Approved: 4/7/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on March 17, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Oleen (excused)

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Charles Prather, District Court Trustee, McPherson
Jamie Corkhill, Department of Social and Rehabilitation Services
Representative Ellen Samuelson
Dr. Lorne Phillips, Department of Health and Environment
Ann McDonald, Court Trustee, Kansas City, Kansas
Gary Jarchow, Court Trustee, Wichita
Ron Smith, Kansas Bar Association
Jody Boeding, Board of Public Utilities
Joan Hancock, Kansas Public Employees Retirement System
Steve Blaylock, Attorney, Wichita
Jolene Grabill, Corporation for Change

Others attending: See attached list

Sub for HB 2583--establishment of paternity; voluntary acknowledgement

Jamie Corkhill, Department of Social and Rehabilitation Services testified in support of HB 2583 and provided written testimony (Attachment No. 1). She said a major responsibility of the Social and Rehabilitation Services Child Support Enforcement Program was to help children by establishing support obligations and by establishing paternity when appropriate. Ms. Corkhill said the fiscal impact would be modest.

Charles Prather, District Court Trustee, McPherson testified in support of HB 2583 and provided written testimony (Attachment No. 2). Mr. Prather suggested an additional requirement be inserted that the person obtaining the acknowledgment certify on the acknowledgment form that the statement of rights and responsibilities was presented to the putative father and that he had the opportunity to read the statement before the acknowledgment was signed.

Dr. Loren Phillips, Department of Health and Environment testified in support to HB 2583 and provided written testimony (Attachment No. 3). He said the Omnibus Budget Reconciliation Act of 1993 required all states to develop a hospital-based paternity acknowledgement program. He said HB 2583 would meet the requirements of the Omnibus Budget Reconciliation Act.

Representative Ellen Samuelson provided written testimony in support of HB 2583 (Attachment No. 4).

Jolene Grabill, Corporation for Change provided written testimony in support of HB 2583 (Attachment No. 5).

SB 797--suspension of professional licenses for contempt in child support proceedings

Senator Vancrum explained the provisions of SB 797 and provided written testimony (Attachment No. 6). He said SB 797 provides delinquent spouses with incentive to pay on their outstanding child support obligations.

Jamie Corkhill, Social and Rehabilitation Services testified in support of SB 797 and provided written testimony (Attachment No. 7). She said SB 797 would provide an option, other than jail, for the judge to consider when a support debtor is found in contempt of court. Ms. Corkhill said if the nonpaying parent holds a professional license, the court would be able to direct the licensing body to suspend or not renew the professional license.

Charles Prather, District Court Trustee, McPherson testified in support of SB 797 and provided written testimony (Attachment No. 8). He said SB 797 would provide an additional tool for the enforcement of child support orders.

Ann McDonald, Court Trustee, Kansas City, Kansas testified in support of SB 797 and provided written testimony (Attachment No. 9). She said SB 797 could provide a remedy in child support enforcement, particularly a group of obligors that are resistant to other enforcement mechanisms.

Gary Jarchow, Court Trustee, Wichita testified in support of SB 797 and provided written testimony (Attachment No. 10). He said SB 797 authorized a court to order a licensing body to take steps to suspend or withhold renewal of the license of a professional who has been found guilty of contempt in a child support enforcement proceeding.

Ron Smith, Kansas Bar Association testified in opposition to SB 797 and provided written testimony (Attachment No. 11). He said all persons, whether or not professional licensees, are subject to orders of a court regarding child support and custody. He further stated failure to obey court orders could result in contempt proceedings. He referred to a Supreme Court case "In re Anderson, 247 Kansas 208, 795 P.2d 64 (1990)" (Attachment No. 11).

Chairman Moran closed the hearings on SB 797.

HB 2993--qualified domestic relations orders

Ron Smith, Kansas Bar Association testified in support of HB 2993 and provided written testimony (Attachment No. 12). He said the provisions of HB 2993 will lower the costs of handling divorce cases.

Jody Boeding, Board of Public Utilities testified in support of HB 2993 and provided written testimony (Attachment No. 13). She suggested HB 2993 be amended to add the Retirement Pension Plan to the public pension plans which already appear in HB 2993. She provided suggested language changes in her written testimony (Attachment No. 12).

Joan Hancock, Kansas Public Employees Retirement System testified in support of HB 2993 and provided written testimony (Attachment No. 14). She suggested new language be added to HB 2993 to provide that Kansas Public Employees Retirement System be subject to qualified domestic relations orders and technical amendments as provided in her written testimony (Attachment No. 14).

Steve Blaylock, Attorney, Wichita provided written testimony in regard to HB 2993 (Attachment No. 15).

A motion was made by Senator Bond, seconded by Senator Parkinson to amend HB 2993 conceptually to include the Board of Public Utilities of Kansas City (Attachment No. 13) and Kansas Public Employees Retirement Systems' technical amendments (Attachment No. 14). The motion carried.

A motion was made by Senator Emert, seconded by Senator Petty to report HB 2993 favorably as amended. The motion carried.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 18, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary **DATE:** 3/17/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Paul Shelby	Topeka	OJA
Jamie Corkhill	"	SRS/CSE
Jody Boeding	KC	BPU
Gary Shrader	KCK	BPU
Stephen Rehm	KCK	BPU
Jerry Jarboe	Wichita	Court Trustee
Jodie Hancock	Topeka	KPERS
Ron Smith	"	KS BAR
Helen Stephens	"	KPOA
Quinn Mitchell	Topeka	Ag Services
LORNE PHILLIPS	TOPEKA	KDHE
BS McGinnis	Topeka	SRS
Chris Kraft	McPherson	Trustee - OJA
Tom Bell	Topeka	KHA
JEFF SONNICH	"	KNLS

#1

Department of Social and Rehabilitation Services
Child Support Enforcement Program

Before the Senate Judiciary Committee
March 16, 1994

Substitute for House Bill 2583
Related to paternity establishment

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The SRS Mission Statement

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

==========

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on behalf of Secretary Whiteman today concerning this bill. A major responsibility of the SRS Child Support Enforcement Program is to help children by establishing support obligations and by establishing paternity when appropriate. During FY 1993, the CSE Program established paternity for nearly 3500 children. From this perspective, SRS ~~strongly~~ supports the Substitute for House Bill 2583.

Background

The Child Support Enforcement Program has a long-standing commitment to improving the means and procedures for establishing parentage for children born out of wedlock. Numerous studies have shown that children benefit tremendously from early establishment of parent-child bonds, gaining both financially and emotionally.

In recognition of this concept the Congress enacted the Omnibus Budget Reconciliation Act of 1993 (OBRA), setting new standards for paternity establishment for state IV-D programs (Attachment A). Effective July 1, Kansas will be expected to:

- o Establish a hospital based program for voluntary acknowledgement of paternity at or near birth;
- o Make available a simple, civil procedure for other voluntary acknowledgements of paternity;
- o Permit genetic test results above a state-determined threshold to create a presumption of paternity;
- o Permit establishment of a support order, without further paternity proceedings, when there is a presumption of paternity based on genetic tests or on a voluntary acknowledgement of paternity; and
- o Make minor changes in the Kansas parentage act to conform to the new federal requirements.

Senate Judiciary
3-17-94
attachment 1-1

SRS/Child Support Enforcement
Sub HB 2583
March 16, 1994

Last fall, the Joint Committee on Children and Families reviewed the new OBRA requirements and recommended enactment of legislation, the original HB 2583. A portion of the Joint Committee report is attached (Attachment B). After the Joint Committee's bill was drafted, the federal Office of Child Support Enforcement issued proposed regulations interpreting OBRA's requirements. SRS requested introduction of a bill (SB 583) which would meet both OBRA and the proposed regulations, and which included additional reforms.

During the House Judiciary Committee's consideration of HB 2583, it became apparent that neither bill fully addressed the concerns of all the groups most deeply affected: SRS' IV-D Program (CSE), the Office of Judicial Administration, the Kansas Hospital Association, and the Department of Health and Environment (Vital Statistics). The measure before you, the Substitute for House Bill 2583, was the product of much discussion and compromise. It clearly meets the statutory requirements which are effective July 1, 1994; it should meet any additional regulatory requirements at the time they become final.

Hospital-based Acknowledgement Program

One of the most prominent features of OBRA is the requirement that states establish hospital-based programs for voluntary acknowledgement of paternity.

Existing Kansas law and procedures for birth registration come very close to meeting the OBRA mandate. Currently when a child is born out of wedlock, an unmarried mother is asked about the child's father when completing paperwork for the birth certificate. At that point, there is an opportunity for the father to voluntarily acknowledge paternity and have his name placed on the birth certificate.

The critical change needed in existing procedures is formal disclosure of the rights and responsibilities of acknowledging paternity. SubHB 2583 requires the state registrar of vital statistics, in consultation with SRS, to make any needed changes to the existing acknowledgement forms. We anticipate that all hospitals will thereafter use the uniform acknowledgement forms as required by the state registrar of vital statistics.

There are two areas concerning hospital-based programs which will not be settled until the federal regulations become final. SubHB 2583 addresses both areas by requiring or authorizing the Secretary of SRS to adopt appropriate rules and regulations (section 1(a) and section 2). The uncertainties are: (1) which hospitals **must** participate in the mandated program, and (2) what tasks participating hospitals will be required to perform, above and beyond distributing forms and written information. It is SRS' intention to limit the definition of "birthing hospital" to the minimum necessary to meet the final regulations, lowering the agency's administrative costs and our risk of underperformance in an audit.

It should be noted that neither the federal agency nor SRS are asking that hospitals become involved in contested paternity situations -- if there is any reluctance on the part of either parent, the case is not appropriate for an in-hospital voluntary acknowledgement.

One of the federal requirements is that due process safeguards be afforded. Although not specifically mandated by federal law, Section 6(e) (page 5) addresses this concern through a revocation procedure which may be exercised within one year of signing the voluntary acknowledgement. A person who was a minor at the time of the acknowledgement is allowed to seek revocation until one year after reaching age 18, but if the infant is more than one year old at that point, the court has discretion to refuse the revocation if it is not in the infant's best interests. This revocation procedure meets the need to protect people from decisions made when emotionally vulnerable without unduly jeopardizing the child's rights and needs.

Other Procedures for Voluntarily Acknowledging Paternity

Hospital-based paternity establishment is only part of the overall requirements OBRA created for voluntary acknowledgements. In all voluntary acknowledgements of paternity, states are required to provide:

- o A simple, civil procedure;
- o Disclosure of rights and responsibilities; and
- o Due process safeguards.

K.S.A. 38-1130 presently provides a simple, civil procedure for parents to voluntarily acknowledge paternity and amend the birth certificate. With slight changes to the standard forms now in use, this mechanism will meet OBRA requirements.

Effects of Acknowledgement, Genetic Testing, and Miscellaneous Requirements

OBRA requires that voluntary paternity acknowledgements be given greater evidentiary weight than they have traditionally received. Although Kansas law currently allows a presumption of paternity to arise when there is a written acknowledgement, it is necessary to makes some changes in the Kansas parentage act to meet OBRA's new requirements. The amendments are in section 5 (page 3).

Under OBRA a voluntary acknowledgement, **without** further paternity proceedings, must form the basis for seeking a support order. A proposed regulation, expected to become final as written, expands this to include genetic test results above the threshold set by the State. In both instances, this is a logical extension of the requirement that these events give rise to a presumption of paternity. In essence, non-paternity would have to be raised as an affirmative defense.

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This is an important, though technical, change from current law. Presently the plaintiff must affirmatively prove paternity of the child before being awarded support under the parentage act. There is always the risk that, if an unknown presumed or alleged father is not joined in the action, the support award will be void (not merely voidable) under the rule of SRS v. Stephens, 13 Kan.App. 2d 715, 782 P.2d 68 (1989). It should be noted that not all states have so strictly construed jurisdiction under the uniform parentage act.

Sections 7(b) and 10(a) of the bill clarifies that the court has subject matter jurisdiction to establish a support order under the conditions mandated by OBRA so long as the court has personal jurisdiction over the defendant named. The defendant always has the option, as noted above, to raise and litigate the issue of nonpaternity before judgment.

Under OBRA, Kansas must extend full faith and credit to another state's paternity determination which is based on a voluntary acknowledgement. Constitutional law already requires this for determinations which are court judgments; section 5(d) (page 4) extends the recognition to other types of determinations.

The Kansas parentage act already provides for introduction of genetic test results if the alleged father does not promptly challenge them. The amendment in section 8(c) (page 6) keeps the practical time standard of our existing law while technically meeting the federal requirement.

OBRA also requires that genetic test results above a certain level give rise to a presumption of paternity. Section 5(a)(5) (page 3, line 42) provides a rebuttable presumption when results show a 97% probability of paternity. This is in line with threshold percentages chosen by other states.

The final two mandates are: (1) allowing paternity judgments to be entered by default, and (2) extending the state's expedited processes to all paternity actions. We believe that no change is needed in existing Kansas law.

Other provisions

As noted earlier, SRS requested some reforms measures in addition to those strictly required to meet the OBRA mandates. These changes are:

- Section 5(b) (page 4, line 4) -- The amendment would clarify the effects of rebutting a presumption.

- Section 5(c) (page 4, line 14) -- The amendment would codify the policy of In re: Ross, 245 Kan. 591, 783 P.2d 331 (1989), which generally favors maintaining existing parent-child bonds.

- Section 8(b) (page 6) -- Under strict interpretation of existing law, genetic tests must be conducted under court order to be entitled to the

streamlined evidentiary provisions of the parentage act. CSE field attorneys have asked that this be extended to tests conducted voluntarily before the petition is filed. It would be particularly beneficial in giving effect to the new federal requirement for a presumption of paternity based upon genetic testing.

- o Section 10(b) (page 7, line 43) -- This change is needed to insure that, before a man's name may be **removed** from a birth certificate, he is given proper notice and an opportunity for hearing.

- o Section 10(d) (page 9) -- Under other amendments made by SubHB 2583, the mother might not be a named party to a case based upon a presumption of paternity. The change in section 10(d) is intended to insure that both parents will receive due process in custody and visitation matters.

- o Section 10(e) (page 9) -- The existing law gives courts full discretion to award or not award a judgment for reimbursement of support previously provided to the child by either the mother or a public agency. As a result, there are areas in the state where a full judgment for reimbursement is routinely awarded, while in others reimbursement is never awarded under any circumstances. The proposed change would encourage more even treatment of cases across the state.

- o Section 11(a) (page 10) -- This amendment clarifies that no attorney-client relationship arises between a petitioner receiving services under the parentage act and the government lawyer assigned to the case. This conforms to existing practices and to provisions in the uniform reciprocal enforcement of support act (URESA).

- o Section 13 (page 11, line 2) -- The proposed amendments to K.S.A. 39-755 will clarify the role of the IV-D attorney in public assistance cases and will remove a statute of limitations for filing paternity actions which conflicts with the Kansas parentage act.

The House Judiciary Committee added section 5(f) (page 4). This amendment does not jeopardize Kansas' compliance with the OBRA mandates.

Fiscal Impact

Enactment of SubHB 2583 is expected to produce modest fiscal gains for the IV-D program. The estimates (revised for the substitute bill) are that collections will increase by $81,000 per year (gross), of which $25,000 would be retained by the state. Administrative costs for a basic hospital-based paternity program are estimated to be $31,000 per year (gross), of which $10,000 would be the state share. If funding for expanded paternity outreach programs were available, federal financial participation (FFP) would be available for allowable costs at the 66% match rate.

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For reference, federal sanctions for failure to meet IV-D program requirements range from $600,000 per year (1% of AFDC funding) to $18,000,000 (all Title IV-D funding plus 5% of AFDC funding), with an ultimate penalty of $85 million per year (all Title IV-D funding and all AFDC federal funding). Failure of the IV-D state plan to meet, on its face, federal requirements creates the risk of immediate suspension of all federal IV-D funding.

Conclusion

In closing, I would note that many features of these new paternity requirements were part of the Joint Committee on Children and Families' report of December 1992. It was encouraging to learn that only 44% of children born out of wedlock in Kansas during 1992 did not have the father named on the birth certificate, as compared with the 60% national average. Notwithstanding this achievement, we know that improving the laws for both voluntary and contested paternity establishments will benefit all concerned.

Respectfully submitted,

Jamie L. Corkhill
Policy Counsel
Child Support Enforcement
296-3237

OBRA '93 (Omnibus Budget Reconciliation Act of 1993)

Paternity Requirements

Paternity performance standards -- New performance standards for paternity establishment. (Note: The statutory formula is now widely acknowledged to be erroneous; corrective federal legislation is expected.)

Expedited process -- States must apply expedited processes in IV-D paternity establishment (including contested cases), as well as in other IV-D establishment and enforcement cases.

Voluntary acknowledgement - Procedures

Requirements:

- o Simple civil procedure for voluntarily acknowledging paternity
- o Procedure must explain rights and responsibilities of acknowledging paternity
- o Procedure must include Due Process safeguards
- o State must have a hospital-based program for acknowledgement immediately before or after birth of a child.

Voluntary acknowledgement - Effects

Voluntary acknowledgement must be:

- o Admissible as evidence of paternity and
- o Create a rebuttable OR conclusive presumption of paternity.

Voluntary acknowledgement - Basis for support order

Voluntary acknowledgement must be recognized as a basis for seeking a support order without further proceedings to establish paternity.

Genetic tests - admissibility

Requirements:

- o Objections must be made in writing "within a specific number of days before any hearing" where the results may be used.
- o If no objection, must be admitted without foundation testimony or other proof of authenticity or accuracy.

Genetic tests - presumption -- Must create a rebuttable or conclusive presumption of paternity if genetic test results (i.e., the probability of paternity) exceeds a specific threshold probability.

Default judgments -- Must be able to obtain default judgment of paternity upon showing service of process upon defendant and any additional showing required by state law.

Full faith and credit -- Must give full faith and credit to a "determination of paternity made by any other State," whether through voluntary acknowledgement, judicial process, or administrative process.

Effective date -- The start of the first quarter after the end of legislative session (7/1/94).

Attachment A

Paternity Establishment

Recommendation. The Joint Committee recommends introduction of a bill that would amend K.S.A. 65-2409a, a statute in the Uniform Vital Statistics Act, to require the written consent of the mother and the person acknowledged to be the father to be made on a form provided by the Department of Health and Environment (KDHE). The bill would, among other things, bring Kansas laws into compliance with OBRA '93. The bill would require the Secretary of Health and Environment to prepare a form for voluntary acknowledgment of a child's paternity that constitutes a declaration conforming to Kansas law governing declarations and that would include:

- the mother's statement consenting to the acknowledgement of paternity;
- the statement of the father acknowledging he is the biological father of the child;
- a statement of both parents that they have received specified information; and
- the statement of both parents that they are voluntarily signing the form and understand they cannot be required to sign.

The bill also would direct the Secretary of SRS, in conjunction with the Secretary of Health and Environment, to prepare information to be provided to parents before they sign a voluntary acknowledgment of paternity, set out the information to be provided, require the Secretary of Health and Environment to distribute both consent forms and the information to be provided to the parents about voluntary acknowledgment of paternity to hospitals and others required to file birth certificates at no charge, and provide the minority of a person signing an acknowledgment of paternity in accordance with provisions of the statute does not invalidate the acknowledgment or make it voidable.

The bill also would require the giving of full faith and credit to determinations of paternity made by another state, the District of Columbia, or specified U.S. territories regardless of whether the determination was established through a judicial or administrative procedure or through voluntary acknowledgment and make a voluntary acknowledgment of paternity done in accordance with the Kansas Parentage Act or provisions of the new legislation, sufficient basis for a support order without additional paternity proceedings, subject to due process safeguards.

Further, the bill would amend four statutes in the Kansas Parentage Act to include a voluntary acknowledgment of paternity made in accordance with the bill, or genetic test results with a probability of 97 percent or greater, as presumptions of paternity; to substitute references to genetic tests for references to blood tests in the existing law; to make genetic test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy in an action in which tests are not challenged; to further clarify the time in which a written notice of intent to challenge the validity of genetic test results must be given; to add voluntary acknowledgment of paternity made in accordance with the new provisions of the bill to the evidence that may be presented in actions relating to paternity; and to allow judgment to be made against a person in paternity actions when the defendant fails to appear or to file an answer upon proof of service.

Paternity Establishment: State Innovations

Barbara C. Cleveland
Andrew M. Williams

November 1992

Measuring Excellence Through Statistics
Periodic Report No. 1
Division of Policy and Planning
Office of Child Support Enforcement
Administration for Children and Families
U.S. Department of Health and Human Services

Measuring Excellence Through Statistics

What follows is the first periodic Measuring Excellence Through Statistics (METS) Report. The METS initiative is a program-wide effort to improve the accuracy of the Office of Child Support Enforcement data as submitted by the States on their program operation. It is being developed and implemented jointly by the Federal Office of Child Support Enforcement, the Administration for Children and Families Regional Offices and the States. Among the objectives are

- to simplify and clarify reporting requirements to ensure uniformity of reporting among the States thereby improving the reliability of the data,
- to determine revised data needs based on performance indicators thereby dropping requirements for unnecessary data,
- to implement new reporting requirements to coincide with State systems development,
- to develop a new periodic report that focuses on achievements and can be used by the States to share these accomplishments and promote their successes.

We have developed this report in response to this last objective. METS is only in its very early stages. While progress has already been made, it may be too early to see improvements in the existing data. In addition, as researchers have noted, innovations can reflect a strong program moving ahead or they may reflect a creative response to serious performance problems. In this latter case, the improvement may not be so apparent. With this as a caveat, we have decided to address the area of paternity establishment for this first METS Report.

Acknowledgments

We would like to thank the following people for providing valuable insights and information: Jeff Ball, Greg Dunn, John Ellis, Pamela Holcomb, John Hoover, Nancy Huston, Jan Ixenberger, Gary Kreps, Gaile Maller, Terri Nickel, Debra Pontisso, Paula Roberts, Nancy Sterk, Marianne Upton, and many others.

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Executive Summary

Despite increases in the birth rates for unmarried women, there has been recent progress in the area of paternity establishment. This improvement is due largely to three inter-related forces: Federal requirements, improved genetic testing, and innovative State and local programs. This paper examines the third force, innovative practices.

Hospital-Based Programs: Some States have developed quick and easy procedures for establishing paternity as close to the time of birth as possible. Hospital or child support staff counsel parents about the benefits of paternity establishment and provide the alleged father the opportunity to sign a voluntary acknowledgment. The father may be more likely to admit paternity during the happy time following birth. Such programs may also be more cost-effective, since they avoid location and genetic testing costs associated with contested cases.

Other Simple and Efficient Methods: Many States have developed simplified procedures to establish paternity after the mother and child have left the hospital. States are developing ways to increase efficiency while still respecting due process. The results take a variety of forms, including: administrative systems, stipulation processes, quasi-judicial approaches, and default judgments. It is difficult to neatly classify these systems, but there are some common themes. All provide multiple opportunities for consent and emphasize simple and fast processes - both administrative and judicial.

Use of Genetic Test Results: States are enacting laws and procedures which encourage greater recognition and use of test results in paternity determination proceedings. State efforts include: establishing a rebuttable presumption based on test results, limiting requirements for the admissibility of test results, setting time constraints for raising objections, using specific testing techniques, and negotiating contracts with genetic laboratories which expand the usefulness, timeliness, and quality of testing.

Outreach: Almost all States have developed outreach campaigns which educate parents and the general public about the benefits of paternity and the process for establishing it. These campaigns are designed to encourage both mothers and fathers to seek and cooperate with paternity establishment efforts. Some common trends in outreach efforts include:

use of appropriate language; use of a variety of media and settings; outreach to fathers; outreach to teens; and prevention of teen pregnancies.

Incentive Programs: Several States have established laws which provide for cash incentives to agencies or child support workers to reward good performance. These States have taken advantage, in a creative way, of the flexibility available to them in the allocation of child support incentive monies in order to encourage paternity establishment efforts. Incentive programs, when adequately funded, may increase paternity establishments.

Interface: Several IV-D programs have improved paternity establishment through cooperative efforts with other agencies. Most of these efforts appear to be operating at the local level. Some are parts of clearly defined programs while others are not. Interface can result in less duplication of effort and improved exchange of information.

Introduction

This paper examines innovative State practices in the area of paternity establishment. In the past, Federal child support legislation and policy have often been based on practices developed by States. Today, States continue to serve as "laboratories" for developing and testing new and innovative procedures that go beyond the requirements of current Federal mandates. State innovation is one of the main reasons for recent improvements in the area of paternity establishment.

Despite facing tough fiscal situations in recent years, States have devoted substantial attention and creativity to improving paternity establishment performance. This commitment reflects a recognition of the long-term benefits, for both families and the State, of paternity establishment. Federal emphasis on paternity establishment and locate have also been a motivating factor.

After providing background on paternity establishment issues, this paper will examine State innovations in the following areas: hospital-based programs, other simplified and efficient procedures, use of genetic test results, outreach and education efforts, incentive payments to counties and workers, and coordination with other public agencies. This overview is not meant to be exhaustive, but is illustrative of the types of practices which States are developing in order to increase and expedite paternity establishments.

A Statement of the Problem

Recent Improvements in the Face of Expanding Need

According to the Census Bureau Survey on Child Support and Alimony: 1989, as of Spring of 1990, approximately 10 million mothers age 15 and over were living with their own children who were under 21 years old and whose fathers were not living in the households. The poverty rate for all women with children from absent fathers was 32 percent in 1989, thus 3.2 million mothers had incomes below the poverty level. The poverty rate for never-married mothers was 53.9 percent compared to a rate of 23.1 percent for ever-married mothers. The poverty status of mothers

with less than a high school education was 59.1 percent. The poverty rate for mothers under 30 was 49.2 percent.

Almost 56 percent of women receiving Aid to Families With Dependent Children (AFDC) have never been married. Over one-half of the AFDC budget goes to families where the mother was a teenager when her first child was born. Both of these statistics point out the importance of establishing paternity. The identification of the father and his potential to contribute to the care and financial support of his progeny could mean a step in the direction of self-sufficiency for the family as well as savings for the States, the Federal Government, and the taxpayer.

Data from the National Center for Health Statistics indicate that 27 percent of total births were out-of-wedlock in 1989. This means that approximately one out of every four children in our society is born out of wedlock. Figures from the late 80's show that the out-of-wedlock birth phenomenon has become ingrained; there is an increase in both actual numbers and in the percentage of growth rate.

More specifically, the total number of births to unmarried mothers in 1989 totaled 1,094,200, a 9 percent increase over 1988. This is a 64 percent increase over the 665,700 out-of-wedlock births at the beginning of the decade in 1980. The 1980 figure represented, in turn, a 67 percent increase over the 398,700 out-of-wedlock births reported at beginning of the previous decade.

The increases in the birth rates were substantial for unmarried mothers in all age groups. Birth rates were highest for unmarried mothers aged 18 to 24, with 57-62 per 1000. Because the number of teenage women declined during the 1980's, the number of births to this age group was not as high as might have been expected.

However, the number of women aged 20 and older increased, particularly the 25 to 44 year olds. Increasingly this group is unmarried. This situation combined with the rising rate of non-marital childbearing caused sharp increases in the number of out-of-wedlock births to this group: between 1980 and 1989, the number of births rose from 393,946 to 746,289, an 89 percent increase.

A quick view of overall paternity establishment statistics reflects the increasing effort in this area. Since the beginning of the child support program in 1976, the number of paternities established has increased 2,000 percent. The number of paternities established from 1986, the year many provisions of the 1984 Child Support Enforcement Amendments

were implemented, to 1991 increased from 245,000 to 479,100, an increase of 96 percent. The annual percent of increase is even more impressive: for fiscal year 1987 to 1988, the increase is 14 percent; for 1988 to 1989, 10 percent; for 1989 to 1990, 16 percent; and, for 1990 to 1991, 22 percent. The attached Graphs A and B show the increases in both the absolute numbers and the percent of increase.

Benefits of Paternity Establishment

Establishing paternity is the first step toward a child support award and child support payments, in turn, can be a first step toward family self-sufficiency. Immediate wage withholding can provide a consistent source of income for the child and mother and medical insurance can be an important part of the support package. Survivor's benefits through Social Security can be another source of income. For public assistance recipients, cooperation in location and paternity establishment is a requirement for receipt of AFDC and Medicaid benefits with certain good cause exceptions.

However, there are also significant non-economic benefits from paternity establishment. Knowledge of family medical history can be important. There are emotional and psychological benefits. Knowing one's father, or just knowing who he is, can be important to a child's development. Studies have shown that bonding occurs within the first year after birth. A father who misses this opportunity may never regain it.

Three Interrelated Forces For Progress

1. Federal Emphases and Requirements for Paternity Establishment

Congress passed several laws designed to encourage improvements in paternity establishment in the IV-D program. In the 1984 Child Support Enforcement Amendments, short State statutes of limitations were prohibited and expedited process provisions encouraged the trend away from trials and court appearance for paternity establishment. The Amendments also changed the Federal funding formula by allowing States to deduct laboratory costs for paternity establishment from the program expenditures used to compute a State program's cost effectiveness for incentive payment determinations. During this period, OCSE supported

a grant to the American Association of Blood Banks to develop standards for laboratory testing for paternity, the Parentage Laboratory Testing Accreditation Program.

In the Family Support Act of 1988, States were encouraged to adopt simplified civil process and procedures in paternity establishment; voluntary acknowledgment in non-contested cases and civil procedures in contested cases were recommended. Paternity establishment efforts were to be expanded by clarifying the statute of limitations on paternity establishment. States were mandated to adopt procedures requiring genetic testing upon request in contested cases. Federal Financial Participation was set at 90 percent for the laboratory costs of genetic testing. Performance standards were established, defining a performance-based system and helping to spawn the METS initiative.

In addition, an audit focus has helped improve performance in this area. A large number of States placed an emphasis on paternity establishment and locate during corrective action periods in response to audit findings.

As can be seen below, some of the Congressional requirements derived from innovations which had occurred at the State level in paternity establishment. A number of the practices had been parts of research and demonstration projects or were in place or planned before these requirements went into effect.

2. Genetic Testing: A Scientific Breakthrough

In recent years, scientific advancements in genetic testing have revolutionized the paternity determination process. A variety of tests are now available, including red cell antigen, human leukocyte antigen (HLA), red cell enzymes and serum proteins, and DNA profiling, which differ in their costliness and conclusiveness of results. A combination of different tests is often used in order to obtain more conclusive results in a case.

Genetic tests can provide exclusionary evidence that it is biologically impossible for an alleged father to actually be the natural father. On the other hand, if an alleged father is not excluded, tests can provide inclusionary evidence by showing the likelihood that he is the actual father (e.g., tests may show that there is a 99 percent probability that the alleged father is the natural father). Use of genetic testing not only increases the accuracy of paternity determination decisions, but often expedites the paternity proceedings and avoids protracted contested cases, enabling child support payments to begin sooner. For instance, in many

cases, the alleged father will voluntarily acknowledge paternity once genetic tests reveal a high probability that he is the father.

3. Innovative State and Local Practices

State practices present a wide array of innovations. Because family law has traditionally been the domain of the States, law and practice vary from State to State. This has resulted in a wide variety of practices and procedures. This situation has allowed the States to be creative and function as laboratories for innovation. It has also resulted in a number of problems due to our now highly mobile society.

Our review of State practices reflects this variety. Paternity establishment can be pursued at various points in time. It can be pursued through administrative or judicial means or some combination thereof. The act of establishment may or may not be linked to the establishment of a child support order.

Certain common threads which appear to positively influence paternity establishment could be found, however. Multiple opportunities for consent by the alleged father are important. Timely intervention and processing are important. And, strong management is important. These three elements in combination can have a synergistic effect. The faster the State or local child support enforcement (IV-D) agency moves to establish paternity, the more success they will have; the more collections they will obtain for the children; and, the more savings they will derive. A first step on the continuum is contact with the parents at the time of birth.

Early Paternity Establishment - At the Hospital

Among the innovations undertaken by various jurisdictions to improve their rates of paternity establishment are hospital-based voluntary consent programs. As might be expected, these operations vary in how they work and the areas they cover. Some States already have programs in effect which cover most of the birthing hospitals in their jurisdictions. Others approach hospital-based paternity establishment through trial programs in certain targeted hospitals, often with an eye to expansion to more facilities. Still other States are just now approaching this area as a result

of legislative changes, budgetary opportunities and in response to the skyrocketing numbers of births out-of-wedlock.

These programs attempt to take advantage of the recommendations of numerous studies and the encouragements of the Family Support Act of 1988 to develop quick and easy procedures for paternity establishment as close to the time of birth as possible. All of these programs operate in a fairly simple manner, have proved to be money savers for the States involved, and include outreach efforts the effect of which is difficult to measure but which generate positive public relations for the hospitals and the States. In a few States, hospital-based programs are staffed by IV-D workers while in other States the IV-D agency provides training and support. However, cases in hospital-based programs are not automatically IV-D cases; the mother must still apply for services or assign her support rights to the State before a IV-D case is established.

The Virginia Variation

Virginia has a hospital-based program to establish paternity administratively. It operates in hospitals throughout the State and is based on a 1990 State law which allows voluntary acknowledgment to have the same force and effect as court ordered paternity establishment. District offices of the Division of Child Support Enforcement negotiate with each hospital to establish a Paternity Establishment Program (PEP) in that hospital. The contract is signed at the State level. Hospitals agree to provide social services staff to explain paternity rights and responsibilities to the parents of the newborn and a notary public to notarize the forms involved. The hospital is also responsible for forwarding these forms to the state level Division of Child Support Enforcement and to the Division of Vital Records. Vital Records then issues a birth certificate.

The hospital is reimbursed $10 per paternity established; this fee can be negotiated up but is capped at $20. However, it is explained to the hospitals that there are other benefits to them from these services. Establishment of paternity may mean that the child will be covered under the father's health care plan through his employment rather than Medicaid. In addition, the intangible benefits of good public relations are touted.

Virginia legislation simplifies the paternity establishment process by taking it out of the judicial system when acknowledgment is voluntary. Their procedures and outreach program attempt to create a positive

environment building on the "glow" of the moment of birth to approach the parents. Hospital staff carefully explain the rights and responsibilities of paternity to the parents, who also receive brochures. If the parents are interested they are given a Declaration of Paternity Form to sign in the presence of a notary. This is the same form used by the Division of Vital Records of the Department of Health. A copy of an Application for Division of Child Support Enforcement Services is included in the information packet given to interested unwed mothers but the hospital has no responsibility for this form.

This program was started in two hospitals and has now expanded to eleven with an additional five under negotiation. From the inception in September 1990 through December 1991, they have established 426 paternities. They estimate savings of $440 per paternity due to the faster process and fewer court appearances. Thus, estimated savings were $187,440 as of December 1991.

The Washington State Variation

The State of Washington has also taken a lead in establishing paternity simply and quickly in the hospital setting. Prior to the implementation of their Paternity Acknowledgment Program, paternity establishment cases were referred to Prosecuting Attorneys or Attorneys General, a practice which often resulted in delays and poor performance. In looking at the situation, the Washington State Commission for Efficiency and Accountability in Government cited two primary problems in paternity establishment efforts: failure to locate the alleged father and lack of cooperation by the mother.

Office of Support Enforcement (OSE) experience, as well as the results of research studies conducted elsewhere, told officials that the longer it took them to establish paternity, the less likely they would succeed. In addition the Family Support Act of 1988 placed increasing demands on the paternity establishment system. OSE recommended a new law. It was enacted effective July 1989.

Under this law, paternity establishment was moved out of the judicial arena and into the administrative one for parents who choose to cooperate. Here too, the decision to cooperate is encouraged by approaching the parents in the hospital at the time of birth when they are happy and proud.

Specifically, the legislation requires that physicians, midwives and hospitals provide an opportunity for unmarried mothers and fathers to voluntarily acknowledge paternity. Written informational materials must also be provided. The original affidavit is sent to the Center for Health Statistics (CHS) of the Department of Health. The name of the presumed father is added to the birth certificate by the hospital if the affidavit is signed within 10 days of the birth. A copy of the affidavit is also forwarded to the OSE with an invoice. OSE provides reimbursement of $20 for each signed and notarized copy that is received. The parents receive their own copy.

The signed affidavit creates a presumption of paternity. Based on that presumption, OSE may serve a Notice and Finding of Parental Responsibility (NFPR) on the father. The notice tells the father the amount of the child support obligation and notifies him that he must provide medical insurance if it is available through his employer.

The father has a right to an administrative hearing on the child support issue. He may also request genetic tests. He may ask that his case be referred to the courts.

The State is pleased with the progress of the program. During the period January through June of 1991, OSE received an average of 644 affidavit copies per month which was an increase over 1990 (543 monthly) and almost double the average number received during the first six months of the program (343 per month). Seventy-two per cent of these 1991 affidavit copies came directly from the hospitals. An additional 21 percent were received from parents who chose to delay signing until more than 10 days after the child's birth. There was the indirect program benefit of establishing paternities for children born prior to the implementation date of the program: 7 percent of the affidavits received from CHS during the January to June 1991 period were for these children. Apparently, these parents heard about the program and wanted to establish paternity for their children.

OSE is also pleased with the cooperation they have received from hospitals and midwives. They have offered and fulfilled requests for training from 50 hospitals. After a brief increase to a 44-day median in 1991 (up from 36 days) for receipt of the signed affidavit, they found that turnover of hospital staff was a problem and that in-service training and encouragement are important parts of the on-going program.

OSE made a number of projections based on 1991 partial data. They would receive 7,700 affidavits a year of which 93 percent or 7,100 would

be for children born after the program implementation date. They anticipated that 19,000 children would be born to unmarried parents during the calendar year 1991. Thus, at those rates, at least 37 percent of all unmarried fathers would be signing an affidavit at birth or shortly thereafter.

They actually fell slightly short of this projection: they received 7,579 affidavits. However, by the end of August of 1992, they had already received 6,982 and projected receipt of between 8,500 and 9,000 affidavits in 1992.

The State program includes order establishment as a part of their administrative process. Approximately 1/3 of the paternity affidavit copies received are matched with an existing child support case and sent to one of the field offices. The others are filed and when a mother later receives public assistance benefits or asks for OSE services, the field office requests a copy of the affidavit.

OSE conducted a limited survey of 90 cases in which staff attempted to serve a Notice and Finding of Parental Responsibility. They successfully served in 80 percent of attempts. Of these, the father defaulted (the amount of child support stated on the notice becomes an order within 20 days of service) in 78 percent of the cases. There were requests for genetic tests in 3 percent of the cases and no requests for a referral to the court system. For these sample cases, a final resolution of the support amount was obtained within 98 days from the birth date of the child.

The West Virginia Variation

The State of West Virginia studied the hospital-based projects in Virginia and Washington and outreach materials from numerous sources. They then looked at their own situation to develop a pilot program for hospital-based paternity establishment. The pilot was implemented in September, 1991 for three months in three specially targeted hospitals.

The two largest birthing hospitals in the State plus one small, progressive rural hospital were selected. Child Advocate Office (CAO) staff worked with hospital administrative, legal and social work staff to develop agreements to try the program in their facilities. This included the cooperation of the Department of Vital Statistics. In addition, CAO, through the Secretary of State's Office, agreed to provide additional Notaries Public to the hospitals if requested. There is no payment to hospitals for paternities established under this program.

CAO then provided training, assistance and oversight to hospital, Vital Statistics and CAO staff. Hospital staff training consisted of the process of paternity establishment including methods of approach, use and distribution of booklets, and completion and distribution of paternity forms. Training also covered the benefits of the program not only for the parents and children involved but also for the hospital, the Department of Health and Human Resources and the taxpayers of West Virginia. CAO staff training covered logging in affidavits received, disposition of forms, continued outreach efforts, and Federal reporting requirements.

Preliminary data indicate that there were 1,179 births during this period in these hospitals. Three-hundred-twenty-eight of them (27.8 percent) were to unwed mothers. Paternity was established in 131 or 40 percent of these births. One-hundred-fourteen or 87 percent of the mothers were West Virginia residents and 52 or 46 percent of these residents were receiving AFDC and/or Medicaid at the time. West Virginia has assumed based on other States' data that a cost of $600 dollars for establishing paternity is reasonable. Thus, they conclude that this brief pilot saved the State about $31,200.

Latest information is that there are now 25 hospitals participating in the program. With this expansion, CAO found it necessary to provide 12-15 hospitals with notaries for weekend and evening work. CAO staff project that all 34 birthing hospitals will be in the program by the end of this year and that 2500 paternities will be established after one full year of operation.

This program was established based on existing legislation which provides that a written acknowledgment of paternity by both parents legally establishes that the man is the father for all purposes. The legislation governing Vital Statistics and Registration contains similar wording thus providing the same opportunity for voluntary acknowledgment after the hospital period. There have not been challenges to paternities established under this program.

The District of Columbia Variation

A number of other jurisdictions are developing or participating in hospital-based efforts to improve paternity establishment rates. The District of Columbia has been using a July 1991 law to improve paternity establishment levels. Currently, all hospitals in the District, operating according to their own procedures, offer alleged fathers the opportunity

to acknowledge paternity by signing an Acknowledgment of Parentage Form. Usually, it is the birth registrar who notifies the father of his rights and offers him the form. The hospital then notarizes it and forwards it to Vital Records which sends the Office of Paternity and Child Support Enforcement a copy. Pamphlets are also available at the hospitals. While this is not designated a hospital-based program, child support staff believe that the in-hospital efforts have a positive effect on the overall program.

The Guam Variation

There is a similar process in Guam. A simplified process for voluntary acknowledgment is used. The form as well as brochures are made available to the father and mother at the hospital. If the father signs the form, it is forwarded to the Registrar of Vital Statistics who issues a birth certificate. The IV-D agency files the form with the Clerk of the Court should it involve a support case.

The Dallas County, Texas Variation (Parkland Hospital)

A hospital-based paternity establishment program has been implemented in Dallas County, Texas. A paid full-time staff person has been placed in Parkland Hospital by the Office of the Attorney General to inform pregnant mothers of the importance of establishing paternity. This hospital was selected for the trial program because it has the largest number of births in the State and mothers tend to stay there longer so there is more time to discuss paternity issues with them.

The staff member is called an investigator and she meets with mothers in groups. She also meets individually with mothers who express an interest in establishing paternity and with fathers who admit paternity. She secures paternity statements and waivers of citation from fathers who admit paternity and arranges court dates to obtain orders. She prepares legal pleadings for women whose partners deny paternity. She informs hospital staff of the legal aspects of paternity establishment and provides brochures to be included in hospital information packets. There has been discussion regarding expanding this program to other hospitals using volunteer staff and perhaps reimbursing the hospital for costs.

The Kent County, Michigan and Shelby County, Tennessee Variations

Kent County, Michigan has also been the site of a hospital-based paternity establishment pilot program using hospital staff. At one of the large hospitals involved, 27 percent of the births are out-of-wedlock and the paternity establishment rate is 46 percent. This may be expanded into a statewide program as part of a proposed Governor's Initiative. Shelby County (Memphis), Tennessee has also operated a hospital-based program for the Memphis area.

The Ohio Variation

New legislation in Ohio has enabled the establishment of a State-wide program for hospital-based paternity establishment there. Under a recently passed law, administrative procedures will be used in the hospital setting. Each hospital will provide a staff person to explain the benefits of paternity establishment and provide brochures on the subject. The father will sign the birth certificate with two people as witnesses. The State will reimburse the hospitals for the administrative costs of providing this service.

Other Variations

Florida will also be targeting major hospitals in Tampa, Jacksonville, and Miami for hospital-based efforts. There are similar movements in California (pilot basis), Arkansas and Pennsylvania. The State of Delaware is experimenting with pre-natal intervention in coordination with the Public Health Division of the State Department of Health and Social Services (see below).

In addition there are federally-supported demonstration programs in New York City and Denver testing various approaches to paternity establishment both before and after birth in the hospital and clinic setting. The New York project is testing the provision of paternity counseling by public health nurses and social workers in the hospital. The Denver project is also using the provision of paternity counseling at pre-natal clinics at Denver General Hospital in addition to testing the use of extended hours of operation by the IV-D agency. Both programs are scheduled to operate through September 1994 when evaluations will be available.

Simple and Efficient Methods of Establishing Paternity After the Hospital

In addition to these hospital-based efforts, numerous jurisdictions have developed simplified and more efficient procedures to establish paternity after the mother and child have left the hospital. Studies have shown that the more time which elapses after the birth prior to establishment of paternity, the greater the cost involved and the less likelihood of success. States have been driven by the 1984 Amendments, the paternity establishment requirements of the Family Support Act of 1988, and the need to reduce welfare costs, as well as the commitment to the belief that every child should have the opportunity to know both parents. They are searching for ways to speed up the paternity process while respecting due process.

The results take a variety of forms depending on the existing system and practices and on the legislative base. Often, jurisdictions which operate an administrative program in the establishment and enforcement of orders still reserve judicial procedures for paternity establishment or will develop some faster processes for early steps, allowing multiple opportunities for consent, but still require some form of judicial ratification of the end result. Others have developed efficient processes within more traditional systems. The variety is almost endless and provides examples for adaptation to diverse situations. It is difficult to neatly classify these systems, but there are some common themes. All provide multiple opportunities for consent. All emphasize simple and fast processes - both administrative and judicial.

Administrative Systems

Administrative systems do not involve a judge or court time. They are operated by agencies, not courts. Since agency workers are able to establish paternities under State law, the delays as well as the greater formality of the judicial system are avoided. For example:

The Oregon Approach: Oregon has been operating for several years under a law which provides for an administrative system for paternity establishment. As with other jurisdictions, when both parents are present and agree to paternity, the steps are simple. Both can sign a joint

Declaration of Paternity. The document is then filed with the Department of Vital Statistics and a modest fee is paid (either by the parents or the IV-D agency). Vital Statistics prepares the birth certificate.

For situations that are not as straightforward as this, Oregon has a very effective paternity establishment program which has been carefully refined over the last six to eight years so that it now is operated mostly by regular staff rather than attorneys and has been reduced to a set of very simple procedures and steps, clearly outlined in flow charts and utilizing standard forms. According to the staff, the system operates efficiently and still provides multiple opportunities for consent.

The welfare department handles in-take. The welfare worker gives the mother an affidavit of paternity to fill out. When it is signed and sworn to, it is sent to the IV-D office. The child support office then issues a Notice of Financial Responsibility which is personally served. If the alleged father wishes to acknowledge paternity, he can simply return an acknowledgment of paternity form to the IV-D office. If the Notice is served and ignored, paternity is established by default. If the alleged father responds and denies, genetic tests (including DNA) follow. A recent law allows the establishment of paternity when genetic test results show a cumulative paternity index of 99 or greater. When this standard is met and the mother makes a statement of paternity, an order is issued, unless a party objects within 30 days. If an objection is raised, the case goes to court. This process appears to avoid contested court actions; Oregon reports that they are establishing approximately 440 paternities per month, of which only one is court ordered.

Alaska: Alaska has also been using an administrative process for voluntary consent. When the mother applies for IV-D services, the alleged father is sent paternity acknowledgment forms. He can admit paternity then or deny and be subject to genetic testing. His signature on the acknowledgment form has the force of law without judicial action. This is similar to the practice of the State of Virginia discussed under in-hospital programs above.

Stipulations

Stipulations provide another means of expediting the paternity establishment process. They can be used under either administrative or judicial systems, can be used at any stage in the process (thereby providing multiple opportunities for consent) and provide a substitute for initiating a formal action.

The Wisconsin Example: The State of Wisconsin's child support program operates under a strong judicial system. This means that there are no administrative processes and that all cases must be adjudicated through the court system. In order to speed up the paternity establishment process, the Milwaukee County Child Support Agency initiated a stipulation process which is now used statewide.

Under this process, paralegals interview the mother and the alleged father in the local IV-D office. Interviews are scheduled and both AFDC and non-AFDC mothers are advised that the alleged father may accompany them should he wish to stipulate to paternity. Each of the parties is interviewed separately by the paralegal to ensure that legal criteria such as over age 18, mentally competent are met. The interview with the alleged father stresses his rights to ensure due process.

If there is still agreement, the document, which contains the support order, is completed and the parents go before a Family Court Commissioner where the document is reviewed and a Judgment of Paternity is entered. If the parents are unable to agree on any part of the stipulation, the Court may schedule another hearing date in order for the parties to reach final agreement. After the court hearing, an Income Withholding Order is done and sent to the father's employer, if applicable. Because of the non-adversarial nature of the process, the State believes that the need for multiple court hearings is avoided.

Stipulation is also possible at later stages in the process. If the alleged father does not appear for the interview, a paternity affidavit is enclosed in the papers that are served. At this stage, he can agree to paternity, deny paternity or agree to genetic testing. He can waive his right to a first appearance before the court and go directly to genetic testing. If he consents to stipulate to the results of the genetic tests, a court date is scheduled. Thus, there are several opportunities to admit to paternity. Further, no support order can be issued until the court acts.

Delaware's Efforts: The State of Delaware has a similar system using a mediation hearing as a first step once jurisdiction is obtained. If the alleged father admits paternity, he signs a Stipulation of Paternity and a consent order is prepared. If he denies, genetic tests are scheduled. If he still denies, the case goes before the Master or Judge for adjudication. The Delaware Child Support Enforcement Division is also working on a pilot project with the Division of Public Health to include paternity establishment in the educational component of the prenatal clinic program. This will provide yet another non-adversarial, voluntary consent opportunity in the process of paternity establishment.

Default Judgments

Some States, regardless of whether they operate a judicial or administrative system, are able to enter default judgments against alleged fathers who fail to cooperate with paternity establishment. The possibility of a default order provides an incentive for alleged fathers to attend hearings and keep genetic testing appointments. For example:

Default in Montana: Montana is a strong administrative process State which had relied on a court system with detailed evidentiary requirements to establish paternity when voluntary consent was lacking. Legislation effective in 1989, streamlined paternity establishment procedures. Once the alleged father is served with an administrative notice of paternity determination, he can admit, deny or default. If he defaults, paternity can be established administratively with the document being filed with the District Court. It is then forwarded to Vital Statistics. The issue of due process is addressed by the fact that the default is appealable. A court hearing is held if it is appealed.

Quasi-Judicial Approaches

Quasi-judicial processes are part of the court system, but contain administrative-type aspects which help make paternity establishment more efficient. In most cases, under a quasi-judicial system, court officers other than judges are able to establish paternities. For example:

Philadelphia's Court Hearing Officers: In Philadelphia, Pennsylvania, court hearing officers help to expedite paternity cases by avoiding full judicial involvement in the process, where possible. Philadelphia's process also gives alleged fathers multiple opportunities to voluntarily acknowledge paternity, and involves close coordination between the court and the District Attorney's office. Similar practices are also used in Allegheny County (Pittsburgh) and other localities in the State.

When a petition is filed in a paternity case in Philadelphia Family Court, a pretrial conference is scheduled before a court hearing officer. At the conference, the alleged father is given the opportunity to admit paternity. If, as occurs in a large number of cases, the father admits paternity, the paternity issue is resolved, and a child support order is entered by the hearing officer. On the other hand, if the alleged father fails to voluntarily acknowledge, the conference is discontinued and administrative orders for genetic testing are issued.

Paternity cases are usually scheduled twice a week in Family Court. One of the days is usually reserved for cases where one or both parties failed to appear for previously scheduled blood draws. On this day, a technician is on-site to immediately take blood samples if the parties appear in court and the paternity issue cannot be resolved.

Once genetic test results are available in a case, the District Attorney's office conducts another pretrial conference with both parties in the case. During these conferences, the District Attorney's staff is frequently able to obtain voluntary acknowledgments if the genetic tests reveal a high probability of paternity.

New England Approaches: Maine and Vermont have recently established new systems which are referred to as quasi-judicial. In Maine, although most of the child support enforcement system was under administrative processes, paternity establishment was done by judges until recently. New legislation allows that a voluntary acknowledgment can be simply filed with the court. The main change however is that the administrative hearing official can order genetic tests. This means that the tests are usually done more quickly, an effective procedural change. Since test results are often conclusive, the father voluntarily agrees to paternity much earlier.

Vermont also established a new State program which is described as quasi-judicial. Since 1990, they have created a new Family Court system and moved the IV-D agency out of and up to an equal level with the welfare office. These changes have been accompanied by alterations in the genetic testing program. A new contract was negotiated (see below) and state law now provides that failure to appear at an appointment for genetic testing results in paternity establishment by default.

Efficient Processes in the Courthouse

Some States maintain a strict judicial system, but adopt procedures, such as on-site blood drawing facilities, which help to expedite paternity establishment. For example:

Prince George's County, Maryland: In response to a dramatic increase in the number of paternity cases, Prince George's County in Maryland developed a unique "one-stop" process for the Paternity Branch of its Circuit Court. Under this process, the County can complete, within one day at one location, all steps of the process, including: arraignment, blood

draws, paternity establishment, support counseling, and support order establishment. The paternity court convenes once every other week, and processes at least 150 cases each day it is in session.

In a typical case, the alleged father, mother, and child(ren) all appear in court at the same time. After the alleged father is advised of his rights, he is given the option of either admitting paternity or submitting to a genetic test.

If the alleged father admits paternity in court, the parties immediately meet with the County Office of Child Support Enforcement staff, in the same building, to see if a consent order is possible, based on the appropriate award amount under State guidelines. If a consent order is agreed to, child support workers prepare an order, and the parties sign the order that same day. If a consent order is not agreed to, the parties go before a judge for an immediate support hearing.

On the other hand, if the man requests a genetic test, blood drawing from all parties is performed on-site, and a trial date is set, usually for about 16 days later, when test results are available. However, few cases actually go to trial since many alleged fathers admit paternity after receiving the genetic test results.

If the alleged father fails to appear in court, but the mother does, a sheriff interviews the mother to obtain information about the whereabouts of the father. If the mother is able to confirm the alleged father's location, the court issues a summons for his arraignment at the next session of paternity court. In certain cases, the court issues an arrest warrant, and, if possible, the sheriff picks up the alleged father that same day.

If the alleged father appears in court, but the mother does not, he is still asked to admit or deny paternity. If he admits paternity, a support hearing is held that day. If he denies paternity: his blood sample is drawn, the case is scheduled for trial, and Social Services contacts the mother to ensure that she and her children show up for blood draws.

Since so many tasks are accomplished in one day, there are no delays caused by missed appointments, full court dockets, or parents who move and need to be relocated. The County's process is also notable because of the close coordination between court staff, IV-D agency staff, and the Sheriff's Department.

Use of Genetic Test Results

Under the Family Support Act of 1988, States must have procedures requiring all parties to submit to genetic tests upon the request of any party in contested cases. While this Federal law requires the use of genetic testing in certain cases, it does not mandate how States must treat the test results in paternity determination proceedings. Despite the lack of a Federal mandate, States are taking the initiative to enact laws and procedures which encourage greater recognition and use of test results.

Expanded Use of Results

States, through statutes and case law, have expanded the use of genetic test results in paternity proceedings. Almost all States now support the admissibility of not only test results which exclude the alleged father and prove nonpaternity, but also inclusionary results that establish a probability of paternity.

Rebuttable Presumption Based on Genetic Test Results

At least 20 States have laws which not only make inclusionary genetic test results admissible, but which create a rebuttable presumption of paternity if the statistical probability that the defendant is the father, according to genetic test results, equals or exceeds a specified threshold percentage. (See attached Table 1.) Under these laws, once genetic testing establishes a presumption of paternity, the burden of proof shifts to the alleged father. In order to overturn the presumption, he must present evidence which shows that he is not the father.

The use of a rebuttable presumption threshold with genetic testing often expedites paternity resolution. If genetic test results meet the threshold for establishing a presumption of paternity, and if the test results are unchallenged, the issue is resolved without further hearing in most cases.

Some States actually go beyond creating a rebuttable presumption. Under Virginia law, paternity is legally established if genetic test results affirm at least a 98 percent probability of paternity. Ohio's statute applies to cases processed through its administrative process where both the mother and alleged father sign a voluntary compact agreeing to be bound by test

results. In these cases, if genetic tests show a 95 percent or greater probability that the alleged father is the actual father, the administrative officer issues an order establishing paternity. In Oregon, if genetic tests show a probability of paternity of 99 percent or greater, test results, together with the testimony of the mother, are sufficient to establish a paternity order unless a party objects in writing.

In addition, some States establish temporary support orders prior to the final adjudication of the paternity issue if the genetic test results reach a certain threshold. For example, Minnesota law allows the establishment of a temporary support order if genetic test results indicate a probability of paternity of 92 percent or greater. Since the alleged father is already obligated to pay support under the temporary order, he no longer has an incentive to delay the paternity process by raising objections or other legal hurdles; therefore, resolution of the paternity issue should be expedited.

Requirements for Admissibility of Genetic Test Results

Some States expedite paternity proceedings by limiting the scope of requirements that must be met before test results can be introduced. These "foundation" requirements may include testimony on the credentials of the laboratory, the condition and reliability of the blood samples, and other factors.

In order to make these requirements less burdensome, some States have enacted statutes which make a laboratory expert's written report admissible as evidence without further testimony, unless the genetic test procedures or results are challenged prior to the paternity proceeding. Montana's statute, for example, says the conclusions of a paternity blood test are admissible as evidence without additional testimony by an expert if the laboratory which performed the tests is accredited by the American Association of Blood Banks. Similarly, Wisconsin statute specifies that blood test results are admissible as evidence without expert testimony if, at least 10 days before the trial or pretrial hearing, the party offering the report files it with the court and notifies all other parties of that filing. Allowing a written report to be used as evidence avoids the cost and time of calling a genetic testing expert or laboratory technician as a witness.

Time Constraints for Raising Objections

Several State laws set time constraints for raising objections to the admission of genetic test evidence. For example, in Oregon, if a party

wants to object to testing procedures or results, a written challenge must be filed with the court and delivered to opposing counsel at least 10 days before the hearing date, or that party waives the right to have genetic testing experts appear at the hearing. In Montana, an alleged father must object to genetic test results or procedures within 20 days after service of the notice of referral of the case to district court, or he waives the right to challenge the results or procedures.

Such laws ensure that the opposing party has adequate warning when a challenge is raised to admitting test results. Once an objection is raised, the testimony of experts and technicians is often required; therefore, avoiding last minute objections is particularly important in interstate cases which involve out-of-state laboratories and experts who have to travel long distances.

Contracts with Laboratories

In addition to enacting laws, States are negotiating contracts with genetic testing laboratories which address various aspects of genetic testing to expand its usefulness. Contract provisions may involve turnaround time, test sites, staffing, and cost control. For example, Vermont recently negotiated a new testing contract which included the following provisions:

- The laboratory must provide test results within 21 days, or the lab pays for the cost of testing in that case. This provision should prevent delays in receiving test results.

- The laboratory must provide on-site blood drawing at all State district offices one day each month. This provision makes testing accessible to mothers and alleged fathers in all parts of the State.

- The State has the right to interview and give final approval before a phlebotomist is hired as a way of helping to ensure the quality and accuracy of blood draws.

- The laboratory pays for all expert witness costs, including travel and incidentals, in paternity establishment proceedings. This provision helps control State costs.

Use of Specific Testing Techniques

Some States also have procedures which specify or encourage the use of certain types of tests. For example, Oregon automatically uses DNA profiling in all cases. Idaho is currently amending its procedures to allow testing of infants and babies under a proposed pilot project in one of the State's regions. The project will examine the costs and benefits of two genetic testing techniques which can be used within the first six months after birth: (1) umbilical cord sampling where blood samples are taken from the newborn's umbilical cord and (2) DNA buccal swabs where samples are taken on a swab from the baby's mouth. (Other more common genetic tests are not usually used before the baby's sixth month.)

Outreach and Education

Almost all States have developed outreach campaigns which educate parents and the general public about the benefits of paternity and the process for establishing it. States realize that it is not adequate to simply institute procedures for paternity establishment, they must make an effort to link parents with the establishment system. As a result, State outreach materials often list phone numbers and addresses of child support offices which parents may contact for more information. States also recognize the need to convince parents about the financial, medical, and emotional reasons for establishing paternity. According to State officials, these campaigns successfully encourage both mothers and fathers to seek paternity establishment and to cooperate with establishment efforts. Several common trends and themes in the States' outreach efforts are discussed below.

Clear, Appropriate Language

Many States have developed materials which explain complicated legal concepts in easy-to-read, clear, understandable language. New Jersey, for example, has developed pamphlets which give practical information about the benefits and the process of paternity establishment in a simple question-and-answer format.

Recognizing that materials must be written in a language that parents can understand, some States have developed materials written in languages

other than English. Texas, New Jersey, and Washington, for example, have developed Spanish language versions of their pamphlets. Washington, in addition, has published outreach advertisements in Spanish and Chinese newspapers.

Variety of Materials, Media, and Settings

To get the message out, States use a wide array of materials and media, including: posters, pamphlets, videos, television, radio, and billboards. States place written materials in a variety of settings, including: schools, public assistance agencies (AFDC, Medicaid, and WIC), health departments, clinics, and hospitals.

Outreach to Fathers

In the past, some outreach efforts focused exclusively on mothers, trying to convince them to initiate the paternity establishment process. However, many States have now developed outreach campaigns which focus on fathers. These outreach efforts are designed to explain the responsibilities and importance of being a father, to promote cooperation in the paternity establishment process, to explain the process including genetic testing, to encourage voluntary acknowledgment if the individual is certain he is the father, and to emphasize the importance of paying child support in the future.

For example:

- Colorado, New Jersey, and Washington all have brochures which are specifically addressed to fathers.

- The Texas Attorney General's Child Support Enforcement Office, in conjunction with other agencies and a radio station, sponsored a day-long "Dad's Rap" session for young fathers in Dallas. The program included discussions about paternity, child support, fathering, and community support services, and the opportunity to talk with an attorney about legal issues. To encourage attendance, free lunch and prizes were provided. There was also a job fair which reinforced the need to financially support children.

- Maine's Young Fathers Project encouraged paternity establishment by providing counseling and information. The

program provided an adult advocate who accompanied the father to the child support enforcement agency and court. The advocate helped the father understand the paternity process and the responsibilities of fatherhood.

Outreach to Teen Parents

Many States have also developed outreach efforts that are targeted at teen parents. These States recognize at least two reasons for focusing on teen parents: (1) the steady increase in births to unmarried teens, and (2) the fact that teens do not yet have mature attitudes and behaviors and therefore may not respond to outreach aimed at adults.

Georgia, Indiana, Nebraska, New Jersey, Washington, and Denver, Colorado, among others, have developed materials designed for teen parents. These materials address the fears of teens by providing accurate information about the paternity establishment process. Many of the materials are in a format, such as a comic book, that is designed to appeal to the teenage reader.

In 1989, Richland County, Ohio developed a "Teen Parent Outreach Program" to disseminate materials on paternity establishment to teenage parents. Under the program, the Richland Child Support Enforcement Agency distributes materials to school guidance counselors and community organizations, such as the YMCA, which serve teens. Child support staff also use seminars to train teachers, students, PTA members, and civic organizations. Local officials believe this outreach program is partly responsible for increasing the County's paternity establishment rate by 44 percent within a two year period.

Preventive Approach

Many States are not only targeting their outreach efforts at teenage parents, but are also focusing outreach on all teens in an effort to prevent them from becoming teenage parents. These outreach efforts address the paternity problem by preventing out-of-wedlock births in the first place.

School Programs: Many States use public schools for this type of outreach. Washington, Colorado, and a private organization, the Center for the Support of Children, jointly developed three school curricula for 7th and 9th graders and high school students on teen paternity rights and responsibilities. The curricula, entitled "Draw Your Conclusion" include

a video, an answer book for teachers, a brochure for parents, a brochure about paternity establishment and child support for teens, and a comic book called "Patman, Protector of Children's Rights". Through the curricula, teens learn: the definition of paternity, how paternity is established, benefits of paternity establishment, rights and responsibilities of parents, and costs of raising a child. These curricula are being used by multiple school districts in Washington and Colorado, and are also being used in several other localities, including: Little Rock, Arkansas; Tulare County, California; Frankfort, Kentucky; and Salt Lake City, Utah.

Texas is developing a bilingual "PAPA Arts" program which presents parenting information, not as an individual module, but as a part of each class. For example, students examine DNA testing in science class and calculate child support award amounts in math. Several other States also have school outreach programs, including: Florida, Georgia, Guam, Kentucky, and Utah. In some of these States, child support workers serve as guest lecturers in high school classes.

Comprehensive Effort in Maryland: In Maryland, the Governor's Council on Adolescent Pregnancy oversees a teenage pregnancy prevention effort which includes school programs and counseling, but also uses mass media advertising. For pre-sexually active 9 to 14 year old children, the State has developed a "Campaign for Our Children" which is designed to reduce the number of teenage pregnancies by promoting continued sexual abstinence. Administered by a nonprofit agency which works closely with State government, the Campaign is jointly funded by the public and private sectors and has a $1 million annual budget. The outreach effort includes: television and radio commercials, brochures, posters, billboards, a 24 hour hotline, and classroom lesson plans. The Campaign's hard-hitting message is designed to show the consequences of teenage pregnancy. For example, one poster which shows an adolescent male holding a baby, reads, "A baby costs $474 a month. How much do you have in your pocket?"

For older, sexually active adolescents, the Governor's Council focuses on using contraception to prevent pregnancies. Free condoms, and in some cases oral contraceptives, are distributed at 400 sites statewide, including five high-school and two middle school clinics in Baltimore.

The Maryland programs appear to be working. Between 1988 and 1990, according to State data, births to mothers younger than 18 fell by over 13 percent statewide. In contrast, during this same time, the teenage birthrate continued to rise in surrounding States and nationwide.

Sharing Materials

As States develop paternity establishment outreach materials, they are sharing these materials at low or no cost with other States. States which borrow the materials simply change state-specific information such as local child support enforcement office addresses. For example, the comic book "Looking Beyond Teenage Pregnancy", which examines the long-term financial responsibilities of parenthood, was originally developed by Georgia, but has been borrowed by approximately 20 States. Similarly, Maryland is making materials from its "Campaign for our Children" available to other States at low cost. Sharing saves the costs of developing new materials and allows States to adopt materials that have already proven effective in other States.

Incentive Programs

Several States have established laws which provide for cash incentives to State and local agencies or child support workers to reward good performance, including in the area of paternity establishment. Paternity establishment by itself, without order establishment and collections, does not result in immediate financial reward. Furthermore, Federal incentive payments do not directly reward paternity establishment efforts (although the Administration has proposed revisions to the incentive formula in order to reward States on a broad spectrum of program activities, including paternity establishment). Therefore, several States have taken advantage, in a creative way, of the flexibility available to them in the allocation of child support incentive monies in order to encourage paternity establishment efforts. Such incentive payments, when adequately funded, may increase paternity establishments. Below are examples of some of the States with incentive programs.

Teen Paternity Establishment in Wisconsin

Wisconsin recognized that the system particularly fails to provide a financial incentive for paternity establishment in cases involving teenage parents. In the short-term, the earnings prospects, and therefore the child support collections prospects, of noncustodial teenage parents are low. Consequently, the State can expect little immediate financial return for establishing paternity in a teenage parent case. Furthermore, in

Wisconsin, which has a state-administered but county-operated program, counties do not even have the incentive of potential welfare savings, which might result from increased paternity establishments and child support collections. AFDC is state-funded and any saved welfare costs benefit the State, not the counties.

Wisconsin addressed this lack of an incentive by passing legislation which allows counties to receive payment of $100 per paternity established for cases where the mother is a teen. In order for a case to qualify, paternity must be established before the child's first birthday, the mother must be under the age of 20 and not married at the time of the child's birth, and the attorney handling the case must represent the State.

In addition, Wisconsin is currently developing a broader system of State incentive payments to counties, which covers paternity establishment as well as other stages in case processing. To be eligible for these incentive payments, a county will have to meet certain criteria regarding collections and administrative efficiency. The State will then distribute appropriated funds to all eligible counties, according to an allocation formula that rewards States for their performance in paternity establishment and collections. Under the program, any incentive money that a county receives must be reinvested in the IV-D program.

County Plans in Ohio

Under legislation passed in 1988, Ohio pays a financial incentive to each county which adopts a plan for increasing, on an annual basis, the number of paternities established. The county must also have procedures for measuring the number of establishments, in order to determine if the plan is working.

In addition, Ohio, like Wisconsin, is developing a broader incentive program. Ohio's legislature has approved a plan to distribute $2.2 million of State funds as incentives to county child support enforcement agencies in 1993. The State is currently developing a methodology for distributing these funds. Under the proposed methodology, the incentives will be distributed in proportion to each county's performance in five areas, with equal weight given to each area, as reported on State data reporting forms which are used as the basis for completing Federal reporting forms. One of the five areas is the number of children for whom paternity is established. Ohio is also proposing that the State distribute Federal incentive payments to counties using the same methodology.

A Successful Pilot Program and a Proposed Two-Tiered System in California

In 1988, California adopted legislation which required the State Department of Social Services to pay counties $90 for each paternity established. The funds came from Federal incentive payments to the State. According to State officials, the incentive program was partly responsible for the 30 percent increase in paternities between January 1989 and December 1990, and another 30 percent increase between January 1991 and December 1991.

This three-year pilot project recently expired, but, due to its success, a larger, more elaborate incentive program is currently being developed. As currently proposed, California's new incentive program will be a two-tiered system. For the first tier, State evaluators will examine counties every year to determine compliance with Federal audit requirements. If a county is in compliance with Federal requirements, it will receive a base level incentive of 10 percent of collections. If it is not in compliance, it will receive a lower base incentive, as low as 6 percent of collections.

A county will only be eligible for second tier incentives if it is in compliance with Federal audit requirements. Second tier incentives will be based on the county's performance in the areas of paternity and support order establishment.

Each year, the first tier baseline incentive, based on compliance with Federal audit requirements, will decline. Therefore, in order to maintain its level of incentives over time, a county will have to continually improve its performance on the second tier criteria, including paternity establishment.

Rewards for Workers in Pennsylvania

In 1989, Pennsylvania established an incentive program, not for counties, but for child support workers. Under the program, employees on teams which meet annual performance goals receive incentive awards. Employees who receive the award can choose either $250 for education and training or a $500 U.S. Savings Bond. The goals upon which teams are rated are reestablished annually, but currently one of the goals is the number of paternities established. If a team meets its goals, every employee on that team receives an incentive reward; however, if a team fails to meet its goals, no employee on that team receives an award. Because the incentives are awarded on the basis of team performance, not

individual performance, they encourage cooperation and information-sharing. The funds come from Federal incentive money paid to the State.

Interaction Among Concerned Agencies

A number of IV-D programs have improved program performance, including paternity establishment, through cooperative efforts with other public agencies. Most of these efforts appear to be operating at the county or district level. Some are parts of clearly defined program initiatives while others seem to be "unprogrammed." It is likely that there are numerous other examples out in the field which never get touted at the national level.

Collocation: Sharing in Utah

Utah developed a pilot project in Ogden and Provo to increase the number and timeliness of paternity establishments through collocation of the IV-D and AFDC offices. IV-D staff in the Provo office believe that this program has been useful. They can cite numerous cases where a welfare applicant appears with the alleged father and can be referred directly to the IV-D offices one floor below where the couple can stipulate to the paternity.

If the alleged father is not present, the welfare office interviews the mother and refers her to the IV-D office. There, IV-D staff conduct an interview and encourage her to return with the alleged father within 24 hours. They hold the application form for AFDC pending the meeting. If she returns with the father and the stipulation is agreed to, staff review the stipulation form for correctness and completeness right there and then.

This unit established 206 paternities in the year ending June 30, 1991 and 304 paternities in the year ending June 30, 1992. For the same periods, blood tests increased from 320 to 639. Staff believe that the instant referral to the IV-D agency which can do the more probing interviews necessary for paternity establishment, the strong encouragement they offer (including holding the welfare form), the immediate review of the stipulation, and the interaction between programs help immensely.

In addition, they believe that they have started to break down the institutional culture which views welfare as separate from child support

activities. As a result of explaining IV-D information needs to AFDC staff they have obtained additional information on 34 percent of the paternity establishment cases and on 60 percent of all cases without slowing down the AFDC processing activities.

Cooperation in Prenatal Education: A Delaware Demonstration

The State of Delaware is participating in a pilot program testing a cooperative approach to paternity establishment between the Child Support Enforcement and Public Health Divisions of the State Department of Health and Social Services. The pilot was initiated in January 1992 at the Northeast State Service Center. It involves integrating the paternity establishment process into the education component of the comprehensive prenatal care program of the Division of Public Health. The project begins the intervention late in the pregnancy of the unwed mother stressing the importance of knowledge of the father's medical background. An information kit containing a project overview, a child support services brochure and a paternity establishment brochure are provided to interested candidates.

After the baby is born, the CSE specialist assumes a lead role in helping the parents understand their rights and responsibilities as parents and in establishing paternity. The project is still in the very early stages.

Other Examples

JOBS and Teens in Roanoke: The JOBS program for teen parents in Roanoke, Virginia reported some very impressive numbers during a recent field review. They believe that these statistics reflect the effect of a sense of pride in work and willingness to work together by the staff of the different agencies involved rather than a specific program designed to address the difficulties of coordination.

There are 57 participants in the JOBS program. JOBS staff picked 30 cases to see what had happened to them as part of the program. They reviewed the records on these cases at the JOBS, JTPA, OCSE and AFDC offices. Paternity had been established in 83 percent of the cases (25 of 30). Of the remaining five cases, in two, hearings were pending. In one, the alleged father was in jail and in two, no reason was given for lack of paternity establishment. Thirty-two of the forty-two children were covered by support orders on which 17 parents (53 percent) had made payments. Ten of the parents (31 percent) paid regularly.

Public and Private in Philadelphia: In Philadelphia, an ambitious program operated under the umbrella of Public/Private Ventures is attempting to work with unemployed non-custodial parents. They are attempting to develop a structure which will coordinate Head Start, AFDC, Public/Private Ventures, Child Support and the Family Court. The nature of the program is still evolving.

Parents Fair Share Beginnings: There may be other interesting developments involving the Parents Fair Share Demonstration where paternity establishment is a pre-requisite for participation. Unemployed alleged fathers and or fathers who are delinquent in their child support payments are being targeted in this joint program supported by the Administration for Children and Families, the Department of Labor, the Pew Charitable Trusts, the Ford Foundation, and the AT&T Foundation.

In the pilot phase, nine sites will offer employment and training services, peer support to promote job readiness, enhanced child support enforcement, and mediation for custody issues. The program emphasizes collaboration among relevant agencies, especially the welfare offices which handle JOBS and AFDC, child support, local family courts and local job training and social service agencies. This joint effort reflects the recognition the some fathers need help in order to be able to pay child support and that in providing job training there is a need to emphasize the man's role as a father as well as a worker.

Currently, these demonstrations are located in Kent County, Michigan; Butler and Montgomery Counties, Ohio; Mercer County, New Jersey; Shelby County, Tennessee; Hampden County, Massachusetts; Mobile County, Alabama; Duval County, Florida; Anoka and Dakota Counties, Minnesota; and Jackson County, Missouri. An independent evaluation will be conducted at the end of the pilot phase of the program, December 1993.

Some Ending Remarks

In this first METS periodic report we have highlighted some of the innovative practices developed by the States to enhance performance in the area of paternity establishment. In the face of a rapidly growing problem, States have managed to hold their own and progress. Their innovations have both reflected and inspired Federal emphases and requirements in this area. They have also learned to utilize the scientific

advances in genetic testing which have caused a revolution in paternity establishment.

This overview has provided snapshots of innovations in hospital-based programs, other simplified and efficient procedures, use of genetic test results, outreach and education efforts, incentive payments to counties and workers and coordination with other public and private agencies. As we said at the beginning, this is meant to be illustrative, providing a sampler of ideas that seem to work and are replicable. OCSE is currently finishing and plans to publish a comprehensive guide which lists, on a state-by-state basis, legislation, gubernatorial initiatives, and program practices in the area of paternity establishment.

We know that there are more new, fast and efficient practices and procedures in the field not discussed here. For instance, in New York and Georgia, there are registries of putative fathers. These provide certain rights to a self-declared father and offer the potential to develop administrative procedures deriving from the implied voluntary consent. In another area concerning fathers' rights, the U.S. Commission on Interstate Child Support has recommended that States be encouraged to give standing to fathers to bring paternity actions. The Commission has also recommended that the child not be joined in a parentage action thus allowing the child to relitigate the parentage issue if certain legal conditions are met. A number of the Commission's recommendations will probably impact State performance as will the federally supported demonstrations which are testing some new practices.

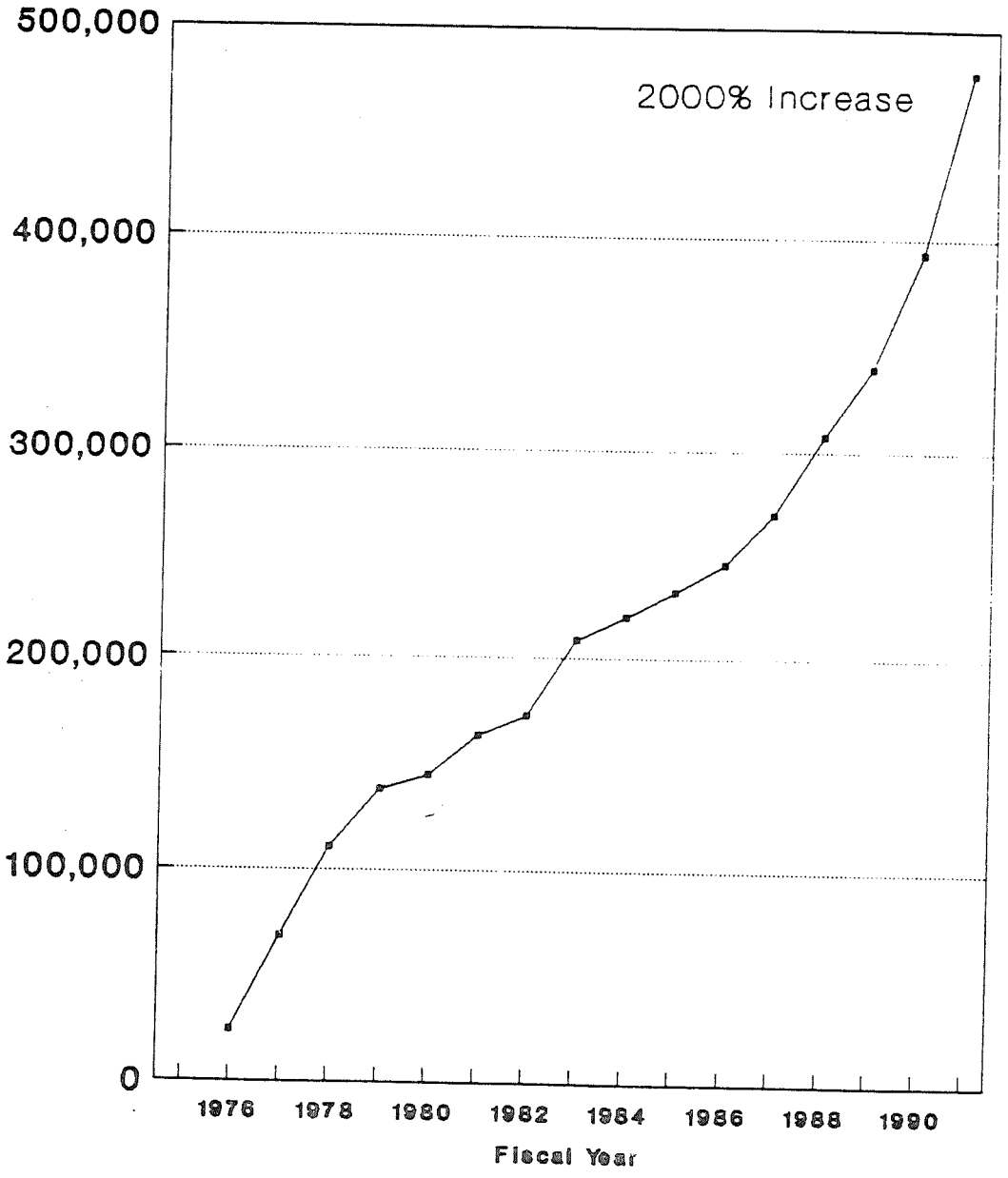
Much has happened and is continuing to happen in the field of paternity establishment. Improvements in performance and in reporting following the 1984 and 1988 legislation will be enhanced by the METS initiative. Heightened attention and the still wider application of successful approaches will enhance the States' ability to demonstrate their performance to the Federal office, to Congress and to their own legislatures and governors.

In sum, while we are facing complex and difficult social problems, progress is being made on the road to self-sufficiency for the children and families in need. The States can proudly claim credit for their creative approaches to child support problems and the IV-D program.

Attachments

GRAPH A

PATERNITIES ESTABLISHED BY IV-D AGENCIES
Program Inception to Present



GRAPH B

PATERNITIES ESTABLISHED BY IV-D AGENCIES
Five Most Recent Years

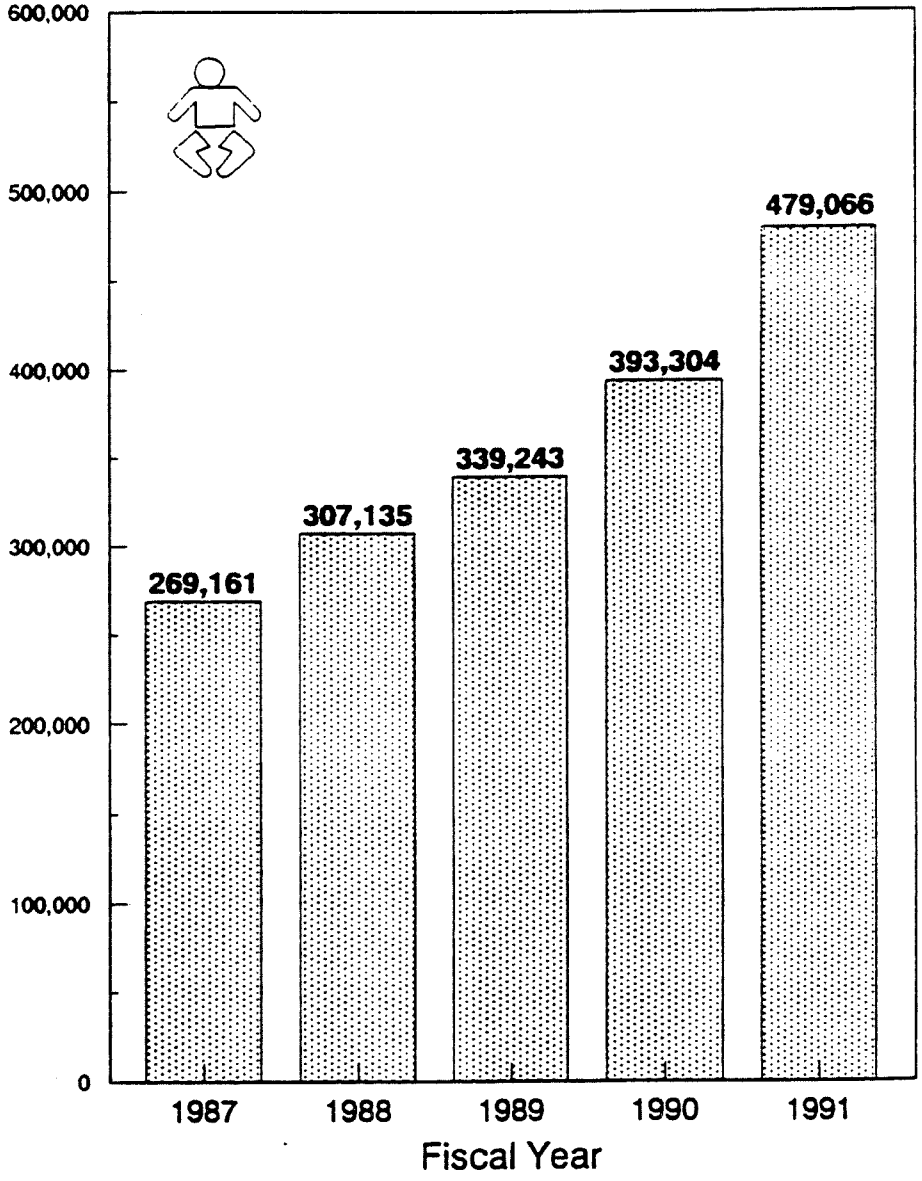


TABLE 1

STATES WITH LAWS THAT LINK PATERNITY PRESUMPTION TO GENETIC TESTING		
State	**Statute**	**Percentage Threshold**
Alaska	25.20.050(d)	95 percent
Arkansas	9-10-108(c)(2)(B)	95 percent
California	Evid. Code 895.5(a)	99 percent
Colorado	13-25-126(1)(e)(iv)	97 percent
Florida	742.12(1)	95 percent
Illinois	40-2511-11(f)(4)	99.8 percent
Iowa	675.41	95 percent
Maine	19-280(1)(D)	97 percent
Michigan	722.716(5)	99 percent
Minnesota	257.62 Subd.5	99 percent
Montana	40-5-234	95 percent
New Mexico	40-11-5(D)	99 percent
North Dakota	14-17-04(1)(f)	95 percent
Ohio	3111.27	95 percent
Oklahoma	10-504(c)	95 percent
Oregon	416.430	99 percent
Texas	Fam. Code 13.06(c)	*
Virginia	20-49.1(B)	98 percent
Wisconsin	767.48(1m)	99 percent
Wyoming	14-2-109(e)(iv)	97 percent

* Under Texas statute, "If the paternity tests show the possibility of the alleged father's paternity and that at least 95 percent of the male population is excluded from the possibility of being the father, then evidence of these facts constitutes a prima facie showing of the alleged father's paternity," and the burden of proof shifts to the alleged father.

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How long after a child is born can paternity be established?

Federal law requires states to allow a paternity action to be started anytime before the child reaches the age of 18 or later depending upon state law.

What if the father is unemployed or in school?

Regardless of the father's current situation, his legal responsibility should be established as quickly as possible following your child's birth. His support level (monthly payments) is based on his income level. When the father gets a job, collecting child support will be easier if paternity is already established.

Can paternity be established even if the father lives in another state?

Yes, paternity can be established if the father of your child lives out of state, but it may take more time.

Does my child's father have a right to visitation?

Visitation can often be the first step in a healthy relationship between your child and his or her father, although visitation rights are not automatic with the establishment of paternity.

Visitation terms can be arranged informally between you and the father or set by the court. If there is a disagreement, the court would have to settle this matter.

IMPORTANT: Child support services are available — for free or for a small fee -- through your local child support enforcement agency (address and telephone number noted on the back of this brochure). However, you have the option of hiring a private attorney.

Child support services include locating the father, establishing paternity, obtaining a support order, and collecting child support payments.

Why A Father Should Support His Child . . .

- *Establishing paternity is the right thing to do! Every father who brings a child into the world should accept his fair share of the financial, legal, and emotional responsibility.*

- *A father can experience the reward of contributing to the growth and development of another human being — his child.*

- *A father can enjoy a relationship with his child. Through active involvement, the father is often seen by the child as a provider, a role model, and a friend who promotes mutual love and respect.*

Your Child Support Enforcement Office:

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children and Families
Office of Child Support Enforcement
370 L'Enfant Promenade, SW
Washington, DC 20447

January 1993

For your child's sake

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...establish paternity!

What is paternity?

Paternity means fatherhood. If parents are married, the husband is considered to be the father of children born during the marriage. If parents are not married, it is important that paternity be ***legally*** established. Otherwise, the baby has no legal father.

Even though we aren't married . . .

. . . the father of my baby and I are living together.

Does this mean that my child's paternity has been legally established?

The answer is "NO." You and the father must first sign an official form which says you both agree he is the father. A judge or other official will then legally declare him the father.

Why establish paternity?

IDENTITY: All children have the right to know their mother and father.

MONEY: Frequently, children supported by only one parent are poorer than children supported by both parents. They need child support. In order to get support, paternity must be legally established.

MEDICAL: Your child needs to know if he or she has inherited any special health problems. Also, it might be possible to obtain medical insurance for your child through the father's employer, union, or military service.

SECURITY: Fathers who support their children when they are young are more likely to continue to pay support until they become adults. If you wait, the father may decide deny paternity which could make your child feel unwanted or unloved.

SURVIVOR'S BENEFITS*: If the father dies, your child could qualify for a number of benefits, including Social Security, pensions, inheritance rights, veterans benefits, and life insurance.

How is paternity established?

Not all states establish paternity the same way but, in general, there are two ways in which paternity can be established:

1. If the man you name as the father of your child ***agrees*** he is the father, he will be asked to sign an official form stating he is the father. In many hospitals and clinics, these forms are available to parents immediately following the birth of their child. This form will be used by a judge or a hearing officer to legally establish paternity. In many states, you do not have to appear in court to establish your child's paternity.

2. If the man you name as the father of your child ***denies*** being the father, or if you are unsure of who the father is, blood/genetic tests can be done.

The results? Usually a father will admit paternity when results of blood tests show he is the biological father of a child. If the father continues to believe he is not the father, he is entitled to a court hearing on the matter. At the hearing, a judge listens to both sides and looks at the test results.

What happens after paternity has been established?

You may seek financial support for your child in order to help pay for necessary living expenses. Under the law, your child is entitled to this support.

The ***amount*** of your monthly child support payment is decided by the laws of the state in which you live. Child support orders require that the father provide financial support for his child until he or she becomes 18 (or older depending upon state law).

*Unless legal paternity has been established, your child may not be able to claim these benefits from his or her father.

From One Mother to Another

Raising a child today is not an easy task, even under the best of circumstances. I am here to tell you it is even more difficult if you are an unwed mother. But it can be manageable if the father of your child legally establishes paternity and provides you with the financial assistance you need.

I used to assure concerned friends and family that my situation was different from other unwed mothers because my boyfriend, "Paul," and I were in a loving relationship. He was even going to be with me in the delivery room for the birth of our baby! Yet six weeks after our daughter was born, our relationship broke down. Paul simply wasn't ready for the emotional and physical demands of caring for a newborn, much less marriage.

Like many unwed mothers, I believed I would be able to afford and raise my child alone. But it didn't take long to realize I couldn't manage financially. My daughter was ill during her first months and medical bills rolled in. Her day care costs nearly equaled my monthly rent!

But what finally prompted me to seek services through the State Child Support Enforcement Agency was seeing a copy of my daughter's birth certificate. I assumed it would name Paul as the father since he had been with me in the delivery room. I was shocked to see, on the "name of the father" line, a row full of XXX's! That's when I realized my daughter deserved much more in life. She was entitled to her father's name on her birth certificate as well as his financial support.

Soon after, I signed up for child support services. Within 10 months, paternity was legally established and a child support order was issued. I am now receiving child support payments on a monthly basis. The legal and financial matters are resolved and Paul has since decided he wants a relationship with his daughter. Today my daughter is benefiting from both the financial and emotional support she receives from her father.

From one mother to another, I urge you to think of your child's needs first. Please consider the importance of having your child's paternity established and the benefits of child support services. Every child deserves a father. Every child deserves to be well cared for. And, every child deserves the love of both parents.

- - From A Mother Who's Been There

#2

Substitute for House Bill No. 2583

Senate Judiciary Committee
March 16, 1994

Testimony of Charles I. Prather
District Court Trustee, Ninth Judicial District
(McPherson and Harvey Counties)

Senator Moran and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss substitute for House Bill No. 2583.

With the apparently ever increasing percentage of children being born out of wedlock, the large proportion of these children being supported on Aid for Dependent Children, and a large proportion of the medical costs attended to these births being paid by government funding, establishing paternity and orders for support and reimbursement has become an ever increasing priority. Because of what can only be described as a rather deplorable record which many states have had in establishing paternity, Congress acted in the Omnibus Budget Reconciliation Act (OBRA) of 1993 to amend Title IV-D of the Federal Social Security Act to require states to establish a hospital based voluntary acknowledgment of paternity procedure to simplify and expedite the establishment of paternity in these situations. While it is often the case that the father is not around at the time of the birth of the child, it has been demonstrated that the father is most likely to acknowledge paternity and accept the responsibility for the child at, or shortly after, the time of birth. It has also been demonstrated that, the sooner after birth the paternity can be established, the greater the probability of recovering at least a part of the costs of the birth and collecting support for the child on an ongoing basis.

For those reasons, and irrespective of the Federal Mandate requiring the changes, I appear today in support of Substitute of House Bill No. 2583.

The benefits of early acknowledgment in establishment of paternity are numerous. Among them, it will almost certainly result in the state being able to recover a greater share of the costs associated with the birth of the child. Almost certainly, it will result in fewer of these children having to be supported on AFDC, or a greater share of the cost of AFDC being recovered from the father. Simplifying and expediting the procedure will reduce the time and cost involved in establishing paternity and orders for support. On the other side of the equation, it should also result in at least some fathers taking a more active role in parenting the children, which may well have a long term impact, and presumably a positive impact, on the lives of those children.

Senate Judiciary
3-17-94
attachment 2-1

While both the state and federal government have a legitimate interest in expediting the establishment of paternity and support, we still have to keep in mind the rights of the putative father. All of us who have worked in child support for any length of time know of cases where, for one reason or another; whether it be the man wanting to be the father, wanting to "give the child a name", or for some other reason; men who are not the actual father of a child have stipulated or acknowledged that they were, often without full knowledge of what that entailed. At some point, whatever the circumstances where at that time changed, or the man named as the father discovered what all was involved, and sought to change his mind. Under current Kansas law, if there has been a finding of paternity, it may well be impossible at that point to reopen the finding, even though everybody concerned acknowledges that the man is not the actual father. The result is usually a nightmare for the person responsible for enforcing that support order.

This is why Section 3(b), Page 2, is so important. Because the people involved in obtaining these acknowledgments may well have no other contact with, and little knowledge of, the whole parentage and support process, and because of potential evidentiary problems involved if the acknowledgment is subsequently contested on the basis that the statement of rights and responsibilities was not given, I personally would like to see an additional requirement inserted that the person obtaining the acknowledgment certify on the acknowledgment form that the statement of rights and responsibilities was, in fact, presented to the putative father and that he had the opportunity to read the statement before the acknowledgment was signed.

This one addition which I suggest would not be contrary to any of the requirements of OBRA, and, to my understanding, the bill, as proposed, does adequately treat all the requirements of OBRA.

There are, of course, other amendments suggested in the bill which are not OBRA requirements, but which would serve to clarify the existing law. Of particular interest to those of us licensed attorneys who practice in the child support area are the provisions making it as clear as possible that no attorney-client relationship arises between the attorney and either the mother or the child. This is a major concern to those of us who practice in the child support area as it helps to avoid potential conflicts which would otherwise inevitably arise. The Legislature has, in the last couple of years, passed amendments in virtually every other context within the child support area to clarify this relationship. The amendments proposed to K.S.A. 38-1125(Sec. 11) and K.S.A. 39-755(Sec. 13) would simply bring these provisions into conformity with the changes already made in other context.

In conclusion, with the single exception of requiring that the person taking the acknowledgment of paternity certify delivery of the statement of rights and responsibilities to the father prior to taking the acknowledgment, I urge your favorable action on this bill as presented.

State of Kansas

Joan Finney Governor

Department of Health and Environment

Robert C. Harder, Secretary

Testimony presented to
Senate Judiciary Committee
by

The Kansas Department of Health and Environment
Substitute for House Bill 2583

The Omnibus Budget Reconciliation Act of 1993 required all states to develop a hospital-based paternity acknowledgement program. This proposed bill is a result of that requirement. There were two bills introduced during this session to deal with paternity acknowledgement--H.B. 2583 and S.B. 583. All parties involved have worked together to draft a single bill on which all parties--Judicial Administration, SRS and KDHE--agree. Substitute for H.B. 2583 is the result of those efforts.

Basically Kansas already has in place a hospital-based paternity acknowledgement program. In fact, we were told by personnel in other states that Kansas was one of the states used as a model for developing the OBRA requirements. However, we do agree that steps can be taken to strengthen the current process by adding the rights and responsibilities statement to the back of the paternity consent form and by disseminating educational material to the parents with regard to paternity acknowledgement.

This bill also specifies that any man named as the father on the birth certificate is to be named a party to the action if a court order is at variance with the child's birth certificate. We applaud this addition as the Office of Vital Statistics frequently encounters cases whereby we receive a court order to add a father's name to a birth certificate but find upon retrieving the original birth certificate that another man's name is already on the certificate as the father. We cannot accept these court orders unless the man listed on the record has been made a party to the action. This provision will save time and frustration on everyone's part.

With all parties now in agreement, KDHE supports Substitute for House Bill 2583.

Testimony presented by:

Dr. Lorne A. Phillips
State Registrar
Office of Vital Statistics
Center for Health and Environmental Statistics
March 16, 1994

Senate Judiciary 3-17-94
Attachment 3-1

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#4

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: JOINT COMMITTEE
ON CHILDREN & FAMILIES
MEMBER: EDUCATION
PUBLIC HEALTH AND WELFARE

HB 2583

March 16, 1994

Chairman Moran and members of the Senate Judiciary Committee,

I would like to call your attention to the Child Support Section of the 1994 Joint Committee on Children and Families. (Attached) See especially pages 2-5 through 2-8.

In 1993, The Omnibus Budget Reconciliation Act (OBRA) created new requirements relating to the establishment of paternity within one year of birth. Under the federal legislation, Kansas must have in place by July 1, 1994, a process applicable to paternity establishment. The Joint Committee on Children and Families studied this issue and reviewed the concept of a hospital-based program. Kansas currently requires the consent in writing, to both parents prior to placement of the father's name on the birth certificate if the mother was not married at the time of conception or birth and no judicial process has resulted in a determination of paternity. This process does not meet with the new federal standards for mandatory disclosure to both parents of the rights and responsibilities of acknowledgement of paternity and notice of availability of genetic testing at no cost to the parents.

Senate Judiciary
3-17-94
attachment 4-1

The Joint Committee recommends state efforts to encourage the dissemination of information about the advantages of voluntary establishment of paternity and the rights and responsibilities of both parents and to encourage voluntary acknowledgement of paternity should be increased. The Committee learned that 44 percent of births to unmarried mothers that occurred in 1992 did not have the name of the father on the birth certificate. The Committee felt that increased efforts in the form of a hospital-based paternity programs developed in cooperation with the Kansas Hospital Associations and changes in the Kansas Uniform Vital Statistics and the Kansas Parentage Act can result in a higher rate of voluntary acknowledgement of paternity.

As Chairman of the Joint Committee on Children and Families, I encourage your favorable passage of HB 2583.

EXCERPT FROM:

Report of the Joint Committee on Children and Families to the 1994 Kansas Legislature

Chairperson
Representative Ellen Samuelson

Vice Chairperson
Senator Lana Oleen

OTHER LEGISLATIVE MEMBERS

Representative Jo Ann Pottorff
Representative Thomas A. Robinett, Jr.
Representative Patricia H. Pettey
Representative Kathleen Sebelius
Representative Judith K. Macy
Representative Joann Freeborn
Representative Douglass Lawrence

Senator Sherman Jones
Senator Carolyn Tillotson
Senator Christine Downey
Senator Sandy Praeger

December, 1993

CHILD SUPPORT ENFORCEMENT

BACKGROUND

During the 1992 interim the Joint Committee on Children and Families was asked by the Legislative Coordinating Council to review several issues of importance to the well-being of children in addition to carrying out the responsibilities assigned by statute to the Committee. In the area of child support enforcement, the Joint Committee was requested to review the state's child support enforcement system with particular attention to administration and possible consolidation within a single agency, identification of an agency to which those responsibilities should be assigned, and compliance with federal mandates. The 1992 Joint Committee on Children and Families made six specific recommendations to the 1993 Legislature as a result of its study, including those briefly outlined below:

- that the Department of Social and Rehabilitation Services (SRS) work with the Kansas Hospital Association to develop a bill draft that would establish a voluntary paternity establishment program;
- that SRS, the Department of Human Resources, and the Kansas Chamber of Commerce and Industry develop a workable system for identifying newly hired employees quickly enough to assist with child support enforcement efforts, with a bill draft to be presented to the Committee;
- enactment of legislation to prohibit court trustees from charging fees in IV-D support cases (1993 H.B. 2013);
- that the Ways and Means and Appropriations committees implement a system that allows the child support enforcement program in SRS to retain a specified amount of federal revenue that exceeds expenses for expansion of services in order to meet federal mandates and improve support collections; and
- establishment of a medical support enforcement program.

(See pages 23 through 25 of *Report to the 1993 Kansas Legislature by the Joint Committee on Children and Families*, for information on child support enforcement services, requirements under Title IV-D of the Social Security Act (IV-D), the structure of the service delivery system in Kansas, problems identified by the 1992 Joint Committee, and the conclusions and recommendations reached by that Committee.)

The 1993 study of child support enforcement issues by the Joint Committee is a continuation of the study initiated in 1992 and has focused on Kansas noncompliance with existing federal requirements and on new mandates arising from the federal Omnibus Budget Reconciliation Act of 1993 (OBRA '93).

COMMITTEE ACTIVITY

Federal Audit

A federal compliance audit of the Kansas child support enforcement program was initiated with an entrance conference in September of 1992 and a random selection of 500 IV-D cases for review by federal auditors. Actual audit activity began in January of 1993 and continued through October. Although SRS will not receive a written assessment report from the federal agency until late winter or early spring of 1994, an exit interview was conducted in October, 1993.

The exit interview indicated audit findings were quite favorable in all but two categories of the audit, with acceptable compliance rates in parent locator services, paternity establishment, enforcement, referral for offsets, wage withholding, and notice of assignment. As anticipated, Kansas was found to be out of compliance in medical support enforcement due to medical support deficiencies and in regard to cases involving families that are not recipients of Aid to Families with Dependent Children (non-AFDC) due to the lack of uniformity in the collection of cost recovery fees in such cases. Once the state child support enforcement agency has received the written audit assessment, a corrective action period is triggered and a corrective action plan must be submitted. A follow-up audit will be conducted to determine whether the state has met terms of the corrective action plan and federal requirements.

SRS informed the Joint Committee that staff is confident, in the area of medical support enforcement, that action by the 1993 Legislature to provide additional staff and the development of an automated system to transfer insurance information to the Medicaid program from child support enforcement will enable the agency to satisfy federal requirements in a follow-up compliance audit. However, in the area of fee collections in non-AFDC cases there are issues that must be resolved by the 1994 Legislature if the state is to be able to meet federal compliance requirements. Issues related to the latter are discussed later in this section of the Committee report.

Medical Support

As noted above, the 1992 Joint Committee recommended to the 1993 Legislature the introduction and enactment of legislation developed by SRS to establish a medical support enforcement initiative and the appropriation of funds requested by the state agency to institute a medical support enforcement program. H.B. 2527, designed to implement the Committee recommendation, was introduced, was passed as amended by the House, and was assigned to the Senate Committee on Judiciary where the bill remained at the end of the 1993 Session. However, 136 special positions were authorized in the SRS budget for FY 1994 for medical support enforcement activities.

Subsequent to the adjournment of the 1993 Session, the Congress enacted OBRA '93 which creates new requirements that must be met by the states in terms of medical support enforcement. OBRA amends Title XIX of the Social Security Act (Medicaid) state plan requirements relating to children's access to group health insurance and other employment-related health benefits. In general, the new state plan requirements concern prohibiting insurers from denying enrollment in a parent's insurance because the child was born to an unmarried parent, is not claimed as a dependent on a tax return, does not reside with the insured, or does not reside in the insurer's service area; requiring insurers to enroll the child upon application by the other parent or SRS when a medical support order exists and the enrolled parent fails to enroll the child; prohibiting insurers from eliminating coverage of the child when there is a medical support order unless certain evidence is provided the insurer; requiring the enrollment of a child for whom a support order exists without regard to open enrollment provisions in the health benefits plan; requiring the employer to withhold the employee's share of the family health insurance premium and to remit the premium to the carrier; prohibiting health benefit plans from imposing special requirements on Medicaid agencies; requiring insurers providing coverage through a noncustodial parent's plan to provide information to the custodial parent, to allow the custodial parent to submit claims for covered services, and to make payments to the custodial parent or provider directly; and permitting wage garnishment and state tax refund intercepts to reimburse Medicaid costs caused

by a parent for whom a medical support order exists who collected a third-party payment but failed to reimburse the parent, guardian, or provider. OBRA '93 also amended ERISA, the federal act that governs self-insured employers who are exempt under ERISA from state insurance regulation of health benefit plans, to give the states authority to impose and enforce state laws that relate to children's health benefits claimed under medical support orders.

As noted by the 1992 Joint Committee on Children and Families in its recommendations to the 1993 Legislature, there is a need for effective enforcement of medical support orders, including a way to initiate coverage and premium deductions when an order is not obeyed voluntarily. H.B. 2527, introduced in 1993, was intended to permit effective enforcement of medical support orders and would be generally compatible with OBRA '93 requirements, with the addition of some provisions and some changes.

In essence, 1993 H.B. 2527, as amended by the House, would authorize a court to issue a medical support order for a child against either parent after consideration of specific factors set out in the bill; require a court, when a medical support order has been issued and a request is made, to include in an income withholding order an order requiring the payor to enroll the child in a health benefit plan if one is available to the obligor or to modify an existing income withholding order in a like manner; provide, when a medical support order is issued, the obligor shall be deemed to have been granted a limited power of attorney to submit health benefit claims on the child's behalf and otherwise to deem the limited power of attorney provided for in the bill to be retained by the obligee; prohibit a health benefit plan from discriminating against a child with a medical support order on the basis of the marital status of the parents at the time of conception or birth or otherwise and to deem the child the legitimate child of the party if benefits are limited to the legitimate child of an insured; and provide for, except for good cause, the granting of judgement against the obligor to the obligee if conditions set out in the bill exist. H.B. 2527 also would amend sections of the Income Withholding Act to add definitions relating to medical support, to add the duty to enroll a child in a health benefit plan to specified duties of a payor when a medical support order has been issued, and to add health benefit premiums to sections of the law that concern the withholding of support. The House further amended H.B. 2527 to amend several statutes that concern direct and indirect contempt to allow a court to restrict the driving privileges of a person found guilty of contempt in a child support enforcement proceeding.

Paternity Establishment

OBRA '93 also created new requirements relating to the establishment of paternity, including a standard for establishment within one year of birth. Under the terms of the federal legislation, Kansas must have in place by July 1, 1994, expedited processes applicable to paternity establishment, including a civil procedure for voluntary acknowledgment of paternity that includes an explanation of the rights and responsibilities of acknowledgment, due process safeguards, and a hospital-based program for acknowledgment of the paternity of newborns; admissibility of voluntary acknowledgment of paternity as evidence and the creation of a rebuttable or a conclusive presumption of paternity; recognition of voluntary acknowledgment of paternity as the basis for seeking a support order without further paternity proceedings; specific procedures concerning objections to the admission of the results of genetic testing and the admission of such test results without foundation testimony or other proof of authenticity or accuracy if there is no objection to the admission; the creation of a rebuttable or conclusive presumption of paternity if genetic test results exceed a specific threshold of probability; the ability to obtain default judgments of paternity upon a showing of service of process and any additional showing required by state law; and the according of full faith and credit to a determination of paternity made by another state, whether as the result of voluntary acknowledgment, judicial process, or an administrative process.

The Joint Committee, in the 1992 interim, explored the need for a hospital-based voluntary paternity acknowledgment program, including a review of the operation of programs in several other states. At that time there was no federal requirement that the state initiate a hospital-based program, but the Committee concluded such a program was desirable in light of the success of such programs in establishing paternity during the period immediately preceding or following the birth of a child to unmarried parents. During the 1993 interim the Committee further reviewed the concept of a hospital-based program.

Kansas law currently requires the consent, in writing, of both parents prior to placement of the father's name on the birth certificate if the mother was not married at the time of conception or birth and no judicial process has resulted in a determination of paternity. The current process does not meet new federal standards for mandatory disclosure to both parents of the rights and responsibilities of acknowledgment of paternity and notice of the availability of genetic testing at no cost to the parents. Conferees recommended that other federal requirements relating to acknowledgment of paternity be incorporated into the Kansas Parentage Act.

Uniform State Policy on IV-D Child Support Collection Fees

During the 1992 interim, the Joint Committee on Children and Families was made aware that Kansas policy does not meet federal standards in regard to the collection of cost recovery fees in IV-D cases, and the Committee introduced 1992 H.B. 2013 which would have amended the law to prohibit the collection of fees by court trustees in non-AFDC IV-D cases. That bill was killed by the House Judiciary Committee during the 1993 interim.

Federal policy allows the states the option to charge a fee for the recovery of costs in non-AFDC support collection cases. However, if fees are charged they must be charged uniformly in all such cases and the state and any or all contractors must employ a uniform methodology for setting the amount of the fee which must be as close to actual costs incurred as possible.

Currently in Kansas child support collection services are offered through SRS, five district or county attorneys with whom the state contracts, and court trustees who contract through the Office of Judicial Administration to provide services. SRS does not charge fees in IV-D cases for services provided through the Department, but some court trustees impose fees that are deducted from the support payment made by the obligor. Those fees may be as high as 5 percent of the support payment.

As anticipated, the federal compliance audit of the Kansas child support enforcement program referenced earlier found Kansas to be out of compliance with federal requirements in regard to uniformity in the collection of fees. The state must submit a plan to come into compliance and meet federal standards as evidenced by an audit review within one year of the written notice of audit results. Therefore, the state policy in regard to fees must be determined during the 1994 Session if the state is to avoid financial penalties for noncompliance.

The Committee heard representatives of SRS (the state IV-D agency), the Office of Judicial Administration, several court trustees, and a district court judge on the issue of the deduction of fees from child support payments in non-AFDC IV-D cases. The Committee also reviewed a letter from the federal child support enforcement agency denying Kansas a waiver from federal requirements of uniformity in fee collections. Those court trustees who communicated with the Committee, the Executive Committee of the Kansas District Judges Association, and the representative of the Office of Judicial Administration oppose prohibition of the collection of fees in IV-D non-AFDC cases. SRS, on the other hand, is opposed to the collection of fees in such cases.

Those opposed to prohibiting the collection of child support collection fees base their opposition on the history in Kansas of allowing court trustees to deduct cost recovery fees from child support payments as a means to support court trustee services, on the belief that individuals receiving child support collection services should bear a portion of the costs because it gives the recipient of services a greater stake in the services, and because fees reduce the tax burden to the general population. Advocates for fees also cite the number of states that charge fees, what they perceive as the trend at the federal level, the options available to the states under federal law, lack of confidence that federal policy under which federal reimbursement is available for 66 percent of the cost of support collection will be continued, and the indirect loss to the State General Fund if the state passes federal reimbursement and incentive payments through to court trustees.

SRS opposes the collection of fees in IV-D child support cases based on opposition to reducing in any way the actual support payment available to the child who is the subject of a support order; the fact that the majority

of those receiving non-AFDC child support collection services have received AFDC in the past and, along with other very low-income recipients of such services, are at risk in remaining independent of public assistance; because under federal law the amount collected in fees must be deducted from the administrative expenses the federal government reimburses at 66 percent of cost, resulting in the entity collecting fees realizing only 34 cents on the dollar more than would have been available if fees had not been deducted from support payments; the increased state administrative costs connected with the collection, accounting for, and distribution of fees; the increased exposure to federal audit exceptions relating to the uniformity of methodology in determining fees and the degree to which the fees are as close as possible to costs; the belief that 66 percent federal reimbursement of costs and a 6 percent federal incentive payment passed through to the counties is sufficient to allow a viable IV-D contractor to be revenue producing without fees; and the results of a 1984 experiment in which the state charged a 4 percent recovery fee in non-AFDC IV-D cases resulting in the loss of one-third of the non-AFDC paying cases and a corresponding drop in federal incentive payments and program generated state revenues.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on Children and Families developed recommendations in regard to the Kansas child support enforcement program as a result of its continued study of the program, the federal audit results, and conclusions of members in regard to several issues with which the Committee has been concerned.

Medical Support Enforcement

The Committee concluded that the medical support enforcement program through which access to a parent's employer-related health benefits for a child can be ordered should be strengthened through enactment of legislation that authorizes appropriate enforcement action and legislation that allows the state to meet new federal requirements resulting from OBRA '93. A strong medical support enforcement program can reduce costs to the state that would otherwise be paid through the Medicaid program and result in increased collections by health care providers for services to children who might otherwise receive charity care.

Recommendation. The Joint Committee recommends legislation which incorporates the recommendations of SRS concerning the enforcement of medical support orders and the new OBRA '93 requirements that must be met by July 1, 1994. The bill incorporates many provisions of H.B. 2527 (described above) that was introduced through the House Committee on Appropriations in 1993, but adds provisions that reflect new federal requirements. The 1993 Joint Committee bill has been submitted for review by federal officials, and SRS staff has been asked to bring additions or changes that may be recommended as a result of such review, if any, to the attention of the committee having jurisdiction over the bill during the 1994 Session.

Paternity Establishment

The Joint Committee on Children and Families concluded that state efforts that encourage the dissemination of information about the advantages of voluntary establishment of paternity and the rights and responsibilities of parents and encourage voluntary acknowledgment of paternity should be increased, both through changes in Kansas law and cooperation with the private sector. During its study of this topic, the Committee learned that 44 percent of births to unmarried mothers that occurred in Kansas in 1992 did not have the name of the father on the birth certificate. The Committee believes that increased efforts in the form of a hospital-based paternity acknowledgment program and changes in the Kansas Uniform Vital Statistics Act and the Kansas Parentage Act can result in a higher rate of voluntary acknowledgement of paternity. The Committee concluded that the current system in which hospital personnel visit with the unmarried mother about paternity as a part of the process of collecting

information for completion of the birth certificate can serve as the foundation for meeting new federal requirements applicable to the voluntary establishment of paternity.

The Committee requested that the six hospitals in the state in which 80 percent of live births occur set up a meeting to include SRS staff and report to the Committee any recommendations arising from the meeting. A meeting was hosted by HCA Wesley Medical Center and a report and recommendations were supplied by the Kansas Hospital Association to the Committee. In addition to incorporation of these recommendations in the Committee's proposed legislation, discussed below, the Committee believes suggestions made at the meeting for other outreach efforts preceding hospital admission are worthy of further consideration by the child support enforcement program.

Recommendation. The Joint Committee recommends introduction of a bill that would amend K.S.A. 65-2409a, a statute in the Uniform Vital Statistics Act, to require the written consent of the mother and the person acknowledged to be the father to be made on a form provided by the Department of Health and Environment (KDHE). The bill would, among other things, bring Kansas laws into compliance with OBRA '93. The bill would require the Secretary of Health and Environment to prepare a form for voluntary acknowledgment of a child's paternity that constitutes a declaration conforming to Kansas law governing declarations and that would include:

- the mother's statement consenting to the acknowledgement of paternity;
- the statement of the father acknowledging he is the biological father of the child;
- a statement of both parents that they have received specified information; and
- the statement of both parents that they are voluntarily signing the form and understand they cannot be required to sign.

The bill also would direct the Secretary of SRS, in conjunction with the Secretary of Health and Environment, to prepare information to be provided to parents before they sign a voluntary acknowledgment of paternity, set out the information to be provided, require the Secretary of Health and Environment to distribute both consent forms and the information to be provided to the parents about voluntary acknowledgment of paternity to hospitals and others required to file birth certificates at no charge, and provide the minority of a person signing an acknowledgment of paternity in accordance with provisions of the statute does not invalidate the acknowledgment or make it voidable.

The bill also would require the giving of full faith and credit to determinations of paternity made by another state, the District of Columbia, or specified U.S. territories regardless of whether the determination was established through a judicial or administrative procedure or through voluntary acknowledgment and make a voluntary acknowledgment of paternity done in accordance with the Kansas Parentage Act or provisions of the new legislation, sufficient basis for a support order without additional paternity proceedings, subject to due process safeguards.

Further, the bill would amend four statutes in the Kansas Parentage Act to include a voluntary acknowledgment of paternity made in accordance with the bill, or genetic test results with a probability of 97 percent or greater, as presumptions of paternity; to substitute references to genetic tests for references to blood tests in the existing law; to make genetic test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy in an action in which tests are not challenged; to further clarify the time in which a written notice of intent to challenge the validity of genetic test results must be given; to add voluntary acknowledgment of paternity made in accordance with the new provisions of the bill to the evidence that may be presented in actions relating to paternity; and to allow judgment to be made against a person in paternity actions when the defendant fails to appear or to file an answer upon proof of service.

Uniform State Policy on IV-D Child Support Collection Fees

The Joint Committee on Children and Families concludes that the 1994 Legislature must establish the state's policy in regard to whether or not fees will be charged for non-AFDC IV-D child support collection services. It is clear that the state risks the imposition of federal financial sanctions if uniformity in the collection or noncollection of fees and the development of a uniform methodology for the determination of fees, if that is the policy adopted, are not forthcoming.

The Committee recognizes there are deep philosophical differences between SRS and the Judicial Branch concerning the validity of deducting collection costs from support payments. Both those who oppose and those who support fees have responsible arguments to support their views. However, there has as yet been no administrative resolution of the issue of uniformity, and the stakes, in terms of failing to deal with the issue, are high in the form of potentially substantial federal financial penalties. The Committee requested that SRS and the Office of Judicial Administration (OJA) develop a fee schedule and a uniform methodology for the determination of fees, including options for fee payment by the obligor. The Committee will receive the report from SRS and OJA early in the 1994 Session and will make its recommendation in regard to the collection of fees in IV-D non-AFDC child support collection actions after receiving the report.

THE CORPORATION FOR CHANGE

A Partnership for Investing in The Future of Kansas Children and Families

Testimony Before the Senate Judiciary Committee
House Bill 2853
March 16, 1994

by Jolene M. Grabill, Executive Director

The Corporation for Change is a non-profit corporation organized by the State of Kansas to coordinate and implement reform of children's services in Kansas. To accomplish this mission, the Corporation builds partnerships between government, business, parents, children's advocacy and service groups to develop a comprehensive and coordinated strategy for investing in the future of Kansas children and families. Our major role is to see connections, test out what works and what doesn't work, experiment with new strategies, and to develop the consensus to reinvest our resources in more comprehensive strategies that do achieve the outcomes we all desire for children and families.

I am pleased to support House Bill 2583. Child support enforcement is one of the critical components of a coordinated children's service system. Establishing paternity is one of the many hurdles involved in effectively enforcing child support orders. This bill would make paternity establishment easier. We encourage the adoption of this legislation.

Thank you.

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Senate Judiciary
3-17-94
attachment 5-1

#6

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MEMBER: COMMERCE, LABOR AND REGULATIONS
COMMITTEE, NATIONAL CONFERENCE ON STATE LEGISLATURES
MEMBER: ENVIRONMENTAL TASK FORCE, COUNCIL ON STATE GOVERNMENTS

TESTIMONY FROM SENATOR BOB VANCRUM TO THE SENATE JUDICIARY COMMITTEE

RE: SB 797

SB 797 provides delinquent spouses with incentive to pay up on their outstanding child support obligations. The bill requires a state agency that has licensed the delinquent individual to suspend his or her license until a settlement or payment schedule is reached.

The bill, modeled after a highly successful ~~California~~ Arizona law, sends the clear message that Kansas is serious about child support obligations. It seeks not to punish or put those who are delinquent out of work, but to prevent child support from being used as a bargaining chip to punish the custodial spouse or to force more liberal visitation rights.

The bill does this by allowing the court to suspend the licences of those spouses who are engineers, doctors, lawyers, commercial truck drivers and pest applicators, if they refuse to settle up. If they fail to do so, their license is revoked and delinquent individuals will have to retake the licensing exam to get it back. The California experience shows that this is a very cost effective way of getting delinquent spouses to pay up.

Senate Judiciary
3-17-94
attachment 6-1

#7

Department of Social and Rehabilitation Services
Child Support Enforcement Program

Before the Senate Judiciary Committee
March 17, 1994

Senate Bill 797
Related to professional licenses and nonpayment of support

==========

The SRS Mission Statement

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

==========

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on behalf of Secretary Whiteman today concerning SB 797. The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS supports SB 797.

Senate Bill 797 would provide an option, other than jail, for the judge to consider when a support debtor is found in contempt of court. If the nonpaying parent holds a professional license, the court, in its discretion, would be able to direct the licensing body to suspend or not renew the professional license. The bill provides an automatic 6-month temporary license, which allows the support debtor to continue working while meeting the court's conditions for being purged of contempt. If the parent meets the court's requirements and obtains a release, the licensing body would be free to reinstate or renew the professional license.

States which have already enacted a professional licensing remedy have found it especially effective for pursuading self-employed parents to pay their child support regularly. Although many self-employed parents take the initiative to care for their children's financial needs, those who ignore their responsibilities become a significant challenge to child support professionals. The federal Office of Child Support Enforcement recently circulated information from an informal survey of the states which suspend licenses for nonpayment of support; a copy is attached.

Senate Bill 797 has much in common with the California and Arizona professional licensing laws. The California law also provides an automatic temporary license, giving the licensee an opportunity to get back into good standing without disrupting work in progress. The California law, however, is extremely broad in application -- it requires the IV-D agency to compile a monthly list of all obligors with significant arrearages and to distribute the list to all licensing bodies, including the drivers license agency. The Arizona measure, like SB 797, is triggered by the court's finding the debtor in contempt of court and notifying the licensing body on an individual basis. Arizona only allows a temporary license upon showing of extreme hardship. Senate Bill 797 draws upon the best features of the California and Arizona laws.

Senate Judiciary
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SRS/Child Support Enforcement
Senate Judiciary Committee
March 17, 1994
SB 797

Fiscal impact

This measure would modestly increase IV-D child support collections:

Gross increase	Retained by State	Net fee fund contribution
$ 78,000	$ 13,600	$ 11,700

CSE's legal costs for pursuing the additional contempt cases would be about $5200 per year (state share = $1800).

Conclusion

We believe that Senate Bill 797 fills a critical gap in the enforcement remedies available for self-employed, nonpaying parents.

- o It has a clear and meaningful consequence for the licensee but does not add to crowded jail populations;
- o It minimizes the administrative burden for SRS and licensing bodies by targeting only the worst cases of nonpayment; and
- o It allows the nonpaying parent to continue working, which gives the parent a reasonable opportunity to be purged of contempt AND prevents hardship for the parent's clientele.

We encourage the committee to recommend SB 797 for passage.

Respectfully submitted,

Jamie L. Corkhill
Policy Counsel
Child Support Enforcement
296-3237

STATE RESPONSES ON LICENSING RESTRICTIONS/REVOCATIONS

The following information was provided by States and OCSE Regional Offices.

1. When did your State implement the licensing restrictions/revocations for child support purposes?

AZ - AZ implemented licensing restrictions incrementally. Some licenses were covered in 1990 legislation. The scope was widened to include additional licenses in 1993.
CA - November 1, 1992
ME - June 30, 1993
MN - In 1991, 24 occupational licensing boards were covered. In 1993, all boards and State agencies that issue professional licenses were added to the statute.
PA - September 2, 1993
SD - November 1, 1993
VT - October 1, 1990

2. What licenses are covered by this process?

AZ - professional, business, trade, and sporting licenses
CA - commercial drivers, professional, business, trade, and commercial sporting licenses
ME - drivers and occupational licenses
MN - all licenses issued by State agencies and occupational licensing boards
PA - all professional and trade licenses
SD - drivers licenses and any State regulated professional license
VT - any license, certification or registration issued by an agency to conduct a trade or business, including a license to practice a profession or occupation

3. For which child support enforcement functions do you restrict/revoke licenses?

AZ - When taking a noncustodial parent to court for contempt, AZ automatically requests that the court refer the case to the appropriate licensing board for revocation of the license or for placing the licensee on probation.
CA - location of obligors to enforce orders
ME - Revocation is available for nonpayment of current support, failure to make payments on arrearages, and

failure to provide health insurance coverage.
PA - to enforce nonpaying orders
MN - Licenses can only be suspended or revoked by a court order which finds the obligor in arrears.
SD - enforcement when there is an accumulated arrearage of $1,000 or more
VT - location of obligors to enforce orders

4. Please provide any statistics and/or anecdotal information available for each of the functions referenced in #3 above.

AZ - Due to lack of automation, no statistics are kept. AZ did revoke one psychologist's license.
CA - From July to September 1993, 3,004 obligors were identified as holding licenses from participating State boards. During this period, payment agreements were successfully negotiated with 1,067 obligors. CA allows 5 months for payment agreements to be negotiated and the license restriction/revocation to be released.
ME - none
MN - The statute has not been used much except as a threat.
PA - Procedures being developed will focus on enforcement.
SD - none
VT - VT does not track collections attributable to license revocation.

5. What have been the costs associated with implementation of licensing restrictions/revocations?

AZ - No statistics are kept. However, start-up costs were minimal because the process was incorporated into the contempt referral process. The most time was spent revising the pleadings that were filed with the court.
CA - From January 1 through June 30, 1993, operating costs for California's State Licensing Match System were $425,684.
MN - none
ME - No data or estimates are available. However, costs incurred are far less than the total collected to date.
PA - staff time and ADP development
SD - No data available. However, there was considerable computer programming done and a paralegal was hired to negotiate with obligors.
VT - none

6. What child support collections have resulted from the licensing initiative?

AZ - No statistics are available.

CA - Due to the nature of this program, it is not possible to clearly identify the collections that it generates. However, Stanislaus County averages $1,538 in collections per license match. Statewide, CA estimates that collections average $1,000 to $1,200 per match.
ME - Since August 24, 1993, over 7,000 absent parents have paid $4.7 million under this new program.
MN - unknown
PA - Although a couple of local PA courts have issued license revocation orders, there's no collection data yet.
SD - In early November, approximately 10,600 notices were sent to obligors with a $1,000 arrearage. Approximately 200 repayment agreements have been arranged and 70 lump sum payments received totaling approximately $200,000.
VT - VT does not track collections based on licensing.

7. What other benefits have resulted from licensing restrictions/revocations?

AZ - IV-D attorneys have indicated that the threat of referral to the professional's licensing board has been a great deterrent and that they have seen a large increase in cooperation from licensed professionals.
CA - The licensing match has provided additional information on absent parents' business licenses and help in location.
ME - IV-D sent notices to delinquent obligors about possible license revocation. Feedback from these notices yielded a tremendous amount of current information on location, income, assets, etc. Many obligors who had never paid or been located responded by calling, appearing at local offices, and sending money.
MN - unknown
PA - Just the news about this technique has caused some obligors to come forward.
SD - This got the obligor's attention. It is a very effective lever and good publicity.
VT - The existence of this law may have provided an incentive for obligors to keep current in their monthly child support obligation.

8. What problems have you encountered in implementing license restrictions/revocations?

AZ - Due to the lack of automation, both at IV-D and at the licensing board level, it is not easy to determine whether or not an individual has a license covered by this provision.

CA - The principal problem has been in retrofitting the system design to accommodate each licensing agency.
ME - The main problem was delays in developing and implementing the programs for the automated system.
MN - none
PA - In PA, the problem is the large number of agencies that issue licenses; there are 27 issuing agencies, boards, and commissions at the State level. Some licenses are also issued by the county government.
SD - One problem was coordination among all affected agencies, especially the courts. (In SD, new payment agreements must be ratified by the court.) A second problem concerned payors who were more than $1,000 in arrears but who were currently paying under an old court order. Under this program, all cases with an arrearage of $1,000 or more are re-reviewed and sometimes updated. This process angered people who were currently paying on their arrearage.
VT - Vermont's system requires that applicants for licenses complete a self-attesting form about whether or not they have a child support obligation. Currently there is no method of verifying this information.

9. Any other comments of general interest or of interest to other States working in this area?

AZ - none
CA - California's State Licensing Match System has been an effective enforcement tool. They recommend their system to other States and are willing to assist other States when requested.
ME - Opponents of the law in the State legislature have introduced a bill to repeal the law. The Governor has publicly stated that he will veto the bill if it passes.
MN - MN recommends that States enact legislation like California's and that the process be administrative rather than require a court order.
PA - PA identified three main issues. First, one must ensure timely reinstatement of a revoked license. Second, one must have due process protections to also ensure that the right person's license is being revoked. Third, keep the process as simple and straight forward as possible.
SD - This is a very effective tool.
VT - none

Senate Bill No. 797

Senate Judiciary Committee
March 17, 1994

Testimony of Charles I. Prather
District Court Trustee, Ninth Judicial District
(McPherson and Harvey Counties)

Senator Moran and Members of the Committee:

I thank you for the opportunity to appear before you today in support of Senate Bill No. 797.

This bill is designed to provide an additional tool for enforcement of child support orders in the State of Kansas.

For all of us working in child support enforcement, one of our biggest frustrations is trying to enforce orders where the obligor, the person owing the support, is self employed or a sole proprietor of his or her own business. Income withholding doesn't work in these situations. The person is already under one order to pay, and a second order doesn't make any difference.

The only alternative in many of these cases is to cite the obligor in contempt of Court and ask the Court to place the person in jail. Judges, at least in my District, are reluctant to do so, except under the most aggravated circumstances. Even in those cases, the incarceration is usually brief and only provides the person incarcerated with one more excuse as to why he or she cannot pay the support ordered.

This bill would, in the appropriate case, provide an alternative that would threaten the person's continued livelihood, but not immediately deprive him or her of that livelihood. With the procedure set out in the bill, the person would have between six and seven months in which to purge himself or herself of the contempt, or, at least, to satisfy the Court of his or her intention to do so in order to obtain the necessary release from the Court.

I would not anticipate that this sanction would be applied in a great many cases, at least in my District. I believe that the mere knowledge that suspension of the obligor's license is an option which would be sufficient to obtain compliance in most cases to which it would be applicable. In those cases where it would be applied, it would offer a middle ground, putting additional pressure on the obligor to comply with the underlying support order, while leaving the obligor with the means to do so.

I urge your endorsement of the bill.

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attachment 8-1

SENATE JUDICIARY COMMITTEE
MARCH 17, 1994 10:00 A.M.

S.B. 797: PROFESSIONAL LICENSES

TESTIMONY OF ANNE MCDONALD, COURT TRUSTEE, 29TH JUDICIAL DISTRICT

This bill allows a court, as part of a civil contempt of court proceeding, to issue an order suspending or withholding the issuance of a license to practice a profession or conduct a business, as part of the punishment when a person is found to be in contempt for wilful failure to pay child support. This could provide a valuable remedy in child support enforcement largely because I anticipate it will reach a particular group of obligors that are resistant to other enforcement mechanisms.

Contempt proceedings are a last resort and at present the main "punishment" is jail, or the threat of jail. Many judges are reluctant to actually incarcerate someone for two reasons: 1) it costs money and our jails are already full; 2) it may provide an additional excuse for the obligor not to make payments. Contempt charges are most often filed against obligors who are unemployed, work for cash or are self employed. The self employed are the group most likely to have a license to practice a profession or conduct a business. The threat of losing that license, for them, may well be more significant than the threat of jail.

It will no doubt be pointed out that loss of a license will also prevent the person from working, in that particular profession

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or business and thus give the obligor an excuse for failure to make support payments. But the bill as I understand it is structured in such a way that the obligor can have up to six months with a temporary license before the license is suspended or withheld. Any one who is serious about paying support can give ample evidence of that to the court during the six month period, in which case the court would not be likely to issue a more permanent suspension or withholding order.

Congresswoman Pat Schroeder of Colorado has sponsored HR 915, which was referred to the House Judiciary and Ways and Means Committees. One of the provisions is a requirement that states suspend licenses. I think some other states have already enacted a bill similar to our Kansas S.B. 797 and the idea has drawn national attention and support. I expect more states will pass laws similar to this one over the coming months.

CONCLUSION

I support S.B 797 and encourage this committee to report it favorably. The threat of the loss of a license can be a very potent tool for the court and it can be particularly beneficial in those cases not amenable to the usual methods. The children helped by this bill probably do not have other remedies that work for them.

Respectfully submitted,

Anne McDonald
Court Trustee
710 No. 7th St.
Kansas City, Kansas 66101
(913) 573-2992 FAX: 573-2969

#10

SB 797
Senate Judiciary Committee
March 17, 1994

Testimony of Gary Jarchow
Court Trustee, 18th Judicial District of Kansas

Senator Moran and members of the committee:

Thank you for the opportunity to appear before you in support of Senate Bill No. 797.

The Court Trustee's office in Sedgwick County is very active in prosecuting contempt of court proceedings against delinquent child support obligors. Over the past 5 years, there has been a notable increase in the number of occasions these proceedings have been against persons holding professional licenses (usually attorneys). While the number is still not too great (less than a dozen), it does cause concern.

Senate Bill No. 797 authorizes a court to order a licensing body to take steps to suspend or withhold renewal of the license of a professional who has been found guilty of contempt in a child support enforcement proceeding. The suspension or failure to renew is not automatic; the licensing body issues a 6 month temporary license after notice to the licensee. The licensee must secure a release from the court and agree to any conditions imposed by the licensing body before issuance of a new license.

A licensing body is usually not aware that a professional person is not following a court order to pay child support. Senate Bill No. 797 would provide a means, at least in serious cases, to bring the problem to a board's attention. It would also provide the child support enforcement attorney with an additional valuable tool for dealing with recalcitrant professional obligors.

Several states, including California, Arizona and Vermont, already have laws in effect which condition issuance or renewal of an occupational license on having a good child support payment record. The rationale behind these laws is that one arm of government should not license a person to earn money if another arm is seeking money from that person as a result of failing to comply with an order to pay child support.

The U.S. Commission on Interstate Child Support has recommended that the federal government and states have and use laws that put a hold on the issuance or renewal of professional licenses of those who are delinquent in their child support obligations until the obligee, obligee's attorney, a state prosecutor or the court responsible for enforcing the obligation consents to a release of the hold. In its report, the Commission states that this is good social policy, since a license is a privilege and not at right and the state has an interest in seeing to it that the licensee is law-abiding and that its judicial orders

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are honored. In addition, the Commission states that this is good collection policy, since licensed, self-employed, uncooperative obligors are often difficult persons from whom to collect child support.

I believe that if Senate Bill No. 797 were the law it would have a good deterrent effect. It is often hard to collect child support from the self-employed. If self-employed professionals know they risk losing their livelihood if they don't keep current in paying their child support or make good faith payments on their arrearage, they will more likely comply with support orders.

Senate Bill No. 797 follows the U.S. Commission's recommendation by giving the court the power to put the hold on the license and suspend it if necessary. The licensee would have more than adequate protection under the procedures outlined in the bill. Before any action could be taken in regard to the license, the licensee would have to be found guilty of contempt in a proceeding in which the licensee could be represented by counsel. And by providing for a mandatory 6 month temporary license before there could be any suspension, the bill affords the licensee who has been found guilty of contempt time to make arrangements with the court to pay and pay on the arrearage. If satisfactory arrangements are made, the court could release the hold on the license. The licensing board could then also condition retention of the license on faithful compliance with the order to pay child support.

I urge your favorable consideration of this bill.

KANSAS BAR ASSOCIATION

Legislative Information for the Kansas Legislature

TO: *Senate Judiciary Committee*

FROM: *Ron Smith, KBA General Counsel*

SUBJ: *SB 797, license revocation*

March 17, 1994

Senate Judiciary 3-17-94 Attachment 11-1

SUMMARY

The Kansas Bar Association opposes this legislation as it may apply to the legal profession. Lawyers already have this system. Further, the bill makes no internal sense.

BACKGROUND

All persons, whether professional licensees or not, are subject to orders of a court regarding child support and custody. The failure to obey court orders can result in contempt proceedings. If found in contempt, persons can go to jail for an indefinite period, which if they are employed can result in loss of employment. Those are significant reasons to comply with such orders.

Lawyers are no different than anyone else when it comes to obeying a court order. This is especially true when the lawyer is a litigant. Lawyers who owe child support must pay it or suffer the same consequences as any one person.

Our Supreme Court already has determined that if a lawyer disobeys a support order, even a support order from another state, that lawyer can be held in contempt. If the attorney still does not obey the order, proceedings begin and the lawyer can be indefinitely suspended or disbarred from the practice of law. *[In re Anderson,* 247 Kan. 208, 795 P.2d 64 (1990)]

The Model Rules of Professional Conduct require lawyers must not engage in conduct that shows contempt for the legal system either in their practice or their personal lives. Attorneys in the practice of law cannot hide from discipline just because the act leading to scrutiny occurs outside the attorney-client relationship.

Further, this bill conflicts with current procedure in the Kansas Supreme Court. It is the Kansas Supreme Court which licenses attorneys. Subsection 1(b) effectively states that the trial court that decides the lawyer is in contempt must file an order with the Supreme Court Then subsection 1(b) sets forth a procedure to suspend or modify the license.

Kansas attorneys have an elaborate discipline system. In the *Anderson*

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

case, the court, after finding Anderson in contempt, filed a complaint with the Disciplinary Administrator. That is the way all attorney complaints begin. The DA then handled the case, filed it with the Supreme Court, and Anderson was disbarred.

Internal Inconsistency

Regarding the new language in section 1(b) or (c) and section 2(f), a district court has no power to order the Supreme Court to do anything, including disciplining a lawyer for contempt. Even legislation creating a different methodology will not be valid unless the Court acquiesces.

We do not think the legislation is necessary in regards to the legal profession.

Equal Protection

Finally the bill raises an equal protection concern.

The bill affects licensees who are professionals or need their license to conduct a business. Essentially, section 2(f) impairs the licensee's ability to earn a living.

Employees who are not licensed but who engage in the same contemptuous activity do not have this remedy used against them. Professionals may raise the issue that these person's employment are not put at risk, thus unequal treatment of people in the same situation. If the remedy is effectively the potential loss of the ability to earn an income, the logical question is why apply the remedy only to licensees. What rational basis is there to affect professionals and *some* (but not all) self-employeds?

Whether the enhanced collection of child support is a sufficient rational basis is unknown, because you do not know from reliable data whether it is the licensees of Kansas who are the problems, or whether it is the employed persons in Kansas who are the problems.

We'd urge caution.

2-11

KANSAS BAR ASSOCIATION

Legislative Information for the Kansas Legislature

TO: *Senate Judiciary Committee*

FROM: *Ron Smith, KBA General Counsel*

SUBJ: *HB 2993, QDROs*

March 17, 1994

Senate Judiciary
3-17-94
Attachment 4-1

SUMMARY

The Kansas Bar Association supports this legislation. The peanut is it will lower the costs of handling divorce cases.

BACKGROUND:

This legislation allows qualified domestic relations orders (QDROs) to be used in KPERS matters. It is similar to laws you have allowed in other police and fire retirement funds.

In a divorce when the main cash asset is the retirement fund of one of the parties, the law allows division of that retirement fund. In Kansas, KPERS funds require the litigants to seek a court order dividing the fund according to law, and they must bring in the KPERS fund as a litigant to get jurisdiction to do so.

All this costs litigants time and attorneys fees to get what the law already allows them to get. *(In re Marriage of Sedbrook)*

HB 2993 allows this division without all the extra costs and is consistent with *Sedbrook.*

Steve Blaylock and the Family Law Section requested the bill, and the Board of Governors recommends its approval.

Thank you.

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

#13

LEGAL DEPARTMENT of KANSAS CITY, KANSAS

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Prosecutors:

Marc D. Conklin
Debra D. Brown

March 16, 1994

Members of the Senate Judiciary Committee
State Capitol
Topeka, KS 66612

Re: House Bill 2993

Dear Senators:

On behalf of the Board of Pension Trustees of the Retirement Pension Plan of the Board of Public Utilities of Kansas City, Kansas (BPU), I am requesting that the Senate Judiciary Committee amend House Bill 2993 to add the Retirement Pension Plan to the public pension plans already included in this bill. The BPU is a water and electric utility which is an agency of the City of Kansas City, Kansas. It is authorized by statute (K.S.A. 13-1246 *et seq.*) to establish its Retirement Pension Plan, which is not affiliated with KPERS.

House Bill 2993 makes it clear that the anti-alienation language in the statutes governing four enumerated public pension and benefit plans does not apply to claims by an alternate payee under a qualified domestic relations order.

As you must be aware, the Kansas appellate courts have made it clear in a number of cases that retirement benefits are marital property subject to division in a domestic relations case. *E.g.*, *In re Marriage of Harrison*, 13 Kan.App.2d 313 (1989), military pensions; *In re Marriage of Sommers*, 246 Kan. 652 (1990), U.S. postal service; *In re Marriage of Sadecki*, 250 Kan. 5 (1992), major league baseball; *In re Marriage of Sedbrook*, 16 Kan.App.2d 668 (1992), firefighters in a non-KPERS plan. Under the Employee Retirement Income Security Act (ERISA), benefits under plans governed by that act are also marital property subject to division. However, some plans which are not governed by ERISA have not yet had a court determination on the subject of marital rights in their plans as it relates to their statutory anti-alienation language.

Understandably, these plans are faced with a dilemma whether to adhere to the statutory language prohibiting any alienation of benefits or whether to recognize a court order purporting to divide retirement and other benefits in a domestic relations action. If the plan takes the former course of action, it faces the threat of suit from the spouse. If it takes the latter course, it faces a possible lawsuit from the employee.

Quite some time ago, in considering one of the KPERS plans, the Kansas Supreme Court held that statutory anti-alienation language could not be used to defeat orders for child support or alimony. *Mahone v. Mahone*, 213 Kan. 346 (1973). After the *Mahone* case, the KPERS statutes were amended to permit recognition of child support and maintenance orders, but pure

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property division was not addressed in either the case or the statutory amendments.

House Bill 2993 currently addresses four public pension plans, including KPERS, and removes the uncertainty discussed above for them by stating that the anti-alienation language does not exempt benefits from claims of an "alternate payee" under a "qualified domestic relations order," as those terms are defined in the United States internal revenue code. The Board of Pension Trustees of the BPU's Retirement Pension Plan is requesting today that HB 2993 be amended to include its plan. I have drafted language which I believe accomplishes the goal and I attach a copy of that proposed amending language.

Sincerely,

Jody Boeding

Jody Boeding
Assistant City Attorney

Attachment

cc: Board of Pension Trustees

Proposed amendment to House Bill 2993
Submitted by the Board of Pension Trustees of the Retirement Pension Plan of the Board of Public Utilities of Kansas City, Kansas

Contact Person: Jody Boeding, Assistant City Attorney, Kansas City, Kansas
Telephone: 913-573-5069

K.S.A. 13-1246a is hereby amended to read as follows:

(a)(1) Any board of public utilities in any municipality of the state of Kansas having a population of more than 120,000 shall be empowered to enter into an agreement with its employees for the purpose of reorganizing and establishing a board to be known as a board of pension trustees composed of six members, and for the purpose of continuing, revising, maintaining and adopting an equitable and adequate pension program for all of its employees, including retired employees, and their dependents. Three members of the board of pension trustees shall be appointed by the board of public utilities from its regular employees to serve at its discretion. Three members of the board of pension trustees shall be elected annually by all of the nonsupervisory employees of the board of public utilities from its nonsupervisory employees and shall serve for fixed periods of one year, commencing on July 1, of each year.

(2) Present employees of such board of public utilities, in order to pay the cost of implementing, continuing and operating such retirement pension plan for such present employees, shall contribute in the aggregate from their earnings not more than ½ of the costs of future-service pensions, and such board of public utilities shall pay or contribute the remaining portion thereof to any revised, continued or adopted retirement pension plan, as provided for herein.

(3) Any costs of paying increased pensions or benefits to retired employees and their dependents of such board of public utilities, and the costs of any back-service obligations under terms of such revised pension plan as may be found and determined to be proper and equitable, under rules and provisions to be adopted by such board of pension trustees, shall be borne in their entirety by such board of public utilities; and such contributions to such continued and revised retirement pension plan for the use and benefit of retired employees and their dependents which shall be made by such board of public utilities shall be computed and based on sound actuarial standards.

(4) Such board of pension trustees shall be empowered to make and enter into an agreement with such board of public utilities, authorizing said board of pension trustees to take control and custody of all assets, property and funds presently held, controlled and in the possession of the now constituted retirement advisory council of such board of public utilities, and its present trustee, as the same was now therefore created and is now functioning as provided by K.S.A. 13-1247 and amendments thereto. The board shall [provide] for such additional funds as may be necessary to fulfill the purposes of this act.

(5) Such board of pension trustees shall be empowered to control and take immediately into and under its custody and control, title to and possession of all records, funds, property and assets of the such existing retirement advisory council of such board of public utilities and its present trustees, as the same is now constituted by the provisions of K.S.A. 13-1247 and amendments thereto, which such retirement council of such board of public utilities, its powers, authority and duties shall be abolished, cease and terminate upon the effective date of this act.

(b)(1) The board of pension trustees shall establish a formal, adequate written pension plan with specific rules of eligibility for pension coverage for all present employees, including retired employees, and their dependents, of such board of public utilities. The plan and rules appertaining thereto may be amended at any time by the vote of four members of such board

of pension trustees and may be the subject of negotiations between such board of public utilities and its employees, but subject to the revision, adoption and ratification of the same by such board of pension trustees, as the same is created and governed by the provisions of this act. The plan and rules shall be printed and distributed to all employees.

(2) Pensions and retirement benefits, received and paid under the such continued and revised retirement pension plan and rules promulgated by such board of pension trustees, to retired employees, their dependents, and present employees, shall at all times bear a reasonable relationship to the wages or earnings paid to any employee of such board of public utilities. Such benefits shall be compatible with any changes in cost of living indexes except, such plan and benefits payable shall at all times be in strict conformity with current, sound actuarial standards and principles.

(3) No employee shall be exempt from having contributions made on such employee's behalf or be precluded from receiving benefits for any reason other than lack of age, or an insufficient period or time of employment.

(4) No plan shall be adopted or modified at any future time which is not properly funded and in conformity with recognized, sound actuarial principles and standards.

(5) All funds and the earnings therefrom held in trust for the use and benefit of the employees and members, including retired employees and their dependents, of such board of public utilities, of any retirement pension plan continued, revised and adopted under the provisions of this act, shall be exempt from civil process, taxation or assessment, and shall not be subject to seizure or execution or liens of any kind. All benefits due to the members or to their beneficiaries of any retirement pension plan continued and revised under the provisions of this act, shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state and civil liability for debts of the members and employees, or their beneficiaries, receiving the same, and shall not be subject to seizure, execution or process of any nature. Provided, however, that any annuity or benefit or accumulated contributions due and owing to any person under the provisions of any retirement pension plan continued and revised under the provisions of this act are subject to claims of an alternate payee under a qualified domestic relations order. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this section shall apply to any qualified domestic relations order which was filed or amended either before or after July 1, 1994. Such retirement pension plan continued and revised under the provisions of this act, such board of pension trustees, or such board of public utilities shall not be a party to any action under article 16 of Chapter 60 of the Kansas Statutes Annotated but is subject to orders from such actions issued by the district court of the county where such action was filed and may accept orders which it deems to be qualified under this subsection if such orders are issued by courts having jurisdiction of such actions outside the state of Kansas. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due and owing from such retirement pension plan pursuant to this act.

(6) The members and employees of any retirement pension plan continued, revised and adopted under the provisions of this act, may name one or more beneficiaries to receive any benefits that may be due or become due to such member and employee in the event of such member of employee's death.

#14

HOUSE BILL NO. 2993
Testimony by KPERS
Senate Judiciary Committee
March 17, 1993

H.B. 2993 would amend K.S.A. 12-111a [retirement plans for first or second class city, police and fire]; 1993 Supp. 12-5005 [retirement plans for other local police and fire]; 13-14a10 [retirement plans for certain city employees]; and 74-4923 [KPERS and KP&F] to provide a new exception to the anti-alienation provisions protecting members' benefits.

The following comments are limited to the provisions proposing to amend K.S.A. 74-4923. The bill as drafted would change K.S.A. 74-4923(b) so that current provisions are contained in a new subsection 74-4923(b)(1), and new subsection 74-4923(b)(2) would be added, to provide that KPERS is subject to qualified domestic relations orders.

Suggested changes to HB 2993

KPERS suggests that the bill be changed to amend K.S.A. 74-4923 as follows:

Do not create an additional subsection -- that is, do not have (b)(1) and (b)(2). Rather, amend current subsection (b) to read as follows:

> (b) Any annuity, benefits, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 *et seq.* or 74-4951 *et seq.*, and ~~any acts amendatory thereof or supplemental thereto~~ amendments thereto, shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state; shall not be subject to execution, garnishment or attachment, or any other process or claim whatsoever, ~~except such annuity, benefit or other accumulated contributions due and owing from the system to such person are subject to decrees for child support or maintenance, or both, as provided in K.S.A. 60-1610 and amendments thereto,~~ and shall be unassignable, except that within 30 days after the death of a retirant the lump-sum death benefit payable to a retirant's beneficiary pursuant to the provisions of K.S.A. 74-4989 and amendments thereto may be assignable to a funeral establishment providing funeral services to such retirant by the beneficiary of such retirant. Provided, however, that any annuity or benefit or accumulated contributions due and owing to any person under the provisions of K.S.A. 74-4901 *et seq.* or 74-4951 *et seq.* are subject to claims of an alternate payee under a qualified domestic relations order. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this amendatory act of 1994 shall apply to any qualified domestic relations order which was filed or amended either before or after July 1, 1994. The Kansas public employees retirement system shall not be a party to any action under article 16 of Chapter 60 of the Kansas Statutes Annotated ~~and~~ but is subject

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to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this subsection from courts having jurisdiction of such actions outside the state of Kansas. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due and owing from the system to be distributed by the system pursuant to this act.

Reasons for suggested changes to HB 2993

The reasons for the above suggested changes in the bill are as follows.

First, HB 2993 as drafted would have KPERS accepting orders for maintenance or child support under subsection (b)(1) and accepting orders for maintenance, child support, and property division under subsection (b)(2). That is, the definition of "qualified domestic relations order" in I.R.C. § 414(p) includes orders for maintenance, child support, and property division.

Second, subsection (b)(2) in HB 2993 does not contain the provision that protects KPERS itself from being made a party to a domestic relations case. KPERS needs this protection.

Third, a problem might arise in that HB 2993 would allow KPERS to accept orders only if they are "filed or amended after July 1, 1994." Many such orders have already been filed. It adds costs to the parties to require the order to be amended. The retirement system would have no problem accepting orders previously filed.

Finally -- and this has needed attention before now -- the statute as currently written appears to authorize KPERS to accept orders only from Kansas domestic relations courts. However, some KPERS members retire, move out of state and get divorced, or terminate their covered employment, move out of state and get divorced, with the result that their benefits or lump-sum withdrawal amounts become the subject of negotiation in their divorced proceedings in their new state of residence. To serve all members equally, KPERS should be able to accept a QDRO from any jurisdiction.

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MESSAGE: The following 21 page(s), including cover page, is/are transmitted to you concerning HB 2993 — Stephen Blaylock written testimony

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MICHAEL M. WALKER

February 21, 1994

TO: House Judiciary Subcommittee #2

FOR: Written Testimony on HB 2993

FROM: Stephen J. Blaylock

The purpose of this bill is to provide a mechanism for dividing and/or attaching public employees' pension benefits for purposes of child support, spousal maintenance (alimony) and property division incidental to a divorce or decree of separate maintenance.

Prior to HB 2993, the various statutes relating to public employees' pension benefits allowed attachment for purposes of child support and spousal maintenance. The Kansas Court of Appeals in an Opinion filed March 13, 1992, held that public employees' pension benefits were marital property and may be divided in a divorce. In Re Marriage of Sedbrook, 16 Kan.App.2d 668, 827 P.2d 1223 (1992), (rev. den.) 1992. A portion of that Opinion is marked as "Attachment 1" to this testimony. Therefore, the ultimate change requested in HB 2993 is to add language and a method of dividing public employees' pension benefits as property division. See also "Attachment 2" which is Attorney General Opinion No. 92-141.

The mechanism requested is the use of a "Qualified Domestic Relations Order" (QDRO). A QDRO is defined by Section 414(p) of the Federal Internal Revenue Code of 1985, as amended. A QDRO is a court order issued by a state domestic relations court that divides retirement benefits in the form of child support, maintenance payments or property rights to a spouse, former spouse or child. The person who is to receive benefits under a QDRO is called an "alternate payee."

The QDRO document itself must meet certain requirements which are set out in Sec. 414(p), and basically places the alternate payee in the same shoes as the plan participant, with the same restrictions regarding benefits. QDROs have been used in the past to attach public employees' pensions for purposes of child support

and spousal support. (Attorney General Opinion - Cite Omitted.) Although each QDRO must be drawn individually to show whether the benefits are for property, child support or maintenance, a sample QDRO for property purposes when the plan participant is in pay status is attached hereto as "Attachment 3".

K.S.A 60-2308(c), effective July 1, 1986, specifically allows the attachment or division of certain retirement plans in a divorce proceeding if made pursuant to a QDRO. While those types of plans do not include public employees' pensions except for child support and maintenance under the Attorney General's opinion, Sedbrook, supra, makes it a logical conclusion.

The bill itself applies the QDRO language to K.S.A. 12-111a (policeman and firemen under charter ordinance), K.S.A. 12-5005 (KP&F system), K.S.A. 13-14a10 (Employees' Retirement Systems), and K.S.A. 74-4923 (KPERS).

This bill is necessary because, although Kansas courts recognize that the above pension benefits can be divided as property pursuant to a divorce proceeding, most of the pension trustees do not recognize a QDRO for property division purposes. Therefore the choices for a court are to either join the trust itself (which means additional legal expense) or to have an "if and when" order. An "if and when" order means that if and when a public employee retires, he or she pays part of his or her pension to their ex-spouse in the form of child support, maintenance or property division. However, this latter method is unsatisfactory because:

1. Death of employee-participant - means loss of pension benefits awarded or they go to new spouse;

2. Collection is difficult or impossible;

3. Bankruptcy; and

4. Tax consequences can be adverse to employee-participant.

With an approved QDRO, all of the above problems are resolved in that the trustee of the pension plan recognizes the alternate payee as a beneficiary and payment is guaranteed, as it is with non-public employee pension plans. In most cases, this will mean that women and children (sometimes men) will actually receive what the domestic court declares they are entitled to. Presently, there are hundred of domestic cases pending with the problem of how to divide public employees' pension plans incidental to a divorce. The Kansas legislature can cure this problem for this asset which, for many domestic cases, constitutes the major marital asset.

The bill has the support of the Kansas Bar Association (KBA) Board of Governors, the KBA's legislative committee, and the KBA's family law section. Failure to pass this bill will create certain additional economic hardships to families already struggling with the high stress level caused by the divorce process.

Sincerely submitted,

WOODARD, BLAYLOCK, HERNANDEZ,
PILGREEN & ROTH

Stephen J. Blaylock
(biography - Attachment 4)

Note: References in the bill to Internal Revenue Code of 1954 should be changed to Internal Revenue Code of 1985 as amended.

ATTACHMENT 1

(827 P.2d 1222)

No. 66,410

In the Matter of the Marriage of LUANNE SEDBROOK, *Appellant*, and DELBERT SEDBROOK, *Appellee*.

Petition for review denied April 21, 1992.

SYLLABUS BY THE COURT

1. DIVORCE—*Fault—Admissibility of Evidence of Fault—Consideration in Determining Financial Aspects of Dissolution—Exception.* The fault of either party to a marriage is not to be considered in determining the financial aspects of the dissolution of the marriage unless the conduct is so gross and extreme that the failure to penalize therefor would, itself, be inequitable. *In re Marriage of Sommers*, 246 Kan. 652, 658-59, 792 P.2d 1005 (1990).

2. SAME—*Maintenance—Basis for Determination.* The determination of the allowance of maintenance must be based on a realistic evaluation of the parties' circumstances, future income, and needs.

3. SAME—*Maintenance—Cohabitation Not Automatic Reason to Deny Maintenance.* A finding of cohabitation may not be equated with the conclusion the relationship has become that of wife and husband and is not, by itself, sufficient to justify denial of spousal maintenance.

4. SAME—*Maintenance—Consideration of Financial Contributions of Unrelated Party.* It is not improper for the trial court to consider the nature and extent of the financial contribution of an unrelated party, or that which he or she may be capable of assuming, in order to maintain a relationship with a spouse seeking continued maintenance from a former spouse.

5. SAME—*Property Division—Consideration of Maintenance Allowance in Determining Property Division.* The determination of maintenance and the division of property should be made at the same time, but, if separately determined, the allowance of maintenance or the lack thereof should be considered before making a division of property. K.S.A. 1991 Supp. 60-1610(b).

6. SAME—*Property Division—Retirement Benefits Earned during Marriage.* To the extent earned during the marriage, retirement benefits represent compensation for marital effort and are substitutes for current earnings which would have increased the marital standard of living or would have been converted into other assets divisible at dissolution of the marriage.

7. SAME—*Property Division—Effect of Exemption and Anti-alienation Provisions on Division of Retirement Benefits.* Exemption and anti-alienation provisions restricting garnishment, attachment, execution, and prohibition of assignment are designed to protect benefits from creditors and do not apply to the claims of a spouse at the time of the dissolution of a marriage.

8. SAME—*Property Division—Municipal Pensions Considered Marital Property.* Municipal pensions are considered as marital property under K.S.A. 23-201(b) for the purpose of making the division of property upon the dissolution of a marriage as provided under K.S.A. 1991 Supp. 60-1610(b).

9. SAME—*Maintenance—Effect of Cohabitation—Property Division—Municipal Pension Subject to Division.* Under the facts and circumstances of this case, the trial court erred in denying spousal maintenance solely on the grounds of cohabitation with an unrelated member of the opposite sex. The trial court further erred in ruling, as a matter of law, that a municipal firefighter's pension benefits were not marital property subject to equitable division upon the dissolution of a marriage.

Appeal from Sedgwick District Court; JAMES G. BEASLEY, judge. Opinion filed March 13, 1992. Reversed and remanded with instructions.

Stephen J. Blaylock and *Cindy Cleous-Stang*, of Woodard, Blaylock, Hernandez, Pilgreen & Roth, of Wichita, for appellant.

David J. Lund, of Dewey & Lund, of Wichita, for appellee.

Before LARSON, P.J., ELLIOTT, J., and NELSON E. TOBUREN, District Judge, assigned.

LARSON, J.: This is a divorce action in which Luanne Sedbrook appeals the trial court's ruling that she is ineligible to receive maintenance from Delbert Sedbrook because she was cohabiting with an unrelated male. Luanne also claims the trial court erred by ruling Delbert's City of Wichita firefighter's pension is not a marital asset subject to division and may only be considered as a source of funds for the payment of child support or maintenance.

The parties married in August of 1964. After 25 years, the parties separated and Luanne filed for divorce in November of 1989.

Delbert commenced his firefighting employment in May of 1963. Wichita established by charter ordinance its police and fire retirement system on January 1, 1965, which after numerous amendments became Charter Ordinance No. 131. Delbert became a member of the system and continued his uninterrupted employment until he retired in April of 1985 with a monthly pension for life of $1,022.94. Cost of living adjustments increased his monthly pension to $1,084.29 by the time of trial.

Luanne's contention that Delbert's pension was marital property subject to division was resolved adversely to her as a matter of law by the trial court in January 1991.

or any part thereof shall be void, except as may be provided herein. Any such annuity or benefit shall not answer for debts contracted by the person receiving the same, and it is the intention of this ordinance that they shall not be subject to execution, attachment, garnishment, or affected by any judicial proceedings."

Similar anti-assignment or anti-alienation provisions relative to state and local government retirement benefits are found at K.S.A. 12-111a, K.S.A. 12-5005(e), K.S.A. 13-14a10 and K.S.A. 1991 Supp. 74-4923(b). K.S.A. 12-5005(e) (Kansas Police and Firemen's Retirement System) and K.S.A. 1991 Supp. 74-4923 (Kansas Public Employees Retirement System [KPERS]) both specifically provide that benefits thereunder are not subject to execution, garnishment, attachment or any other process or claim whatsoever, except such annuity, pension, or benefit or any accumulated contributions due and owing from the system to such person(s) or special member "*are subject to decrees for child support or maintenance, or both, as provided in K.S.A. 60-1610 and amendments thereto.*" (Emphasis added.)

The Kansas Supreme Court in *Mahone v. Mahone*, 213 Kan. 346, 348, 352, 517 P.2d 131 (1973), held the anti-alienation provisions in K.S.A. 74-4923 (Weeks), which then provided that KPERS funds "shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever, [including decrees for support or maintenance,] and shall be unassignable," was inapplicable to a claim for past-due child support.

Justice Prager looked to the purposes of KPERS as enabling public employees to accumulate reserves for themselves and their dependents in stating:

"In arriving at this conclusion we have applied the principle that a statute is not to be given an arbitrary construction, according to the strict letter, but one that will advance the sense and meaning fairly deducible from the context. 'It is not the words of the law but the internal sense of it that makes the law; the letter of the law is the body; the sense and reason of the law is the soul.' [Citation omitted.] The whole purpose and policy of our exemption laws has been to secure to an unfortunate debtor the means to support himself and his family, to keep them from being reduced to absolute destitution and thereby public charges. [Citation omitted.] In construing statutory exemptions this court has consistently taken into consideration this purpose and policy. We have by judicial construction exempted from the application of certain statutory exemptions, persons and situations not falling within that purpose." *Mahone*, 213 Kan. at 350.

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Last year our court in *In re Marriage of Knipp*, 15 Kan. App. 2d 494, 809 P.2d 562, *rev. denied* 248 Kan. 995 (1991), held that federal law (42 U.S.C. § 407[a] [1988]) precluded a Kansas court from dividing a lump sum social security disability award, but did not prohibit considering the value of the award in dividing marital property. The exemption section there involved provided:

" '(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and *none of the moneys paid or payable* or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.' (Emphasis added.)" 15 Kan. App. 2d at 495.

Interestingly, the party prevailing in our court petitioned for review, claiming our decision permitted, and indeed encouraged, the trial court to do indirectly what it could not do directly. The petition for review was not granted.

An earlier Supreme Court decision on a companion issue, *Mariche v. Mariche*, 243 Kan. 547, 758 P.2d 745 (1988), citing *Mahone* as authority, held social security disability benefits payable to a parent are subject to garnishment to satisfy past-due child support payments, and that such garnishment is not precluded by what is now K.S.A. 1991 Supp. 60-2308(a). The true purpose of the exemption statute, to protect the funds necessary to support a pensioner and his family, precluded strict application of the exemption statute. 243 Kan. at 551-52.

We find no decisions directly relating to the construction of the Wichita ordinance and thus look to decisions from other states.

Community property states have held not only is each spouse the owner of the other's pension (a position we might reach by a literal reading of the language of K.S.A. 23-201(b) that "[e]ach spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to K.S.A. 60-1610 and amendments thereto"), but also the anti-alienation provisions were designed to protect benefits from creditors and not from spouses and family members. See *Koelsch v. Koelsch*, 148 Ariz. 176, 180, 713 P.2d 1234 (1986); *Collida v. Collida*, 546 S.W.2d 708, 710 (Tex. Civ. App. 1977).

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Illinois held in *In re Marriage of Hackett*, 113 Ill. 2d at 292-93, that enactment of anti-alienation provisions was to protect retired firefighters and their beneficiaries from creditors and that benefits could be divided between divorcing parties. See *Rice v. Rice*, 762 P.2d at 927 (anti-alienation provision is a "spendthrift" provision to protect a pensioner's income from the claims of creditors; as spouse in divorce proceedings is not a creditor, benefits accumulated during marriage are subject to division as jointly acquired property).

There have been earlier cases which hold to the contrary, but the recent trend is in accordance with the cases above cited.

In *Graham v. Graham*, 396 Pa. Super. 166, 578 A.2d 459 (1990), a state employee's pension was deemed subject to attachment through a qualified domestic relations order in a divorce action notwithstanding a statute exempting benefits from any process whatsoever. *Young v. Young*, 507 Pa. 40, 488 A.2d 264 (1985), was quoted by the *Graham* court in setting forth two reasons why state or municipal pensions were not excluded from equitable distribution with the court, stating:

"[First], '[r]etirement funds . . . are created for the protection of not only the employee, but for the protection of his family as well. Hence, the provisions exempting assignments and attachments contained therein are to relieve the person exempted from the pressure of claims that are hostile to his *and to his dependents' essential needs', citing Fowler v. Fowler*, 116 N.H. 446, 362 A.2d 204, 205, 93 A.L.R.3d 705 (1976).

"[Second], we note that a family loses its ability to spend a portion of its income when that income is deferred and placed in a pension. It would be terribly unfair to read an exemption statute, which was created to protect a pension for the benefit of a retired employee's family, in such a way that the exemption would bar children *or a former spouse* from receiving support from the very fund created for their benefit, and would once again deny them the benefits of the income they sacrificed to a pension years before. *Id.*, 507 Pa. at 47-50, 488 A.2d at 267-69 (emphasis added)." 396 Pa. Super. at 170-71.

Wichita Charter Ordinance No. 131 sets forth in § 2 that the system provides "retirement annuities, survivors' annuities, death benefits and other benefits for police and fire officers of the City of Wichita *and their dependents.*" (Emphasis added.) We believe a spouse must be considered as a dependent to be granted protection under the plan and not treated as a creditor. A spouse

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is a member of the family unit the retirement plan is designed to protect. We hold the anti-alienation provisions, in particular those relating to exemption from garnishment, attachment, and prohibition of assignment, do not apply to the claims of a spouse at the time of the marital dissolution.

An excellent collection of cases from the increasing number of states that by statute and decision have conferred on divorce courts authority to make an equitable distribution of joint and separate property and have recognized spousal claims to an interest in retirement and pension benefits is set forth in Baxter, Marital Property § 11.2 (1991 Supp.).

While there is ample authority for our decision here in the prior Kansas decisions we have cited, especially *Sadecki*, 250 Kan. 5; *Sommers*, 246 Kan. 652; and *Harrison*, 13 Kan. App. 2d 313, the logic of those opinions and ours herein is bolstered by some of Professor Baxter's observations:

"The most timely issue regarding the economics of divorce is the question of spousal claims to an interest in retirement or pension benefits of the other spouse. . . .

. . . .

"More important, in our typical case, the wife has a just claim to a share of the benefit derived from joint contributions, albeit her contributions were of a different order. She already has earned her right to a share and paid for it with her past services. Thus she has a present accrued interest, not a contingent claim such as is involved in alimony.

. . . .

". . . The spread of no-fault grounds requires that the economics of divorce be fair and equitable, otherwise the homemaker wife may be victimized and impoverished.

". . . Not only has alimony been de-sexed, it also has come to be regarded as an interim stipend which is available for a relatively short time while a former spouse in need prepares for the labor market. . . . In short, the current law of divorce in most states has upset the former equilibrium and requires new approaches to the concepts of marital property and the future financial security of broken families." Baxter, Marital Property § 11.2, pp. 26-28.

We hold that none of the three reasons given by the trial court justifies the refusal to consider Delbert's firefighter's retirement benefits as marital property because:

(1) *Sommers* and *Sadecki* support our finding that K.S.A. 23-201(b) includes a municipal pension as marital property;

(2) the anti-alienation provisions of the Wichita ordinance must not be applied to disadvantage spouses and family members; and (3) *Harrison* and *Sadecki* provide ample authority that the retirement benefit has a determinable value.

Luanne claims the trial court has authority to make her an alternate payee under Delbert's pension plan pursuant to K.S.A. 1991 Supp. 60-2308(b) and (c). We will not reach or decide this issue for two reasons. This was not an issue before the trial court and will not be considered for the first time on appeal. *Kansas Dept. of Revenue v. Coca Cola Co.*, 240 Kan 548, 552, 731 P.2d 273 (1987). There is also an insufficient record to determine if the statutory requirements are met. See *Dickinson, Inc. v. Balcor Income Properties Ltd.*, 12 Kan. App. 2d 395, 399, 745 P.2d 1120 (1987), *rev. denied* 242 Kan. 902 (1988).

We also decline to remand, as Luanne requests, with instructions that the retirement benefits be divided equally, in kind. The trial court may divide property as set forth in K.S.A. 1991 Supp. 60-1610(b)(1). We will not make an order limiting or confining the trial court's options.

We recognize the large burden which trial courts bear in following the provisions of K.S.A. 1991 Supp. 60-1610(b), but they must be free to reach decisions that are fair, just, and equitable under all of the circumstances in accordance with the evidence which may be presented and the contentions and arguments which are made.

Reversed and remanded for determination of the property division and allowance of maintenance, if any, in accordance with the directions of this opinion.

ATTACHMENT 2

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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November 6, 1992

ATTORNEY GENERAL OPINION NO. 92-141

Meredith Williams
Executive Secretary
Kansas Public Employees Retirement System
Capitol Tower, Suite 200
400 S.W. 8th Avenue
Topeka, Kansas 66603-3925

Re: State Boards, Commissions and Authorities--Public Employees Retirement Systems; Kansas Public Employees Retirement System--Benefits and Rights Nonassignable and Exempt From Taxes and Legal Process, Exception for Decrees for Support and Maintenance; Effect of Decree for the Division of Property Following Dissolution of Marriage

Synopsis: The whole purpose and policy of Kansas' exemption laws has been to secure to an unfortunate debtor the means to support himself and his family, to keep them from being reduced to absolute destitution and thereby public charges. The spouse of a member of the Kansas public employees retirement system is not to be regarded as one of the parties subject to the anti-alienation provisions set forth in K.S.A. 1991 Supp. 74-4923, as amended by L. 1992, ch. 321, § 10. Therefore, any annuity or benefit earned pursuant to K.S.A. 74-4901 et seq. may be subject to a decree for the division of property following dissolution of marriage. Cited herein: K.S.A. 74-4901; K.S.A. 1991 Supp. 74-4902; 74-4923, as amended by L. 1992, ch. 321, § 10; L. 1961, ch. 427, § 23; L. 1974, ch. 338, § 1; L. 1982, ch. 152, § 24; L. 1990, ch. 282, § 11; L. 1991, ch. 238, § 3.

* * *

Dear Mr. Williams:

As executive secretary for the Kansas public employees retirement system (KPERS), you request our opinion regarding whether any annuity or benefit earned under K.S.A. 74-4901 et seq. is subject to a decree for the division of property following dissolution of marriage. You raise this issue because of the decision of the Kansas Court of Appeals in In re Marriage of Sedbrook, 16 Kan.App.2d 668 (1992).

In Mahone v. Mahone, 213 Kan. 346 (1973), the Kansas Supreme Court "concluded that the statutory exemption contained in K.S.A. 74-4923 is not applicable when in conflict with the enforcement of a decree or claim for child support." Id. at 350.

> "In arriving at this conclusion we have applied the principle that a statute is not to be given an arbitrary construction, according to the strict letter, but one that will advance the sense and meaning fairly deducible from the context. 'It is not the words of the law but the internal sense of it that makes the law; the letter of the law is the body; the sense and reason of the law is the soul.' [Citation omitted.] The whole purpose and policy of our exemption laws has been to secure to an unfortunate debtor the means to support himself and his family, to keep them from being reduced to absolute destitution and thereby public charges. [Citation omitted.] In construing statutory exemptions this court has consistently taken into consideration this purpose and policy. We have by judicial construction excepted from the application of certain statutory exemptions, persons and situations not falling within that purpose." Id. (emphasis added).
>
> "In construing the exemption provision under 74-4923 we should consider the other sections of the statute which created and maintain [KPERS]. The purpose of the act is set forth in K.S.A. 74-4901. One of its purposes is to enable public employees to accumulate reserves for themselves and

> their dependents. [Emphasis in original.] Under 74-4902(7) a member's dependent child is specifically included as a beneficiary of the program. In view of these provisions it seems clear to us that [KPERS] is designed to protect the minor dependents of a member as well as the member himself.
>
> "This court as a matter of public policy has always vigorously protected the right of a dependent child to receive support from his father. The denial of relief to the minor children in cases such as this might well cast upon the public the burden of supporting a pensioner's children and relieve him and his property of that obligation. Such a holding in our judgment would be perversive of the true purpose and policy of our exemption laws and the intent of the legislature in providing the exemption contained in K.S.A. 74-4923." Mahone, 213 Kan. at 351-52 (emphasis added).

The Kansas Court of Appeals determined in In re Marriage of Sedbrook, 16 Kan.App.2d 668 (1992) that municipal pension benefits are marital property subject to equitable division upon the dissolution of marriage. The court then addressed the effect of an anti-alienation provision contained within the retirement plan for firefighters of the city of Wichita. City of Wichita, Charter Ordinance No. 131, § 16 provides:

> "EXEMPTIONS. The right to a service retirement annuity, disability annuity, death annuity or any annuity or benefit under the provisions of this ordinance by whatsoever name called, or a refund, is personal with the recipient thereof, and the assignment or transfer of any such annuity or benefit or any part thereof shall be void, except as may be provided herein. Any such annuity or benefit shall not answer for debts contracted by the person receiving the same, and it is the intention of this ordinance that they shall not be subject to execution,

attachment, garnishment, or affected by any judicial proceedings."

After acknowledging the purpose of anti alienation provisions as determined in Mahone, the Court of Appeals stated:

> "We believe a spouse must be considered as a dependent to be granted protection under the plan and not treated as a creditor. A spouse is a member of the family unit the retirement plan is designed to protect. We hold the anti-alienation provisions, in particular those relating to exemption from garnishment, attachment, and prohibition of assignment, do not apply to the claims of a spouse at the time of the marital dissolution." Sedbrook, 16 Kan.App.2d at 683-84.

With this in mind, we review the provisions of the anti-alienation clause contained in KPERS. Subsection (b) of K.S.A. 1991 Supp. 74-4923, as amended by L. 1992, ch. 321, § 10 states:

> "(b) Any annuity, benefits, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 et seq. or 74-4951 et seq., and any acts amendatory thereof or supplemental thereto, shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state; shall not be subject to execution, garnishment or attachment, or any other process or claim whatsoever, except such annuity or benefit or any accumulated contributions due and owing from the system to such person are subject to decrees for child support or maintenance, or both, as provided in K.S.A. 60-1610 and amendment thereto; and shall be unassignable, except that within 30 days after the death of a retirant the lump-sum death benefit payable to a retirant pursuant to the provisions of K.S.A. 74-4989 and amendments thereto may be assignable to a funeral establishment providing funeral services to such

> retirant by the beneficiary of such retirant. The Kansas public employees retirement system shall not be a party to any action under article 16 of chapter 60 of the Kansas Statutes Annotated and is subject to orders from such actions issued by the district court of the county where such action was filed. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due and owing from the system to be distributed by the system pursuant to this act." (Emphasis added).

The emphasized portion of the anti-alienation provision has been in existence since enactment of the statute in 1961. L. 1961, ch. 427, § 23. Following the court's decision in Mahone, the legislature amended the anti-alienation provision to provide that KPERS benefits were not subject to "any other process or claim whatsoever, including decrees for support or alimony. . . ." L. 1974, ch. 338, § 1 (emphasis denotes new language). In 1982, the term "maintenance" replaced "alimony." L. 1982, ch. 152, § 24. After amendments in L. 1990, ch. 282, § 11 and L. 1991, ch. 238, § 3, the anti-alienation provision stated that any annuity, benefit, or funds "shall not be subject to execution, garnishment or attachment, or any other process or claim whatsoever, except such annuity or benefit or any accumulated contribution due and owing from the system to such person are subject to decrees for child support or maintenance, or both, as provided in K.S.A. 60-1610 and amendments thereto. . . ." At no time has the anti-alienation clause expressly addressed the effect of a decree for the division of property following dissolution of marriage.

As evidenced in Sedbrook, courts have increasingly acknowledged that retirement benefits are essentially deferred compensation and, when earned during marriage, constitute marital property that may be subject to a decree for division of property. See Sedbrook, 16 Kan.App.2d at 679-80. We find no distinguishing feature in KPERS which would permit us to reach a different conclusion regarding any annuity or benefit earned under KPERS. A spouse of the member of KPERS is a part of the unit the retirement plan is designed to protect. The spouse is not to be treated as a creditor of the member. The spouse is not to be regarded as one of the parties subject to

the anti-alienation provision set forth in K.S.A. 1991 Supp. 74-4923, as amended. Therefore, any annuity or benefit earned pursuant to K.S.A. 74-4901 et seq. may be subject to a decree for the division of property following dissolution of marriage.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm

ATTACHMENT 3

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COPY OF SEDBROOK QDRO

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
DOMESTIC DEPARTMENT

IN THE MATTER OF THE MARRIAGE OF)
)
LUANNE SEDBROOK,)
)
Petitioner,)
)
and) Case No. 89 D 3423
)
DELBERT D. SEDBROOK)
)
Respondent.)

QUALIFIED DOMESTIC RELATIONS ORDER

NOW on this _____ day of _____, 1993, the following Qualified Domestic Relations Order is entered into pursuant to the Journal Entry filed herein on the 23rd day of August, 1993. Petitioner appears in person and by and through her attorney of record, Stephen J. Blaylock. Respondent appears in person and by and through his attorney of record, David J. Lund.

The Court FINDS and ORDERS as follows:

Respondent (plan participant), whose present address is 2324 S. Crestway, Wichita, Sedgwick County, Kansas 67218, and

whose Social Security Number is 442-38-2723, and the Plan Administrator shall make division of benefits inuring to Respondent under the Wichita Police and Fire Pension Fund, to the Petitioner (alternate payee) whose present address is 3026 East Funston, Wichita, Sedgwick County, Kansas 67211, and whose Social Security Number is 515-46-1250 as part of the property division and not as support. Correspondence regarding administration of the plan should be directed to the Plan Administrator, c/o Keith Brown, Pension Management, City of Wichita, City Hall, 12th floor, 455 N. Main, Wichita, Kansas, 67202, phone number (316) 268-4549.

The Alternate Payee must notify the Plan Administrator in writing by certified mail of any change of address.

Payment of benefits shall be made as follows: The Alternate Payee is to receive fifty percent (50%) of the gross benefits, including increases thereon, which have accrued to the participant as of the next payment due the participant after the Plan Administrator receives this Order. Payments shall be made to the Alternate Payee in life annuity form and shall be made in accordance with the terms and provisions of the Plan, including any future increases.

Benefits as set forth herein shall be paid in a manner permitted by the plan, if not by annuity, and by the law, as may be amended from time to time.

This Court shall retain jurisdiction over the payments as set out herein, until such retirement benefits shall have been

fully paid to Petitioner and further shall reserve the right to modify this Order should it be later determined that it is not in compliance with any laws, statutes, or city ordinances.

Petitioner and Respondent shall include all of the taxable portion of said benefits as received by him or her in his or her gross taxable income. Petitioner's benefits when paid, shall not be taxable income or deductible on the Respondent's tax returns. In the event the IRS determines that the benefits are taxable to Respondent when paid to Petitioner, said taxes shall be paid on a pro-rata basis by Petitioner and Respondent.

JUDGE OF THE DISTRICT COURT

APPROVED:

WOODARD, BLAYLOCK, HERNANDEZ,
PILGREEN & ROTH

BY: _____
STEPHEN J. BLAYLOCK
Attorneys for Petitioner
Supreme Court No. 07223

DEWEY & LUND

BY: _____
DAVID J. LUND
Attorneys for Respondent
Supreme Court No. 11618

ATTACHMENT 4

STEPHEN J. BLAYLOCK

BIOGRAPHY

STEPHEN J. BLAYLOCK is a partner in the Wichita law firm of Woodard, Blaylock, Hernandez, Roth & Day where his practice is in the areas of divorce, pension, estate planning and selected areas of tax. He received his B.A. degree in economics and J.D. degree from the University of Kansas. He is a frequent lecturer for the Kansas Bar Association, Washburn Law School, and other organizations in the area of tax issues, pension plans, and property division as they relate to divorce. He is Co-Author of the "Family Law" Chapter for the Kansas Bar Association Domestic Relations Committee, and presently on the Kansas Bar Association Family Law Executive Committee. Mr. Blaylock is a member of the American Academy of Matrimonial Lawyers and serves as chair of their tax committee. He is listed in the "Best Lawyers in America" under Domestic Law. He recently authored "Retirement Benefits; Tax Ramifications Reviewed and Applied" in the Summer of 1993 edition of the Journal of the American Academy of Matrimonial Lawyers. Steve has been practicing law since June of 1971.