructional manual for child support workers to aid them in processing and constructing child support cases that will meet the legal requirements of proof in their jurisdiction. The modules covered are: constructing an enforceable case, analyzing the evidence, working the case, starting the action, discovering evidence, trying the case, understanding potential defenses, and using remedies and elements of proof.

G. McDlellan, Handbook of Massachusetts Family Law (1978).

This is a general handbook on the practice of family law in Massachusetts. These materials include discussions of guidelines for the determination of support payments, tax considerations, contempt, and modification of support orders. The forms section provides models of complaints for support modification and contempt. Forms for a variety of motions and summonses are also included. The rules section contains a reprint of the Massachusetts Rules of Domestic Relations Procedure.

Matrimonial Decrees: Modification and Enforcement (Inst. for Continuing Legal Educ. 1975).

This varied set of materials was compiled for a program on the modification and enforcement of matrimonial decrees. Model forms are included for motions to modify alimony, child support

and medical payments, a motion for sequestration, a motion for modification and for various writs and affidavits. In addition, there is a section dealing with the federal statutes and regulations on the Parent Locator Service. Along with reprints of the pertinent statute and regulations, there is also a brief textual discussion of the Parent Locator Service.

L. McKillop, Paternity Establishment Handbook (Nat'l Inst. for Child Support Enforcement, Office of Child Support Enforcement, U.S. Dep't of Health and Human Services 1981).

This handbook is the text of a training course for child support workers. Modules are included on the following topics: the need for establishing paternity, opening a case, communicating with the parents, working the paternity case, and blood testing.

Michigan Family Law (Inst. of Continuing Legal Educ., R. Rowse & R. Brevitz eds. 1978).

This looseleaf practice manual is a comprehensive review of Michigan family law compiled as an aid to Michigan's bench and bar. Numerous sections discuss child support matters. These include: the Michigan Friend of the Court system, tax considerations, modification of support, enforcement of support, and URESA. Examples of a variety of forms are also given.

J. Milligan, 14 Ohio Practice: Family Law (1975 & Supp. 1983).

Volume 14 of this treatise on Ohio family law and practice includes coverage of a wide range of child support issues. Forms are included with the textual material.

Missouri Family Law (Missouri Bar Committee on Legal Education, 2d ed. 1976).

This practice handbook reflects major substantive and procedural changes in Missouri family law caused by the passage of the 1974 Dissolution of Marriage Act. With respect to child support, this book covers the following topics: the duty to support, actions for support, the amount of support and the use of guidelines in determining the appropriate amount, paternity

actions, URESA, enforcement of support orders, modification, and tax considerations. The paternity materials contain forms for a petition for declaration of paternity and order of support and several sets of suggested interrogatories. Citations are made throughout the handout to relevant Missouri cases and statutory provisions.

R. Mnookin, Child, Family and State (Little, Brown and Company 1978).

A general casebook concerning the legal treatment of children, including a discussion of the parental support obligation. Particular attention is given to such topics as the legal duty of support; the scope of the parental support obligation; and, the modification of child support decrees and enforcement.

A. Mojian & N. Perlberger, Pennsylvania Family Law (1978 and Supp. 1982).

The 1978 edition of this family law practice manual for Pennsylvania attorneys was updated by a 1982 supplement. This supplement includes texts and digests for the 1980 Divorce Code and the Rules of Civil Procedure Governing Support Actions adopted by the Pennsylvania Supreme Court in 1981. The supplement is cross-referenced to the main text of the manual. The following topics relevant to child support are covered: the effect of failure to support on custody and visitation, support actions, computation of the amount of support, modification and enforcement, support of a child in college, tax considerations, and paternity actions. An appendix provides a wide range of forms useful in child support actions. These include: a complaint for support, a petition to modify a support order, a petition to submit support arrearages, and a petition to vacate a support order. Also appended to this manual is the scale of suggested minimum contributions for support by absent parents adopted by the Pennsylvania Department of Public Welfare as part of the Title IV-D child support enforcement program in 1976.

National Center for State Courts, A Manual for Processing Support Payments in the North Dakota District Courts (St. Paul, 1975).

This manual for the processing of support payments in the District Courts of North Dakota includes procedures for: recording the receipt of support checks and requesting county treasurers' checks; recording support payments; administering accounts that are in arrears; and processing various other requirements of support payments. Procedures for maintaining case jackets are not included. The manual is designed to provide guidance for large-volume courts in their day-to-day operations, as well as introducing the support payments process to new personnel. Selected procedures could also be adapted for use in lower-volume courts. Procedures are illustrated by the liberal use of diagrams, charts and sample forms.

National Judicial Education Program, Support Awards and Enforcement: Instructor's Manual (New York: NOW Legal Defense and Education Fund 1981).

This instructor's manual was prepared for use in the Support Awards and Enforcement segment of a four-hour, three-segment continuing education course for judges. The course covers both alimony and child support, using a hypothetical case for illustration. The book includes substantial information from economic studies of child support and of the effect of divorce on the living standards of ex-husbands, ex-wives, and children. The manual contains the following materials: the edited transcript, with inserts of all visuals; a complete set of visual aids; and a bibliography of relevant legal and social scientific literature, including an annotated bibliography of selected sources focusing on gender-based discrimination.

Support, Custody and Marital Property in Florida (Fla. Bar, Continuing Legal Educ. Comm. 1978).

This is a practice manual designed to assist Florida attorneys. The child support section covers a broad range of topics and provides numerous references to Florida case law. The volume also includes an appendix summarizing recent decisions.

Supreme Court Domestic Relations Committee, Domestic Relations Manual (Supreme Court of Pennsylvania 1982).

In 1978, the Court Administrator of Pennsylvania established the Domestic Relations Task Force for the purpose of standardizing the handling of domestic relations caseloads throughout the state. The Task Force report, completed in May, 1980, provided a compilation of standards and procedures. In October, 1981, a 34-member Domestic Relations Committee was appointed, one of its objectives being the maintenance of an up-to-date manual for use by domestic relations professionals working in the court system. The manual provides an extensive list of definitions, and goes on to cover the following support areas: substantive and procedural, civil and criminal support statutes; intake; procedures preliminary to mandatory pre-trial conference; mandatory pre-trial conference; judicial proceedings; petitions for modification; follow-up counseling; collection and disbursement; enforcement of court orders; RURESA; the IV-D child support enforcement act; and various issues related to child custody. In addition, the manual addresses administrative concerns. Set forth in appendices are a topical index and Civil Procedure Rules governing support, including various sample forms.

1-2 Texas Family Law Service (1982).

This is a two-volume looseleaf practice manual on Texas family law that has been updated through 1982. Volume I of this service provides both brief textual notes on substantive law and practice as well as a wide variety of forms. Of interest to the attorney dealing with child support issues would be the general materials on procedure in a domestic relations case, as well as the child support chapter which discusses such matters as the duty to support, the determination of the amount, modification, and the collection of arrearages. A separate chapter focuses on enforcement of orders by means of contempt, garnishment, and attachment, and explains the use of URESA. Another chapter is devoted to tax considerations. Volume II of the manual provides a reprint of the Texas Family Code and applicable rules of civil procedure.

The Law of Parent and Child (Minnesota Continuing Legal Education Division, Minnesota State Bar Association, 1980).

These materials prepared by the Minnesota State Bar Association include a chapter highlighting various state statutory provisions regarding child support in non-welfare

cases. Another section focuses on the unwed parent and provides a brief discussion of the obligation of support owed by the parents of an illegitimate child. A further chapter provides an overview of the IV-D program in Minnesota.

A. Turnbull, Maryland Domestic Relations Forms/Practice (1978).

This Maryland form book contains the following forms useful to practitioners dealing with child support issues: petition for child support, petition to increase child support, petition to decrease child support, answers to petitions for support and for modification of support, expense lists, petition for contempt, paternity petition, petition for counsel fees in a child support case, interrogatories, agreements for child support, and agreements for a "Lester" arrangement for the support of spouse and children. Brief explanatory notes accompany most of these forms.

W. Wadlington & M. Paulsen, Cases and Other Materials on Domestic Relations (3d ed. 1978).

This domestic relations casebook includes coverage of a wide variety of child support issues. Among others, these include: problems in enforcement, the effect of bankruptcy on support orders, tax considerations, paternity, and guidelines used in setting the amount of support. This casebook is updated with periodic supplements.

FEDERAL LEGISLATIVE MATERIALS

These materials include the various federal acts and amendments passed by Congress since 1974 which deal with child support, together with references to published reports and hearings applicable to each. Also listed are miscellaneous Congressional materials on this topic and materials on currently pending legislation.

Federal Laws and Legislative Histories

I. Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975) (codified at 42 U.S.C. §651 et seq.).

This statute added Title IV-D to the Social Security Act and created the federal child support enforcement program.

Legislative History:

Senate Comm. on Finance, Social Services Amendments of 1974, S. Rep. No. 1356, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 8133, 8145.

Staffs of Senate Comm. on Finance and House Comm. on Ways and Means, 93d Cong., 2d Sess, Social Services and Child Support: Summary of the Provisions of H.R. 17045 (Comm. Print 1974).

Enforcement of Support Orders in State and Federal Courts: Hearings on H.R. 5404 and Related Bills Before the Subcommittee on Claims and Governmental Relations of the House Committee on the Judiciary, 93d Cong., 1st Sess. (Oct. 25, 1973) (available from Committee, serial no. 47).

House Comm. on Ways & Means, Child Support Program Improvements, H.R. Rep. 368, 94th Cong., 1st Sess. (1975) (report to accompany H.R. 8598).

Staff of Senate Committee on Finance, 94th Cong, 1st Sess., Child Support: Data and Materials (Comm. Print 1975).

II. Act of June 30, 1975, Pub. L. No. 94-46, §2, 89 Stat. 245 (1975).

This statute delayed the effective date of the program from July 1, 1975 to August 1, 1975.

III. 1975 Amendments to the Social Security Act, Pub. L. No. 94-88, 89 Stat. 433 (1975) (codified at 42 U.S.C. §601 et seq.).

This statute has 3 major provisions affecting the child support enforcement program: (1) states may obtain waivers from certain requirements and receive reimbursement from federal funds at a rate of 50% instead of the 75% rate; (2) an applicant for or a recipient of AFDC may be excused from cooperating in the establishment of paternity or securing support when to do so would not be in the best interests of the child; and (3) AFDC recipients are to be provided with a supplemental payment if their total disposable income would be reduced due to implementation of the child support program.

IV. Tax Reduction and Simplification Act of 1977, Pub. L. No. 95-30, §§501-05, 91 Stat. 126 (1977).

This statute makes several amendments to Title IV-D of the Social Security Act. Among these are changes in the garnishment provisions to include employees of the District of Columbia and to specify procedures and conditions in serving garnishment orders on federal agencies.

Legislative History:

H. Conf. Rep. No. 263, 95th Cong., 1st Sess. 35, reprinted in 1977 U.S. Code Cong. & Ad. News 287, 300.

V. Medicare-Medicaid Anti-fraud and Abuse Amendments of 1977, Pub. L. No. 95-142, 91 Stat. 1175 (codified in various sections of 42 U.S.C.).

A medical support enforcement program was established in this law under which Medicaid applicants and recipients could assign their rights to medical support to the state at the option of the state. The law provides for incentive payments to localities making collections for states and for states making such collections on behalf of other states. It allows the

state medical agency to enter into cooperative agreements with the IV-D agency or any appropriate state agency in order to aid in the enforcement and collection of medical support obligations.

Legislative History:

H. Conf. Rep. No. 673, 95th Cong., 1st Sess. 45, reprinted in 1977 U.S. Code Cong. & Ad. News 3113, 3119.

VI. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified at 11 U.S.C.).

This new federal uniform law on bankruptcy continued to make child support payments nondischargeable. It also repealed §456(b) of the Social Security Act which had barred the discharge in bankruptcy of assigned rights to child support. (See XII for reinstatement of this provision.)

Legislative History:

Senate Comm. on the Judiciary, Bankruptcy Reform Act of 1978, S. Rep. No. 989, 95th Cong., 2d Sess. 79, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5865.

VII. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, §2334(a). 95 Stat. 357, 863 (1981) (codified at 42 U.S.C. 656(b)).

This section reenacted §456(b) which bars against the discharge in bankruptcy of rights to child support that have been assigned to the state as a condition of AFDC eligibility.

Legislative History:

H. Conf. Ref. No. 208, 97th Cong. 1st Sess. 986, reprinted in 1981 U.S. Code Cong. & Ad. News 1010, 1348.

Dischargeability of Child Support: Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 96th Cong., 1st Sess. (June 13, 1979) (available from Committee, serial no. 35).

VIII. Act of Jan. 21, 1980, Pub. L. No. 96-178, §2, 93 Stat. 1295 (codified at 42 U.S.C. §655).

Section 2 of this law extended until March 31, 1980 the availability of federal matching funds for services provided non-AFDC cases retroactive to October 1, 1978.

Legislative History:

Conf. Rep. No. 96-718, 96th Cong. 1st Sess. 7, reprinted in 1979 U.S. Code Cong. & Ad., News 2669, 2670.

IX. Social Security Disability Amendments of 1980, Pub. L. No. 96-265, §§401-08, 94 Stat. 441, 460-69 (1980) (codified at various sections of 42 U.S.C.).

This statute increases federal matching funds effective July 1, 1981 to 90% of the costs of developing, implementing, and enhancing automated child support management information systems. It also makes federal matching funds at the 75% rate available for child support enforcement duties performed by court personnel with the exclusion of individuals making judicial determinations. Other provisions of the statute authorize use of the IRS to collect child support for non-AFDC families; provide state and local IV-D agencies access to the wage information of the SSA and state employment security agencies in order to establish and collect child support obligations; and reduce the amount of AFDC payments to the states by the federal share of child support collected but not distributed by the state. A further requirement is that the states report the full amount of child support collected and distributed and the amount of expenditures for the calendar quarter which ended 6 months earlier to receive advance payment of the federal share of administrative costs.

Legislative History:

Senate Comm. on Finance, S. Rep. No. 408, 96th Cong., 2d Sess. 6, reprinted in 1980 U.S. Code Cong. & Ad. News 1277, 1285.

H. Conf. Rep. No. 944, 96th Cong., 2d Sess. 62, reprinted in 1980 U.S. Code Cong. & Ad. News 1392, 1410.

X. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified at various sections of 42 U.S.C.).

This statute adds several amendments to the Social Security Act that affect the IV-D program. Federal matching funds are made available on a permanent basis to state agencies for child support enforcement services to persons not receiving AFDC. States are also permitted to receive incentive payments for enforcement and collection in all AFDC cases, although previously states were only eligible to receive such payments in interstate cases. The law also prohibits payments to states for child support enforcement expenditures not claimed within two years and postponed until October 1, 1980 the imposition of a penalty on any state not having a child support enforcement program determined to be effective by the OSCE annual audit.

Legislative History:

Senate Comm. on Finance, S. Rep. No. 336, 96th Cong., 2d Sess., reprinted in 1980 U.S. Code Cong. & Ad. News 1448.

H. Conf. Rep. No. 900, 96th Cong. 2d Sess, reprinted in 1980 U.S. Code Cong. & Ad. News 1561.

XI. Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, 94 Stat. 3566 (1980) (codified at various sections of 42 U.S.C.).

This statute adds §463 to the Social Security Act. This provision permits any state to enter into an agreement with the Secretary to use the Parent Locator Service for locating a parent or child in cases involving the enforcement of a legal child custody order or the unlawful taking or restraint of a child. It also designates federal agents and attorneys as authorized persons who may request information from the federal Parent Locator Service in parental kidnapping and custody cases. States and H.H.S. are to be reimbursed for the costs of providing services through the collection of a fee. In addition, the law postponed any reduction in AFDC annual child support enforcement audits until October 1, 1981 and prohibited until that date any changes in the OSCE regulations regarding the audit criteria and the penalty for failure to have an effective child support enforcement program.

Legislative History:

Parental Kidnapping Prevention Act of 1979: Hearings on S.105 Before the Subcomm. on Criminal Justice and the Subcomm. on Child and Human Development of the Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess. (Jan. 30, 1980).

Parental Kidnapping Act of 1980, H. Conf. Rep. No. 1401, 96th Cong., 2d Sess. (1980).

XII. Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, §§2331-36, 95 Stat. 357, 860-65 (1981) (codified at various sections of 42 U.S.C.).

In addition to reinstating the bar against a discharge in bankruptcy of a child support obligation assigned to a state as a condition of AFDC eligibility, as noted above, this statute makes several other amendments to the Social Security Act. First, past due child and spousal support payments may be collected through the withholding of federal tax refunds. Second, state agencies may collect legally established spousal support for a parent with whom the child is living as well as support for the child. Third, the existing methods of cost recovery for collections in non-AFDC are replaced by a fee of 10% of the support amount owed in order to reduce the state's administrative costs claimed for federal matching. Fourth, child support enforcement agencies are required to determine periodically whether any individuals receiving unemployment compensation or trade adjustment assistance benefits owe child support. If so, the state employment security agency is required to withhold the unemployment benefits and disburse it to the child support enforcement agency in the amount of the outstanding obligation.

Legislative History:

Senate Comm. on the Budget, S. Rep. No. 139, 97th Cong., 1st Sess. 520, reprinted in 1981 U.S. Code Cong. & Ad. News 396, 787.

XIII. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, §§171-76, 96 Stat. 324, 401-04 (1982) (codified at various sections of 42 U.S.C.).

This statute makes several changes in the Social Security Act relating to child support enforcement. It repeals the 10% fee requirement of the Omnibus Budget Reconciliation Act of 1981 and restores the fee provisions of prior law under which states had the

option of whether or not to charge for the costs of non-AFDC child support collection. It gives states the choice of recovering costs from either the absent parent or from the custodial parent. The statute also adds a new requirement of allotments from the pay and allowances of any members of the uniformed services on active duty when that member fails to make support payments. The federal matching rate is reduced from 75 to 70% and child support incentive payments are reduced from 15 to 12%.

Legislative History:

Senate Comm. on Finance, S. Rep. No. 494, 97th Cong., 2d Sess. 14, reprinted in 1982 U.S. Code Cong. & Ad. News 781, 790.

H. Conf. Rep. No. 760, 97th Cong., 2d Sess. 452, reprinted in 1982 U.S. Code Cong. & Ad. News 1190, 1232.

Miscellaneous Hearings and Congressional Reports

1. Senate Comm. on Finance, Child Support Amendments, S. Rep. No. 1350, 94th Cong., 2d Sess. (1976) (report to accompany H.R. 9889).

2. Senate Comm. on Finance, Social Services, Child Care, and Child Support, S. Rep. No. 1306, 95th Cong., 2d Sess. (1978) (report to accompany H.R. 12973).

3. Staff of Senate Comm. on Finance, 95th Cong., 2d Sess., Public Welfare Programs: Data and Materials Prepared for the Use of the Subcommittee on Public Assistance (Comm. Print 1978).

4. House Comm. on Ways and Means, Social Welfare Reform Amendments of 1979, H.R. Rep. 451, 96th Cong., 1st Sess. (1979) (report to accompany H.R. 4904).

5. Staff of Senate Comm on Finance, 96th Cong., 1st Sess., Child Support: Data and Materials (Comm. Print 1979).

6. House Comm. on Ways and Means, Child Support Amendments of 1983, H.R. Rep. 527, 98th Cong., 1st Sess. (1983) (report to accompany H.R. 4325).

7. Supporting a Family, Providing the Basics: Hearings Before the House Select Comm. on Children, Youth and Families, 98th Cong., 1st Sess. (July 18, 1983).

8. Staff of Senate Comm. on Finance, 98th Cong., 2d Sess., Child Support: Data and Materials (Comm. Print 1983).

9. House Comm. on Ways & Means, Tax Reform Act of 1983, H.R. Rep. 432, 98th Cong., 2d Sess (1983) (report to accompany H.R. 4170).

10. Tax Law Simplifications and Improvements Act of 1983: Hearings Before the House Comm. on Ways & Means, 98th Cong., 1st Sess. (July 25, 1983) (H.R. 3475).

Currently Pending Legislation

H.R. 4325, 129 Cong. Rec. H9969 (1983).

House Comm. on Ways and Means, Child Support Enforcement Amendments of 1983, H. Rep. No. 527, 98th Cong., 1st Sess. (1983).

Senate Comm. on Finance, Child Support Enforcement Amendments, S. Rep. No. 98-387, 98th Cong., 2d Sess. (1984).

MATERIALS AVAILABLE THROUGH THE NATIONAL CHILD SUPPORT ENFORCEMENT REFERENCE CENTER

The materials listed in this appendix are available through the National Child Support Enforcement Reference Center. These materials are available free of charge to State and local officials involved in the Child Support Enforcement Program. The address is:

The National Child Support Enforcement
Reference Center
6110 Executive Boulevard - Room 820
Rockville, MD 20852
(301) 443-5106

The Reference Center library has hundreds of articles, books, studies, sample forms and statutes, abstracts, audio/visual materials and other works. The items in this appendix are restricted to recent materials (since 1980) which may be of interest to the legal profession and which are otherwise hard to obtain. It contains, for example, studies and reform proposals related to judicial administration. In most instances, only one copy of each identified item is available through the Reference Center. In some cases, an entry has been annotated in this bibliography; where this has occurred, the page number of the annotation is included in parenthesis. A complete listing -- Information Sharing Index -- of all materials available from the Reference Center may be obtained from the Center.

The Administrative Adjudication of Child Support Obligations, National Institute for Child Support Enforcement, 1981. (IX-5)

Alternatives to Judicial Child Support Enforcement, Marygold S. Melli & Sherwood Zinc, 1982.

A Study of Family Law Courts - Final Report, Social Policy and Law Studies, Inc., 1980. (IX-5)

Benefits of Establishing Paternity, National Institute for Child Support Enforcement, 1981.

Bloodtesting Testimony for Use in Paternity Trials, Video Cassette (2 parts - 50 minutes).

Child Support Enforcement Procedures Manual, Polk County (Oregon) District Attorneys Office, 1982.

Delaware Child Support Formula - Melson Formula, Family Court of the State of Delaware, 1980.

Effective Enforcement Techniques for Child Support Obligations Handbook, National Institute for Child Enforcement, 1981.

State of Washington Divorce Modification Project for Increasing Support Orders in Welfare Cases - Final Report 1982.

Technical Notes and Briefing Papers, Minn. County Attorney's Council (four publications: "Paternity Adjudication," "Enforcing the Child Support Judgment," "The Minnesota URESA," and "Contempt and Child Support Enforcement."

The Central Registry/Clearinghouse: A Tool for Improving the Child Support Enforcement Program, U.S. Dep't. of Health and Human Services, Office of Child Support Enforcement, 1983.

Use of Expert Testimony in Contested Paternity Cases, Video Cassette, Institute of Gov't, University of North Carolina.

URESA - Administrative Procedures Handbook, National Reciprocal Family Support Enforcement Association, 1981.