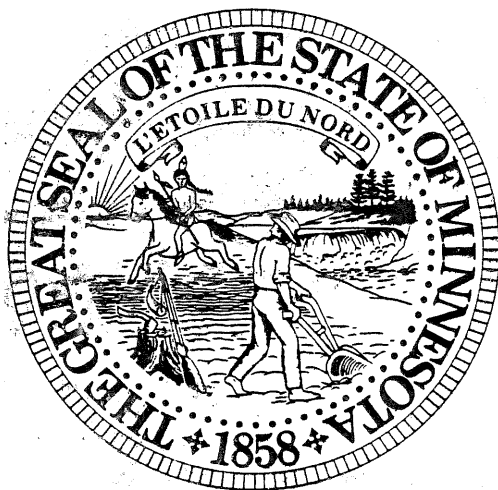


MINNESOTA NON-TAX REVENUE COMMISSION

REPORT TO THE GOVERNOR OF MINNESOTA



FULL AND COMPLETE FINDINGS AND RECOMMENDATIONS RESULTING FROM THE EXAMINATION, INVESTIGATION, AND STUDY OF THE STATE CHILD SUPPORT SYSTEM PURSUANT TO PUBLIC LAW 98-378, THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984.

October 1, 1985

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## INTRODUCTION

### MINNESOTA NON-TAX REVENUE COMMISSION

On September 27, 1984, Governor Rudy Perpich appointed twenty-six persons to the Minnesota Non-Tax Revenue Commission (MNTReC). He charged MNTReC with the review and exploration of revenue sources in the State of Minnesota which do not involve a tax, and to make recommendations to optimize those non-tax revenues. Emphasis was to be given to the human services field, including the areas of corrections, health, income support, mental retardation, mental health, chemical dependency, social services, as well as child support enforcement.

MNTReC membership consists of the state IV-D director, a legal services attorney, three legislators, a county administrator, three judges, a business executive, a non-custodial parent, a child support officer, three county attorneys, an assistant attorney general, a private attorney, three county commissioners, a social worker, a custodial parent, a welfare director, a farm advocate, a women's rights advocate, and a children's rights advocate. MNTReC is chaired by the county attorney of Hennepin County.

The McKnight Foundation awarded MNTReC a grant of \$60,094 to fund two staff positions, one attorney and one part-time clerical. Additional staff support was pledged by a number of state and county agencies.

### CHILD SUPPORT TASK FORCE

The 1984 Child Support Enforcement Amendments to Title IV-D of the Social Security Act required the governor of each state to appoint a state commission on child support by December 1, 1984, as a condition of the state's eligibility for federal payments under title IV-A or D of the Act. Since the charge to MNTReC included the examination of the existing or prospective problems associated with the collection of child support, MNTReC was designated the child support commission in the State of Minnesota. The MNTReC charge was amended to satisfy the federal requirement that it "examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing

support and parental involvement both for children who are eligible for aid under a State IV-A or D plan and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children." 45 CFR §304.95(c).

MNTReC met nine times between November, 1984, and February, 1985, to develop general principles by which government should be guided in establishing and collecting fees for services, and to be briefed in the human services areas of concentration. In February, 1985, the MNTReC Chair assigned each member to one of six smaller work groups, or task forces. Task force membership was augmented by non-MNTReC persons selected for their expertise, unique perspective, and/or propensity for creative thinking.

Task Force I was assigned the area of child support enforcement, which included satisfaction of the mandates of the Child Support Enforcement Amendments of 1984. Membership on the Child Support Task Force consists of two attorneys practicing in the area of family law, the state IV-D director, a legal services attorney, a state senator, a IV-D administrator, a judge, a custodial parent, a non-custodial parent, and a social welfare professional.

The Task Force chair assigned a sub-committee of Task Force members to take primary responsibility for reviewing the literature, data and laws in each of seven subject areas. These subject areas are as follows: cost of services; non-public assistance services; establishment of the support obligation; enforcement of the support obligation; inter- and intrastate enforcement of support; paternity; and custody and visitation. The sub-committees met individually and then led the discussion and analysis of each subject area by the full Task Force.

The Task Force held a public hearing on April 30, 1985, in St. Paul, Minnesota, and one on May 1, 1985, in Duluth, Minnesota. Testimony was taken from custodial parents, non-custodial parents, spouses of non-custodial parents, and attorneys, on whether the system provides fair and equitable child support awards; how successful the present system is in securing support for children; and how the laws and courts' handling of visitation and custody affect a parent's willingness and ability to pay support. In addition, written testimony was received, and citizens continue to write to the Task Force members, sharing their problems and concerns with the child support system.

The Task Force met thirteen times from March 11, 1985, through September 30, 1985, and reported back to MNTRC on three occasions. On September 8, 1985, the Task Force shared its Advance Report of findings and recommendations in a symposium of child support officers and attorneys at the annual conference of the Minnesota Family Support and Recovery Council.

The Task Force set out initially to familiarize itself with the IV-D program operations in the state, and the basic laws and legal constraints within which child support obligations are enforced. It became clear that it would be impossible to complete a thorough and comprehensive evaluation and review of the state's child support system by October 1, 1985. Yet the Task Force was satisfied that such was the intent of Congress in requiring the creation of state child support commissions,. Therefore, the Task Force requested, and was granted, permission from MNTRC to extend its term an additional twelve months, through December, 1986. The Task Force then commenced its review of the seven identified subject areas for purposes of identifying issues, making initial observations on the operation of the system, making initial recommendations for change, and identifying areas where substantive reform may be required.

The results of this preliminary review form the substance of this report. In each subject area the Task Force defined a "general principle", or policy, by which to measure the operation of the present system, and upon which to base its recommendations. Preliminary findings are reported in each area. These findings are more in the nature of observations, or intuitions and for the most part have not been confirmed by hard data. One objective of the Task Force over the next twelve months is to gather data to either support or refute the findings.

Recommendations for change are made in those areas where the Task Force was able to identify a specific problem and need for correction. The recommendations for change are intentionally very general in nature. A second objective of the Task Force over the next twelve months is to determine the means by which the recommendation will be effected, and define specifically how it will operate in individual cases.

Recommendations for further study are made in areas where there is either greater controversy, or where the issues are too complex to lend themselves to solution by a simple recommendation for change. A third objective of the Task Force in the next twelve months is to complete an in-depth analysis of these broader, critical issue areas.

Commencing with the month of October, 1985, the sub-committees will be detailing the data essential for an informed analysis of each subject area and, if necessary, commissioning its retrieval. The Task Force will meet not less than monthly to review the sub-committee findings and give direction to further inquiry. Areas of inquiry will be prioritized. Supplemental findings and recommendations will be reported out by the Task Force as it completes its inquiry into each designated issue area.

The Task Force will issue a full and comprehensive report integrating its findings and recommendations with respect to Minnesota's child support system as a whole by January 1, 1987. MNTReC will be reconvened as necessary to receive and approve the Task Force's report.

## OVERVIEW OF MINNESOTA'S CHILD SUPPORT PROGRAM

The child support enforcement program was created in 1975 by Congress through the passage of Public Law 93-647. Part B of the Law established a Title IV-D of the Social Security Act. This mandated program is commonly known by its legislative classification, Title IV-D, and it began on August 1, 1975, as a condition of receiving federal funds for the AFDC program.

The IV-D program locates absent parents, takes legal action to determine paternity, obtains court orders for child support, determines the ability of the absent parent to meet the support obligation, and enforces the court's order for child support. This activity is performed for nearly all families receiving Aid to Families with Dependent Children (AFDC), and is a required service for all non-public assistance families upon request.

The law requires each AFDC applicant and recipient to assign to the state the right to all ongoing and accrued child support monies for collection. The family is then assured a consistent monthly assistance payment, regardless of whether support payments are collected. As a result, the state is placed in the position of creditor. The support obligation becomes a debt owed by the absent parent to the state. In addition, the AFDC recipient is required to cooperate with the state and county in establishing paternity and collecting the support monies.

The IV-D program is a model of intergovernmental partnership, federally directed but state and county administered. The federal role of providing direction, oversight, funding and regulations forms the cornerstone upon which the states build their individual programs.

The Child Support Enforcement Amendments of 1984 (P.L. 98-378) were a response by Congress to the ineffectiveness of some state IV-D programs. The intent of the Amendments is to improve the equality of services between AFDC and non-public assistance families, mandate the enactment of specific enforcement procedures by the states, and establish guidelines for the setting of adequate levels of child support.

As mandated by federal law, Minnesota has designated a single and separate organizational unit to administer its Title IV-D program. This unit ensures that all functions of the IV-D program are carried out properly, efficiently, and effectively. Its focus is on fiscal analysis, evaluation of county support enforcement programs, operation of the state parent locator service, and policy

development and implementation so maximum collections are made by the local agencies in the most cost-effective manner possible. This state agency is the Office of Child Support Enforcement, located within the Department of Human Services.

Pursuant to Minnesota's State IV-D Plan, the Title IV-D program is supervised by the state agency while the individual counties are responsible for the administration of the daily IV-D program operations. In eighty-six counties the IV-D program is administered by the Department of Economic Assistance. The eighty-seventh county administers it through the County Attorney's Office. All county IV-D agencies have negotiated a cooperative agreement with their local county attorney for provision of legal services.

There are 10 state, and 393 county IV-D employees in Minnesota. As of June 30, 1985, there were 109,278 child support cases statewide, an increase of 9.2% over the previous year. Total child support collections for fiscal year 1985 were \$59,118,088. This represents an increase of 7.2% over total collections in the prior year. Of the total collections, \$26,881,038 were collections in non-public assistance cases. The non-public assistance caseload has doubled in the past five years and currently represents 24% of the total IV-D caseload.

Statewide there are court orders for child support in 76% of all AFDC cases and 91% of all non-public assistance cases. On an average, collections are being made in about 33% of these cases. The average collection per open IV-D case statewide is \$131.20 per quarter.

For every dollar spent in fiscal year 1985 for child support enforcement in Minnesota, \$2.95 was collected. Child support collection activity returned 9.5% of AFDC grant expenditures to the state for the same period of time.

Collections through interception of state tax refunds total \$2,469,627 thus far in calendar year 1985. Collections through Project Intercept, the federal tax refund intercept program, total \$5,772,659 to-date in 1985. This reflects an average collection of \$484.36 in each of 11,918 cases.

In addition to child support collections, the IV-D agencies established paternity in 3,230 cases in fiscal year 1985, and located 6,389 absent parents.

Minnesota is one of twenty-three states that has had funding approved by the U.S. Department of Health and Human Services to establish a statewide automated clearinghouse system for child support enforcement. The project, funded at a 90% level by the federal government, will allow the state to apply advanced automated practices to the management and administration of its



support enforcement program. The statewide clearinghouse will establish a master file for child support case handling, recordkeeping and management. The project is being undertaken in phases. The first phase of requirements analysis was completed in December, 1984. The second phase, or feasibility study, will be completed by the close of 1985. The results of this study will form the basis for the design of the proposed system.

## REVIEW OF MINNESOTA'S CHILD SUPPORT LAWS

### COST OF SERVICE

Minnesota provides state supervision to county administered IV-D programs. The state funds the Office of Child Support Enforcement in the Department of Human Services. The state also appropriates money to reimburse the counties up to 50% of the non-federal share of salaries and fringe benefits of human services employees. This includes county IV-D personnel, among others. The appropriation for the next biennium is eight million dollars. At present, 70% of administrative costs are reimbursed to the state and counties by the federal government.

Additional financial assistance is provided to the counties by the federal government in the form of incentive payments, which are deducted from the federal share of child support collections before reimbursing the federal government for its contribution toward the AFDC assistance payment. Prior to October 1, 1985, the incentive was twelve percent of collections made on behalf of AFDC families. Effective October 1, 1985, the Child Support Enforcement Amendments of 1984 provide for a new system under which the state will receive a minimum incentive payment based on a percentage of amounts actually collected on behalf of AFDC families and on behalf of non-public assistance families. The percentage is based on the ratio of the state's AFDC collections to the state's total administrative costs, and the state's non-AFDC collections to the state's total administrative costs.

The state is required to pass through an appropriate share of the incentive payment to the counties which provide the child support enforcement services. The Department of Human Services is in the process of promulgating a rule which will provide for the distribution of Minnesota's incentive payment among the counties.

Counties retain a percentage of child support collections in AFDC cases that matches the county share of AFDC grant expenditures (currently 7.1%). The balance is reimbursed to the state and federal governments according to their respective rates of participation (40.2% and 52.7%).

Since August 1, 1981, Minnesota law has prohibited the imposition of any fee on a person requesting non-public assistance child support enforcement services. Minn. Stat. §518.551, subd. 7. However, the Child Support

Enforcement Amendments of 1984 required states to charge an application fee not to exceed \$25, effective October 1, 1985. Accordingly, the Minnesota Legislature amended the law to require a \$5 application fee by any person applying for child support and maintenance collections services, except persons who transfer from public assistance to non-public assistance status. In addition, fees assessed by state and federal tax agencies for collection of overdue support will be imposed on the non-public assistance client requesting those services. These amendments to Minnesota law were effective August 1, 1985. Ch. 131, 1985 Minn. Sess. Laws.

In addition, Minnesota law continues to allow a county to charge an obligor a monthly collection fee equivalent to the cost to the county of providing collection services. This fee is limited to ten percent of the monthly court ordered child support and may only be assessed against obligors who are delinquent in payment of the monthly child support. Minn. Stat. §518.551, subd. 7. The court may order that this fee, as well as child support, be withheld from the obligor's income. Minn. Stat. §518.611, subd. 5. Currently, eleven counties in the state have opted to assess this charge.

## PUBLIC ASSISTANCE REIMBURSEMENTS

An applicant or recipient of public assistance or foster care is considered to have assigned all rights to children support and maintenance to the public agency, including rights to both current and accrued child support and maintenance obligations. This assignment is by operation of law. Minn. Stat. §256.74, subd. 5. The county agency, as assignee of the recipient-obligee, is entitled to judgment for child support payments accruing within ten years preceding the date of the commencement of any action to collect, up to the amount of the total public assistance expenditures. Minn. Stat. §256.87, subd. 1. Judgment is to be entered in the name of the public agency to the extent that arrearages are assigned. If judgment was entered before the assignment of rights attached, the public agency may enforce the judgment as if the judgment were granted in its name. Minn. Stat. §518,551, subd. 9.

A parent of a child is liable for the amount of public assistance furnished for the support of that child and its caretaker. The county agency may bring an action to recover the amount of assistance furnished, which the parent has had the ability to pay in the two years immediately preceding the commencement of the action. In addition to granting the county a money judgment, the court may order continuing support contributions pursuant to the child support guidelines. Minn. Stat. §256.87. This is an independent cause of action which may be brought by the county agency notwithstanding the existence of a previous court order for support, and notwithstanding the fact that the obligor is current under that order. County of Isanti v. Formhals, 358 N.W. 2d 703 (Minn. Ct. App. 1984). The order for continuing support contributions remains in effect for five months after termination of the public assistance grant and can remain effective thereafter upon request for the former recipient.

When either party to a proceeding for marital dissolution, legal separation, determination of parentage, or custody of a child, is a recipient of public assistance, or applies for it subsequent to the commencement of the proceeding, the public agency must be notified of the pendency of the action. Minn. Stat. §518.551, subd. 5. If the requisite notification has not been given and the public agency determines that child support was ordered in less than the guidelines amount, it must move the court for a redetermination of the support payments per guidelines.

## ESTABLISHMENT OF THE SUPPORT OBLIGATION

Public Law 93-647 required that the state IV-D plan provide for a formula to be utilized by the IV-D agency in determining the amount of the support obligation if the obligation was to be established by other than court order. Minnesota's Office of Child Support Enforcement issued a child support guideline in 1978 for use by the county IV-D units. It was a guide and was not binding on the counties or the courts. Two county courts issued their own support guideline by court rule.

In 1983, the legislature took the guidelines developed by the Office of Child Support Enforcement and codified them in Minn. Stat. §518.551, subd. 5. Since August 1, 1983, courts have been required to set child support by multiplying the obligor's net income by the percentage indicated in the guideline table. The percentage increases with the number of children and as the obligor's net income increases. The guidelines are binding unless the court makes express findings of fact as to the reason for departure below the guidelines. The court may depart above the guidelines if the parties agree, or by making further findings.

Child support must be determined by the child support guidelines in non-public assistance cases, as well as public assistance cases. Halper v. Halper, 348 N.W. 2d 360 (Minn. Ct. App. 1984). While not expressly required by the legislature, the Minnesota Court of Appeals has also held that once a substantial change in circumstance has been established, the court must apply guidelines in modifying the child support order. Hadrava v. Hadrava, 357 N.W. 2d 376 (Minn. Ct. App. 1984).

Minnesota law provides for the ordering of child support after considering all relevant factors, including:

- "(a) The financial resources and needs of the child;
- (b) The financial resources and needs of the custodial parent;
- (c) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) The physical and emotional condition of the child, and his educational needs; and
- (e) The financial resources and needs of the noncustodial parent."

Minn. Stat. §518.17, subd. 4. In 1984, subdivision 5 of this section was

amended to clarify that the court may order child support in an amount below guidelines only after considering the above factors and making express findings of fact regarding the financial resources and needs of the child, as well as the reason for the lower order.

Chapter 547 of the 1984 Minnesota Session Laws also amended the child support guidelines to allow the court to consider debts owed to private creditors, but only in non-public assistance cases, and only if the debt was reasonably incurred for the necessary support of the child or obligee or for the necessary generation of income. Any departure from guidelines based on a consideration of debts may not exceed eighteen months in duration.

The Parentage Act (Chapter 257), the Domestic Abuse Act (Chapter 518B), and the Uniform Reciprocal Enforcement of Support Act (Chapter 518C), all require that child support orders be determined in accordance with Chapter 518, and therefore, in accordance with the child support guidelines. In 1983 the legislature created a separate cause of action for child support by a custodial parent. Minn. Stat. §256.87, subd.5.

Child support obligations established in marital dissolution judgments entered prior to June 1, 1973, are enforceable until the child reaches the age of twenty-one, or is earlier emancipated. Brugger v. Brugger, 229 N.W. 2d 131 (Minn. 1975). On June 1, 1973, the age of majority in Minnesota became eighteen years. Thus, subsequently entered child support orders terminate on the child's eighteenth birthday. However, the Minnesota legislature amended the definition of a child entitled to support in recognition of the fact that many children reach the age of eighteen before they complete high school. Therefore, all awards of child support made in actions commenced on or after May 18, 1983, require that support be paid while the child is under the age of eighteen years of age, or is under the age of twenty and still attending secondary school. The law applicable at the time the marital dissolution action is commenced will control the age at which the support obligation terminates. Kleinhuizen v. Kleinhuizen, 354 N.W.2d 588 (Minn. Ct. App. 1984).

#### MODIFICATION OF THE SUPPORT OBLIGATION

Effective August 1, 1983, all orders for child support must provide for a biennial adjustment in the amount to be paid based on the change in cost-of-living. The adjustment is made automatically on the first of May of every other year, after providing notice to the obligor and opportunity for the obligor to request a hearing on the issue of whether there has been a

sufficient increase in income. The court may waive the requirement of the cost-of-living clause if it finds that the obligor's occupation does not provide for a cost-of-living adjustment, or if the child support order already has a provision for a step increase. §Minn. Stat. 518.641.

Automatic cost-of-living adjustments will allow child support orders to keep pace with ordinary inflation. When either parent undergoes a substantial change in circumstance, however, it is necessary to motion the court for a modification of the child support order. Forms for this purpose are made available by the Department of Human Services to obligors and obligees through the clerk of court.

Before the support obligation will be modified, the law requires a showing of one or more of the following:

- (1) substantially increased or decreased earnings of a party;
- (2) substantially increased or decreased need of a party;
- (3) receipt of AFDC assistance; or
- (4) a change in the cost-of-living for either party as measured by the federal bureau of statistics.

Minn. Stat. §518.64, subd. 2. In addition, this change in circumstance must make the terms of the original order unreasonable and unfair.

On a motion for modification the court must take into consideration the financial circumstances of a new spouse, if either, or both parents, have remarried. Prior to June 10, 1983, only the financial circumstances of the custodial parent's spouse was considered.

A parent who remarries after a marriage dissolution and takes on additional obligations of support is considered to do so with full knowledge of any prior support obligation. Such additional obligations will not constitute grounds for modification of the prior obligation.

Once the requisite change in circumstance making the terms of the support order unreasonable and unfair has been established, the child support order must be modified consistent with the child support guidelines. Hadrava.

#### ENFORCEMENT OF THE SUPPORT OBLIGATION

**INCOME WITHHOLDING:** Minnesota has had child support withholding laws since 1971. At that time, the withholding order was discretionary with the court, was effective only against wages from employment, and could be ordered only in public assistance cases. In 1977, the law was amended to allow the

public agency to petition for wage withholding in both public assistance and non-public assistance cases. A showing that payments would not otherwise be made was required, and the withholding would begin immediately.

In 1981, the withholding laws were amended quite substantially. Either the obligee or the public agency could petition for the withholding order, and the court was required to grant the order upon request. The withholding order was effective against any income, regardless of source. This included wages, salaries, payments to an independent contractor, workers' compensation, unemployment compensation, annuity, military and naval retirement, pension and disability payments. Minn. Stat. §518.54, subd. 6. Further, both spousal maintenance and child support could be withheld.

However, withholding could not take effect until certain conditions were met. These conditions included a thirty day arrearage, notice to the obligor of the existence of the arrearage, and opportunity for the obligor to either pay the arrearage or request a hearing for modification of the child support obligation. Minn. Stat. §518.611.

In 1982, the income withholding laws were further amended to require that the court include income withholding in every order. In 1983, there were amendments that clarified that income withholding applied to child support orders entered in any type of action.

Pursuant to the Child Support Enforcement Amendments of 1984, the income withholding laws were amended again in 1985, to allow an obligor with a thirty day arrearage to avoid the implementation of income withholding only by proving a mistake of fact. An additional amount equal to 20% of the monthly support order must be withheld by the obligor's payor of funds as well, until the arrearage is paid.

Minnesota law expressly provides that an order for withholding has priority over an attachment, garnishment, execution or wage assignment for any other debt. The only limitations on a withholding for child support are those imposed by the Consumer Credit Protection Act. Minn. Stat. §518.611, subd. 6.

Employers are required to give the public agency notice within thirty days of an obligor's termination of employment, and to include the obligor's home address and name and address of the new employer or payor of funds, if known. Minn. Stat. §518.611, subd. 8. Additionally, employers and educational institutions are required to make an obligor available for service of process in marital dissolution, paternity, and child support enforcement actions. Minn. Stat. §543.20.



Employers may deduct one dollar from the obligor's remaining salary to offset the employer's expenses in making an income withholding.

**JUDGMENTS:** In 1984, the legislature created an administrative method of obtaining and docketing a money judgment for child support arrearages. Minn. Stat. 548.091. Once an obligor is at least thirty days in arrears, the obligor may be served with an affidavit of default and notice of intent to enter judgment. If the obligor fails to pay all arrears within twenty days, or to request a hearing on the issue of whether the arrears claimed owing have been paid, the obligee may file the affidavit of default together with proof of service with the clerk of court, who shall enter and docket the judgment.

A judgment for arrears can also be obtained by motion and court order. A judgment will be allowed only for those payments which accrue within ten years of the date the action is commenced. Dent v. Casaga, 208 N.W.2d 734 (Minn. 1973).

The obligor has the right to petition for a retroactive modification of the support obligation on grounds that the failure to pay in accordance with the terms of the original order was not willful. However, in an action for judgment, the obligor's ability to pay is irrelevant. Barth v. Barth, 356 N.W. 2d 743 (Minn. Ct. App. 1984).

An execution or garnishment for child support arrearages has priority over the collection of any other debt and is not subject to the statutory limitations applicable to those debts. Once a judgment is docketed a lien attaches to all real property of the judgment debtor in the county of docket.

**CONTEMPT:** Civil contempt proceedings are used to secure compliance with a reasonable order, and are not punishment for past misconduct. Incarceration may be ordered upon a finding by the court that the obligor failed to comply with a support order of which he had notice, and that confinement is reasonably likely to produce compliance. The obligor can effect his release by compliance, or by agreeing to comply as directed to the best of his ability. Hopp v. Hopp, 156 N.W.2d 212 (Minn. 1968).

When an obligor is unrepresented by counsel, and the court reaches a point in contempt proceedings where incarceration is a real possibility, it must suspend the proceedings and determine whether the obligor desires counsel. If the obligor desires counsel and the court determines that the obligor is indigent, counsel must be appointed. Cox v. Slama, 355 N.W. 2d 401 (Minn. 1984).

Contempt proceedings may not be used to enforce child support orders for children beyond the age of eighteen years. Hampton v. Hampton, 229 N.W. 2d 139 (Minn. 1975).

**TAX REFUND INTERCEPT:** The Revenue Recapture Act (Chapter 270A) was enacted in 1980. It requires the county to certify debts of at least \$25, including child support arrears, to the Department of Revenue. Any income or property tax refund of the child support debtor will be intercepted and the monies forwarded to the county to be applied against the arrearage.

In 1982, the laws were amended to allow a non-public assistance obligee to obtain a court order directing the Department of Revenue to similarly intercept an obligor's tax refunds. This order was effective for only one year. In 1984, the law was again amended to allow the order to remain effective for purposes of interception until the total arrearage had been satisfied. It also allows the interception of additional monies for payment of attorneys fees incurred in obtaining the order. Minn. Stat. §290.50, subd. 6.

Effective August 1, 1985, each claim against the tax refund of a child support debtor will cost the obligee or public agency \$3.00.

**CRIMINAL NONSUPPORT:** Anyone who is legally obligated to provide care and support to his/her child, and who knowingly fails to do so without lawful excuse, is guilty of nonsupport. They may be fined up to \$300 and imprisoned up to 90 days. If the period of nonsupport exceeds 90 days, the person is guilty of a felony and may be sentenced up to five years. Minn. Stat. §609.375.

#### INTERJURISDICTIONAL ENFORCEMENT OF SUPPORT

**URESAs:** Minnesota adopted the Revised Uniform Reciprocal Enforcement of Support Act in 1982 (Chapter 518C). RURESAs requires the filing of a petition for support enforcement with the court in the obligee's county of residence. Upon finding a duty to support, the court will order the transmittal of the petition to the responding jurisdiction in which the obligor resides. The petition, and accompanying order and certification, will be filed with the court in the responding jurisdiction. The prosecuting attorney in that jurisdiction has a duty to represent the obligee and commence an action on her

behalf. The child support agency in the responding jurisdiction will collect the support from the obligor and forward it to the corresponding agency in the initiating jurisdiction.

The Minnesota court, when acting as the responding jurisdiction, will establish the support obligation in accordance with Minnesota law. Thus, child support guidelines will be used to determine the support award. Kusel v. Kusel, 361 N.W. 2d 165 (Minn. Ct. App. 1985).

The Minnesota court may, in its discretion, order payment of arrearages which have accrued under prior orders. However, it may not modify those arrears. McDonnell v. McCutcheon, 337 N.W. 2d 645 (Minn. 1983). The entry of an order in a RURESA proceeding does not modify the original support order unless expressly provided by the court. Arrears will be determined by the original order with amounts paid under the RURESA order credited against amounts accruing. F-M-W Human Services v. Jacobson, 363 N.W. 2d 342 (Minn. Ct. App. 1985).

REGISTRATION: Provision for registration of a foreign support order was included in the enactment of RURESA. To register a foreign order, the obligee must send three certified copies of the support order and an affidavit to the clerk of court in the obligor's county of residence. Notice of filing is sent by the clerk to the obligor, who has twenty days to petition the court for vacation of the registration, otherwise the registration is confirmed. A registered order is enforceable as any other order entered in the state.

When a support order is registered, the arrears are also registered. The Minnesota court can modify those arrears, to the extent that modification is permissible in the jurisdiction where the original order was entered. McDonnell.

INTRASTATE ENFORCEMENT: RURESA, including the registration of foreign order provisions, applies not only when the obligor and obligee reside in different states, but when they reside in different counties within the State of Minnesota.

#### PATERNITY

Minnesota adopted a modified version of the Uniform Parentage Act (UPA) in 1980. It is codified in Minnesota Statutes Chapter 257.

Under Minnesota law, the alleged father in a paternity action has the right to court-appointed counsel if indigent, has the right to blood testing, and the right to a jury trial. If the alleged father is deceased, the court may order the decedent's parents and/or siblings to submit to blood tests for purposes of establishing the right of the child to public assistance benefits, including social security.

If the results of blood testing indicate a likelihood of paternity greater than 92%, the court must order temporary support pending trial. Upon entry of a judgment of paternity, the court may require the father to reimburse the obligee or public agency for expenses which were incurred for the past support of the child in the two years immediately preceding the commencement of the action, and require the father to pay the reasonable expenses of the mother's pregnancy and confinement. Child support will be determined according to the child support guidelines.

The mother of a child born out-of-wedlock has sole custody of the child until paternity is established. If the father has previously acknowledged paternity of the child, rights to custody and visitation will be determined at the time of a paternity adjudication. If paternity has not previously been acknowledged, the father must petition for rights of visitation or custody in a separate proceeding following the adjudication of paternity.

In 1985, the Minnesota legislature abolished the three year statute of limitations to the bringing of a paternity action. An action is not barred until one year after the child reaches the age of majority.

A mother and father of a child born out-of-wedlock may acknowledge under oath that they are the biological parents of a child. Among other things, the execution of this written declaration of parentage will secure the rights of the child to social security benefits, veteran's benefits, inheritancy, and dependent medical insurance. When the declaration of parentage is filed with the state registrar of vital statistics, it creates a presumption of paternity under the law.

#### VISITATION AND CUSTODY

Failure by the non-custodial parent to make support payments is not a defense to interference with visitation rights, nor is interference with visitation rights a defense to the nonpayment of support. The remedy for the aggrieved party is to petition the court for an appropriate order. Minn. Stat.

§518.612. An unwarranted denial of visitation may constitute contempt of court, and may be sufficient in and of itself for a reversal of the custody award. Minn. Stat. §518.175, subd. 4.

When the non-custodial parent has been given visitation rights by the decree, the custodial parent is not to move the children to another state without permission of the court or the non-custodial parent. Minn. Stat. §518.175, subd. 3. However, failure to secure permission will not be a defense to nonpayment of support, even when the custodial parent has concealed the location of the child. Southwell v. Chamberland, 361 N.W. 2d 814 (Minn. 1984). The custodial parent will be presumptively entitled to permission to remove a child out-of-state unless the non-custodial parent can establish by a preponderance of the evidence that the move is not in the best interests of the child. Auge v. Auge, 334 N.W. 2d 393 (Minn. 1983).

The court may suspend child support payments during an extended period of visitation, or reduce child support below the guidelines level when necessary to allow for the cost of visitation. When visitation becomes an issue in a child support enforcement proceeding conducted by the county attorney, the county attorney's office may continue its representation of the custodial parent as to visitation matters as well. St. George v. St. George, 304 N.W. 2d 640 (Minn. 1981).

By definition, a parent with legal custody of a child has the right to determine the child's upbringing, including education, health care and religious training. When the parents have joint legal custody, they have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care, and religious training. A parent who has physical custody of a child controls the routine daily care and residence of the child. When the parents have joint physical custody, the routine daily care and control, and the residence of the child, is structured between the parents. Minn. Stat. §518.003, subd. 3.

An award of joint custody is discretionary with the court. When contemplating an award of joint custody, the court must consider additional factors, including the ability of the parents to cooperate in the rearing of the children, methods for resolving disputes, and whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing. Minn. Stat. 518,17, subd. 2.

The award of joint custody may be the basis for a downward departure from the child support guidelines. Berthiaume v. Berthiaume, 368 N.W. 2d 328 (Minn. Ct. App. 1985). However, in joint custody situations, the court should

determine the financial obligation of each parent for the support of the children according to the support guidelines and require him/her to pay the respective amount to the other parent during that parent's custodial period. Hortis v. Hortis, 367 N.W. 2d 633 (Minn. Ct. App. 1985).

**FINDINGS AND RECOMMENDATIONS**

## COST OF SERVICE

### GENERAL PRINCIPLE

The extent to which state and local government share the cost of administering the child support enforcement program should approximate the extent to which they benefit from child support recoveries and contribute to the cost of the AFDC program. Any cost recovery system must provide a reliable, cost-effective method of collection from the individual on whose account service was required without jeopardizing support income to the family.

### ISSUES

The subject matter encompassed in the cost of providing child support enforcement services includes: whether the IV-D agency should recover the administrative costs of providing the service, and if so, from whom, i.e., whether there should be a service fee attached; the manner in which administrative costs are shared by the governmental units involved; and the cost-benefit ratio of service delivery as it relates to the ability of the IV-D agencies to provide adequate staff.

### PRELIMINARY FINDINGS

1. A \$5.00 non-public assistance application fee was enacted during the 1985 legislative session per federal mandate, and sufficient time has not elapsed since its August 1, 1985, effective date to evaluate its impact on the client population or administrative costs.
2. The majority of counties in the state feel that the \$20.00 non-public assistance application fee which was required at the onset of IV-D was not cost-effective to administer.
3. Fee and cost recovery options permitted by federal law are cumbersome to implement and not cost-effective to administer.
4. Counties are required to offer services to all custodial parents, regardless of their income or financial means.
5. Current state law limits the ability of counties to shift costs to the obligee-custodial parent.

### RECOMMENDATIONS FOR CHANGE

No recommendation for change is made due to the very recency of the state legislature's action in this area and due to the need for further study and fiscal analysis.



## RECOMMENDATIONS FOR STUDY

1. Whether there is a cost recovery system that could be administered in a cost-effective manner and without jeopardizing support recoveries to the family.
2. Whether state participation in administrative costs would improve the delivery of service by the counties.
3. The effect of the new incentive formula which will become effective October 1, 1985, on the ability of the counties to provide service to the non-public assistance client population in need.
4. Whether certain "lower priority" services, such as modification of existing support orders, should be made available to non-public assistance clients only upon payment of a reasonable fee based on ability to pay.

## NON-PUBLIC ASSISTANCE SERVICES

### GENERAL PRINCIPLE

All families should have equal access to IV-D services of a quality and nature comparable to that provided by the private sector.

### ISSUES

The subject matter encompassed in non-public assistance services includes: whether the services provided non-public assistance clients are equal to the services rendered by the county in public-assistance cases; whether the staff complement of the IV-D agencies is adequate to handle the requests for non-public assistance child support enforcement services; and whether custodial parents in need of child support enforcement services are receiving needed information on the availability of IV-D services.

### PRELIMINARY FINDINGS

1. Data is not readily available on the number of custodial parents who are not already part of the IV-D system, and who are in need of support enforcement services.
2. IV-D services have not been adequately publicized, and there is no data currently available on the impact a publicity campaign would have on the non-public assistance caseload.
3. The Child Support Enforcement Amendments of 1984 require that the availability of IV-D services be publicized and Minnesota's Office of Child Support Enforcement is taking steps to comply.
4. IV-D agencies do not uniformly and consistently acknowledge potential conflicts of interest that may exist between the county and the non-public assistance client.
5. There has been an improvement in the quality and quantity of non-public assistance services in recent years, however, there still are variations in resources available, which can result in delays and selective service offerings by some local IV-D agencies.

### RECOMMENDATIONS FOR CHANGE

1. Develop a policy on the identification and handling of conflicts of interest, which would include the disclosure of potential conflicts between the non-public assistance client and the county at the time the client applies for IV-D services.
2. Inform AFDC applicants with existing support orders and accrued arrears of the consequences of the assignment of support rights and the availability of non-public assistance services as an alternative to public assistance.

3. Increase the communication between the IV-D agency and the non-public assistance client.
4. Create an administrative grievance process, beginning at the county level and continuing to the State Office of Child Support Enforcement, for resolving disputes between IV-D agencies and clients or persons denied service; make a description of the process available to all IV-D non-public assistance applicants.
5. Clearly establish the respective rights of the county and the non-public assistance client to support monies collected after support rights have been assigned.
6. Allow information from IV-D files to be released to the custodial parent or legal counsel for support enforcement purposes.
7. Any prioritization process by the local IV-D agencies which would have the effect of denying services must be accomplished through an open, public process involving constituent and client comment; the agency's prioritization policy must be issued in writing and be available to all non-public assistance applicants.
8. Clarify when the attorney-client relationship arises between the IV-D attorney and the non-public assistance client together with all the ethical duties imposed upon attorneys by the Code of Professional Responsibility and state statute; provide notice to that effect to clients.

#### RECOMMENDATIONS FOR STUDY

1. Whether case prioritization has an adverse effect on the delivery of services to the non-public assistance client population; if so, how that effect can be minimized; and if not, what that case prioritization should be.
2. Whether the IV-D program can adequately handle any increase in demand for service that would be generated by improved publicity.
3. Design and implement an effective, low cost media and/or public awareness campaign regarding the availability of IV-D services, including the means by which the client market will be penetrated.

## ESTABLISHMENT OF THE SUPPORT OBLIGATION

### GENERAL PRINCIPLE

Both parents have a duty to contribute to the support of their minor children in a manner consistent with the financial means and ability of the parents, the needs of the children, and their overall standard of living.

### ISSUES

The subject matter encompassed in the establishment of the child support obligation includes: whether Minnesota's child support guidelines are the appropriate objective standard by which to calculate the child support obligation of the non-custodial parent; whether all relevant factors to the determination of a child support obligation are included in a child support award under guidelines; how child support orders can be updated to remain consistent with the financial circumstances and needs of the parties and minor children; and how to ensure that support orders are obtained as a matter of course for children whose parents are estranged.

### PRELIMINARY FINDINGS

1. There is a perception by child support obligors that Minnesota's guidelines are unfair in that they:
  - a. do not specifically factor in the custodial parent's income in the support calculation; and
  - b. are not based on any objective standard of the cost of raising a child.
2. Compliance with a court ordered support obligation is enhanced if the obligation is perceived as fair.
3. Minnesota's child support guidelines give no direction to the courts in their application to non-traditional custody situations.
4. Since the enactment of guidelines in 1983, they have generally been accepted by the judiciary, and have resulted in an overall increase in average child support awards.
5. Compared to other state support guidelines and model formulas, Minnesota's child support guidelines:
  - a. are low when the obligor's net monthly income is less than \$1000;
  - b. are generally mid-range;
  - c. are higher for one child when the obligee has income at least equal to the obligor; and
  - d. are lower for three children when the obligee has income less than than one-half that of the obligor.
6. It is not clear what effect guidelines and caselaw have on establishing the priority of support obligations when an obligor has more than one family to support, or the resultant impact on the level of support.

7. Whether an Order for Protection in a domestic abuse action contains an order for child support is discretionary with the court, and courts frequently deny support requests for lack of adequate financial information.

#### RECOMMENDATIONS FOR CHANGE

1. Require that courts include a child support order in domestic abuse actions involving minor children, and that the petitions provide sufficient financial information for the courts to assess the support obligation pursuant to guidelines.

2. On remarriage of either party, clearly define the obligation of a new spouse with respect to the child support provisions of the dissolution judgment of the previous marriage.

3. Clearly define the manner in which the duty to support is allocated among children of different relationships (e.g., first, second and third families).

#### RECOMMENDATIONS FOR STUDY

1. Identify the specific objections to Minnesota's child support guidelines and evaluate their validity;

a. develop suggestions for amendment of the guidelines law in response to objections deemed valid; and

b. develop arguments and data to refute objections deemed invalid.

2. Determine whether recently published research on the cost of raising children, and various child support factors provide sufficient justification for adoption of a new objective standard in Minnesota, and what that standard might be.

3. Determine whether there should be a statutory scheme to minimize the number of support orders entered involving the same family, or to keep the orders consistent.

## ENFORCEMENT OF THE SUPPORT OBLIGATION

### GENERAL PRINCIPLE

The child support enforcement system should be reliable, predictable, operate in a standardized, expeditious manner across the state, and be based on principles that are easily understood by the public at large.

### ISSUES

The subject matter encompassed in the enforcement of child support includes: how to avoid the accrual of child support arrearages; how to provide sufficient incentives for the payment of support; and how to maximize child support arrearage collections.

### PRELIMINARY FINDINGS

1. Income withholding has proven to be one of the most efficient and cost-effective remedies for the enforcement of the child support obligation.
2. Obligor have been known to take advantage of the stay in income withholding by being repeatedly late with payments and paying up only in time to avoid implementation of the withholding. Recent amendments to the withholding laws, which remove the option of paying arrears to avoid withholding once a thirty day arrearage has been established, should alleviate this problem.
3. Allowing all obligors a thirty day grace period before the withholding sanction is imposed fails to recognize the fact that by the time the order is entered, many obligors have already demonstrated that payments are not likely to be made.
4. It is difficult for the IV-D agency to maintain current employment information on file for purposes of keeping income withholding in effect.
5. All employers are not knowledgeable about the withholding laws and their related constraints.
6. Enforcement of the support obligation on the self-employed is particularly difficult.
7. There are many sanctions for failure to pay child support, but few incentives to pay.
8. Conflicts arise when an obligor owes arrearages to more than one county and/or state, and particularly when arrearages are also owing to the custodial parent.
9. The administration of the \$50 bonus for AFDC recipients has been costly for the counties and there has been no noticeable improvement in recipient cooperation with the counties' support enforcement efforts.

## RECOMMENDATIONS FOR CHANGE

1. Allow the court to order immediate income withholding upon finding that payments are not otherwise likely to be made.
2. Require notice to employers of the income withholding laws and Consumer Credit Protection Act limitations at the time they are served with an income withholding order.
3. Provide a method for termination of income withholding when the support obligation terminates.
4. Reverse the burden of proof in constructive civil contempt cases to require the obligor to prove inability to pay, rather than obligee to prove ability.
5. Impose a late fee on tardy support payments.
6. Disallow, or modify, exemptions from judgment collections when the debt is for child support or maintenance.
7. Establish a central judgment docket which would create a lien on all real property in the state.
8. Require that priority be given to current support obligations, and that the first obligation in time be implemented first, when effecting an income withholding.
9. Require all obligors to keep the obligee agency informed of any change in income source within sixty days of the change.
10. Identify all potential conflicts in the enforcement of support and/or collection of arrearages and provide notice of the facts and alternatives to all affected parties.
11. Extend the grievance procedure for non-public assistance clients who are denied service to AFDC recipients, who rely on the IV-D agency to diligently enforce their right to support as assignee.

## RECOMMENDATIONS FOR STUDY

1. Whether child support enforcement would be enhanced if all support was required to be paid through a central registry in the state.
2. How to minimize the effect of arrearage collection on the ability of the obligor to fairly meet current child support obligations.
3. Whether support arrearages should accrue pre-judgment interest.
4. Whether the collection of child support judgments should be handled through a central judgment recovery office.
5. Assess the success of the Wisconsin initiative.
6. Develop a model support enforcement system and a five-year plan for its implementation.

## INTER- AND INTRASTATE SUPPORT ENFORCEMENT

### GENERAL PRINCIPLE

The residence of an obligee and obligor in different jurisdictions should not jeopardize or impair their respective rights and obligations to support.

### ISSUES

The subject matter encompassed in the interjurisdictional enforcement of support includes: the reciprocal enforcement of support between states; and the reciprocal enforcement of support between counties in the State of Minnesota.

### PRELIMINARY FINDINGS

1. There is no standardization in URESA petitions and the responding IV-D agency and court frequently receive inadequate information upon which to properly assess the relative merits of the case.
2. There is confusion over the status of arrearages and prior orders once the reciprocal process is instigated.
3. Multiple URESA orders resulting from inter- and intrastate movement of both obligor and obligee are confusing, and often are inconsistent with one another.
4. URESA does not in fact always operate in the best interest of the obligee for whose benefit and convenience it was enacted.
5. Minnesota is one of the few states with intrastate reciprocal enforcement of support laws.
6. Discovery is difficult and often non-existent in URESA proceedings.

### RECOMMENDATIONS FOR CHANGE

1. Adopt a uniform URESA petition for use by all counties in Minnesota, and propose a similar petition form for use nationwide.
2. Develop a policy for counties to follow in deciding when reciprocal action is appropriate.

### RECOMMENDATION FOR STUDY

1. Whether Minnesota needs an intrastate reciprocal enforcement of support law.
2. Whether interjurisdictional support enforcement can be simplified and the probability of achieving the desired result maximized.



3. Whether the model interstate withholding law developed by the ABA should be adopted by Minnesota.

4. Whether the means of getting the proper information before the court can be improved.

## PATERNITY

### GENERAL PRINCIPLE

The legal status and rights of a child born out-of-wedlock should be comparable to that of a child born in-wedlock.

### ISSUES

The subject matter encompassed by paternity includes: the manner in which the parent-child relationship is established; and the manner in which rights to custody, visitation and support are adjudicated.

### PRELIMINARY FINDINGS

1. There is considerable confusion over the legal status of a declaration of parentage.
2. There is insufficient outreach to the community for purposes of advising parents of children born out-of-wedlock of their rights and obligations.
3. The rights of the child are not always adequately protected.
4. Paternity actions are susceptible to receiving a lower priority within the IV-D agency as they are less likely to result in immediate collections.
5. Failure of IV-D agencies to follow a declaration of parentage with an adjudication of paternity leaves the respective rights of the parents to custody and visitation unadjudicated as well.

### RECOMMENDATIONS FOR CHANGE

1. Remove the statutory provision allowing compromise settlements in paternity actions.
2. Create fiscal incentives for the IV-D agencies to establish paternity.
3. Clarify the law and IV-D manual material with respect to the effect of a declaration of parentage as creating a presumption of paternity.
4. Create penalties for hospitals which fail to comply with reporting requirements in the case of out-of-wedlock births to minor mothers; and require hospitals to give written information to unmarried mothers of any age regarding the availability of IV-D support and paternity services, as well as the short and long-term ramifications of failing to establish paternity.
5. Require IV-D units to consult with the client-mother at all stages of a paternity action, and to secure separate counsel when the interests of the county and the mother diverge or conflict.

## RECOMMENDATIONS FOR STUDY

1. Develop a demonstration program involving IV-D staff that includes public education targeting adolescents; a community awareness project on paternity; and access to supportive services in making decisions on paternity.
2. Whether Minnesota should adopt the provisions of the Uniform Parentage Act which are not presently in the law.
3. Whether the system for establishing paternity and the resultant parental rights and obligations can be streamlined without sacrificing due process.
4. Whether the IV-D agency should be required to obtain a judgment of paternity, including a custody order, at the time a support obligation is established for a child born out-of-wedlock.

## CUSTODY AND VISITATION

### GENERAL PRINCIPLE

Rights to custody and visitation must be determined in a manner that is consistent with the best interests of the children, bearing in mind that children have a right to the continuing emotional, psychological and financial support of both parents.

### ISSUES

The subject matter encompassed by custody and visitation includes: how the determination of parental rights to custody and visitation impacts on the likelihood that child support will be paid; how parental conflicts over custody and visitation can be minimized; and how continuing parental involvement can be secured without jeopardizing the financial stability of the family unit.

### PRELIMINARY FINDINGS

1. The existing remedies for enforcement of visitation orders are ineffective.
2. Despite the legal status of support and visitation as independent issues, they are inextricably intertwined for the parties.
3. Children can end up the victims of a power struggle between the parents.
4. The limitation of IV-D authority to support-related issues can leave non-custodial parents without access to the legal system for enforcement of their visitation rights, and custodial parents without counsel to defend against actions related to visitation and custody arising out of IV-D instigated support enforcement actions.
5. Threats of contesting custody are used as a tool to negotiate inappropriately low child support awards.
6. A parent may use his/her power as custodian to make the non-custodial parent buy the right to see the child.

### RECOMMENDATIONS FOR CHANGE

1. Require that both parents keep the other advised of their whereabouts, including any change in residence address, but allowing for waiver in exceptional circumstances.
2. Require that whenever a violation of a visitation order is alleged, that upon the request of either party, court services shall intervene and each party shall be required to meet with court services on at least one occasion in an effort to resolve the problem.

3. Provide specific minimum standards for "reasonable visitation" within which there would be no basis for departure from child support guidelines.
4. Provide financial consequences for departure by either parent from a "reasonable" visitation schedule.
5. Amend the custody statutes to provide that custody and visitation issues may not be raised by a non-custodial parent in the context of an action to establish, modify, or enforce child support, except in paternity adjudication proceedings.
6. Provide that the court shall not consider financial ability to provide for children in the process of determining the custody of the children.
7. Provide that an award of joint legal custody shall not constitute grounds for departure from the child support guidelines, and that when awarding joint physical custody, the court may depart from the guidelines only to the extent necessary to ensure that the child enjoys approximately the same standard of living in each home, making express findings of fact regarding each household's standard of living and the basis for its departure from guidelines.

#### RECOMMENDATIONS FOR STUDY

1. Whether there is a positive relationship between joint custody and compliance with child support orders and if so, whether joint custody awards should be favored as being in the child's best interest.
2. Whether it may be appropriate to make visitation and child support dependent and if so, upon what basis.
3. Whether mandatory counselling, or conflict resolution, for parties to a family court dispute would facilitate their future compliance with the court's orders.
4. The effect of joint custody on AFDC eligibility and child support collections in public assistance cases.

## CONCLUSION

Legislation in recent years has generally been designed to respond to specific problems within the child support enforcement system. The Child Support Task Force believes that it is time to examine the system as a whole, including the manner in which the system interacts with the public, and the manner in which the participants to that system interact with each other. The Child Support Task Force, under the guidance of MNTReC, will be continuing its investigation and analysis of Minnesota's child support program during the next twelve months. It will be giving particular emphasis to creating an environment within the support enforcement system which is conducive to cooperation among the system's participants in the belief that such cooperation will include an improved compliance with court-ordered child support obligations.

Minnesota historically has had one of the more successful child support programs in the nation. It has taken the lead in adopting strong and effective child support legislation. Its statutory scheme for support enforcement served as one of the models upon which the Child Support Enforcement Amendments of 1984 were based. Having laid the foundation in the law for a strong support enforcement program, Minnesota must now educate the public, members of the bench and bar, as well as its own IV-D personnel, in the effective use of the child support enforcement measures.

Only when the importance of adequate child support awards to the maintenance of women and children above the poverty level is clearly understood by the general public, will custodial parents uniformly demand their right to support and non-custodial parents be compelled to meet their obligations. Both parents must be educated in their respective rights and obligations to ensure the well-being of their children.

Minnesota has enacted numerous remedies in recent years which allow for the cost-effective, administrative enforcement of child support. Child support officers and attorneys must be trained to recognize the value of these mechanisms and learn how to implement them in the manner in which they were intended.

Because much of the discretion in the law has been eliminated, it is generally the egregious or complex factual matter that will come before a court for judicial determination. Family law has always been specialized, and has

become even more so with the state of flux introduced by the number of decisions handed down by the Minnesota Court of Appeals. Judges handling family law matters must be required to participate in continuing legal education to ensure the judicious handling of the complex and emotionally laden issues inherent in these matters. For the same reason, attorneys representing the parties to these actions must also be appropriately informed and educated in the law.

**APPENDICES**



Appendix A  
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Membership List

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Appendix B

MINNESOTA NON-TAX REVENUE COMMISSION CHARGE

The Minnesota Non-Tax Revenue Commission has as its charge:

- I. To identify and adopt general principles by which government can be guided in creating and collecting non-tax revenues.
- II. To review and explore sources of revenues in the State of Minnesota which do not involve a tax and to optimize those non-tax revenues.
- III. To isolate those sources of non-tax revenue which meet the following two criteria:
  - A. It is a significant existing or potential source of non-tax revenue; and
  - B. There are existing or prospective problems associated with the collection of the revenue.
- IV. To commence its review and exploration of revenue sources with those found in the human services area, including the areas of corrections, health, income support, child support, mental retardation, mental health, chemical dependency, social services, and others of similar classification.
- V. To consider each source of non-tax revenue identified per III. and IV., above, as follows:
  - A. By reviewing the procedures currently utilized and policies followed in the State of Minnesota to generate the revenue:
    1. Through identification of the costs of the service provided by government, the current amount of revenue generated by providing that service and the potential for increase; and
    2. Through determination of the type, cost, and problems associated with each system used to collect a non-tax revenue.
    3. Through examination of collateral issues that impact on collections; including family dynamics, visitation, interstate enforcement, and public policy implications.
  - B. By comparing the procedures and policies identified with those of other jurisdictions, model programs, the requirements of state and federal law, and the general principles adopted

per I., above;

- C. By determining what changes, if any, in current policy, procedures, and law are needed and appropriate as a result of the review and comparison conducted pursuant to paragraphs A. and B.; and
- D. By recommending to the Governor of Minnesota those changes identified as needed and appropriate pursuant to paragraph C. and further recommending how they can best be implemented.

Appendix C

Membership List

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## Appendix D

### CHILD SUPPORT PUBLIC HEARINGS

April 30, 1985 - St. Paul

May 1, 1985 - Duluth

The following represents the recommendations/main ideas/feelings/opinions of the 11 people that testified in St. Paul and the seven people that testified in Duluth. The purpose here is to present an "at-a-glance" look at some of the primary concerns raised by those testifying. These concerns are:

1. Guidelines, at the high end of the grid, are punitive. They are alimony disguised as child support. Child support in this income bracket is unrealistically high. It simply does not cost that much money to raise a child in Minnesota.
2. Sole custody is antiquated. Joint custody is preferable, as it encourages a father to be sociologically and viably interactive in the child's life. Minnesota is maximizing the importance of child support enforcement and minimizing the importance of quality and quantity visitation by awarding sole custody.
3. Child support enforcers should be equally concerned about visitation. Denial of visitation by the custodial parent presents many problems for the noncustodial parent, including refusal to pay child support.
4. Child Support Guidelines in Minnesota are too high.
5. Minnesota is discriminating against second marriages when the Court considers the new spouse's income in setting the child support award. Minnesota is encouraging people to live together instead of to marry.
6. This Panel or Commission must address more than money, it must also address visitation.
7. Judges need more than legal training, they need training to know what the best interests of the child are.
8. Too often non-custodial parents are not properly pursued for child support enforcement. Too often, some cases "fall through the cracks".
9. Instead of ordering the noncustodial parent to pay child support, noncustodial parents should be ordered to pay day-care expenses.
10. Due process to implement income withholding in Minnesota should be tightened up. Thirty days plus 15 more days is too long.
11. Child support legislation is one of the most positive pieces of social legislation that has ever come out of Congress.

12. Nonpublic assistance services should be "equal" to public assistance services and should be better publicized. Adequate personnel should be hired in each county to properly handle case loads.

13. Guidelines are too rigid, but also too easy for the Court. Rather than making the case individual to the noncustodial parent, the Court is simply applying the Guideline figure. Guidelines assume things that are not assumable in every case.

14. In some situations, private debts should be considered before applying guideline, as the private debt may be debts for past child support.

15. Guidelines today is a much more equitable system than the old system of judicial discretion. Guidelines today are easier for the Court and they reflect more fully the economic realities of raising children.

16. It is inappropriate to put pressure on AFDC recipients to cooperate in securing support and to "dangle" a fifty-dollar bonus in front of us.

17. It's incredibly frustrating to know that the absent parent lives in a new home, has three cars, and yet he is not forced to pay his child support payments.

18. Women are not aware of their rights, both in the public assistance and nonpublic assistance area, in terms of what they can do to enforce the support obligation.

19. Child support personnel need training. They need training in how to properly collect child support, how to become people who can assist the County Attorney's Office, the Judges, and the custodial parents.



Appendix E

MNTReC:Task Force I

Meeting Schedule

March 8, 1985

April 1, 1985

April 18, 1985

May 8, 1985

May 23, 1985

June 5, 1985

June 24, 1985

July 2, 1985

July 8, 1985

July 25, 1985

August 20, 1985

August 30, 1985

September 27, 1985

**CHILD SUPPORT GUIDELINES**

APPENDIX F

The court shall set child support by multiplying the obligor's net income by the percentage indicated by the following guidelines:

<u>Net Income Per Month of Obligor</u>	<u>Number of Children</u>						
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7 or more</u>
<u>\$400 and Below</u>	<u>Order based on the ability of the obligor to provide support at these income levels, or at higher levels, if the obligor has the earning ability.</u>						
<u>\$401 - 500</u>	<u>14%</u>	<u>17%</u>	<u>20%</u>	<u>22%</u>	<u>24%</u>	<u>26%</u>	<u>28%</u>
<u>\$501 - 550</u>	<u>15%</u>	<u>18%</u>	<u>21%</u>	<u>24%</u>	<u>26%</u>	<u>28%</u>	<u>30%</u>
<u>\$551 - 600</u>	<u>16%</u>	<u>19%</u>	<u>22%</u>	<u>25%</u>	<u>28%</u>	<u>30%</u>	<u>32%</u>
<u>\$601 - 650</u>	<u>17%</u>	<u>21%</u>	<u>24%</u>	<u>27%</u>	<u>29%</u>	<u>32%</u>	<u>34%</u>
<u>\$651 - 700</u>	<u>18%</u>	<u>22%</u>	<u>25%</u>	<u>28%</u>	<u>31%</u>	<u>34%</u>	<u>36%</u>
<u>\$701 - 750</u>	<u>19%</u>	<u>23%</u>	<u>27%</u>	<u>30%</u>	<u>33%</u>	<u>36%</u>	<u>38%</u>
<u>\$751 - 800</u>	<u>20%</u>	<u>24%</u>	<u>28%</u>	<u>31%</u>	<u>35%</u>	<u>38%</u>	<u>40%</u>
<u>\$801 - 850</u>	<u>21%</u>	<u>25%</u>	<u>29%</u>	<u>33%</u>	<u>36%</u>	<u>40%</u>	<u>42%</u>
<u>\$851 - 900</u>	<u>22%</u>	<u>27%</u>	<u>31%</u>	<u>34%</u>	<u>38%</u>	<u>41%</u>	<u>44%</u>
<u>\$901 - 950</u>	<u>23%</u>	<u>28%</u>	<u>32%</u>	<u>36%</u>	<u>40%</u>	<u>43%</u>	<u>46%</u>
<u>\$951 - 1000</u>	<u>24%</u>	<u>29%</u>	<u>34%</u>	<u>38%</u>	<u>41%</u>	<u>45%</u>	<u>48%</u>
<u>\$1001 - 6000</u>	<u>25%</u>	<u>30%</u>	<u>35%</u>	<u>39%</u>	<u>43%</u>	<u>47%</u>	<u>50%</u>

Guidelines for support for an obligor with a monthly income of \$6001 or more shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income of \$6000.

Net Income defined as Total monthly income less:

- \* (1) Federal Income Tax
- \* (2) State Income Tax
- (3) Social Security Deductions
- (4) Mandatory Pension Deductions
- (5) Union Dues
- (6) Cost of Dependent Health Insurance Coverage
- (7) Cost of Individual Health/Hospitalization Coverage or an Equivalent amount for actual Medical Expenses.

\*Standard Deductions apply - use of tax tables recommended

- (a) The child support payment guidelines take into consideration the following criteria:
- (1) all earnings, income, and resources of the obligor including real and personal property;
  - (2) the basic living needs of the obligor;
  - (3) the financial needs of the child or children to be supported; and
  - (4) the amount of the aid to families with dependent children grant for the child or children.

- (b) In establishing a support obligation, the Court may consider debts owed to private creditors, but only if:

- (1) the right to support has not been assigned under section 256.74;
- (2) the debt was reasonably incurred for necessary support of the child or obligee or for the necessary generation of income. If the debt was incurred for the necessary generation of income, the court shall consider only the amount of debt that is essential to the continuing generation of income;
- (3) the party requesting a departure produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the amount of the original debt, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid; and
- (4) the court determines that the debt was legitimately incurred for the necessary support of the child or obligee or for the necessary generation of income.

Any schedule prepared under paragraph (b), clause (3), shall contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the party's control.

The court shall order child support in accordance with the guidelines and any departure therefrom. Any further departure below the guidelines that is based on a consideration of debts owed to private creditors shall not exceed 18 months in duration, after which the support shall increase automatically to the level ordered by the court. Nothing in this section shall be construed to prohibit one or more step increases in support to reflect debt retirement during the 18-month period.

Where payment of debt is ordered pursuant to this section, the payment shall be ordered to be in the nature of child support.

- (c) Previous support orders and maintenance orders may be considered if the obligor is paying them.
- (d) Nothing shall preclude the court from receiving evidence on the above factors to determine if the guidelines should be exceeded or modified in a particular case.
- (e) The above guidelines are binding in each case unless the court makes express findings of fact as to the reason for departure below the guidelines in that case in which the court orders support that so deviates from the guidelines. It may also increase the amount of child support by more than the guidelines without making express findings by agreement of the parties or by making further findings.