FAMILY LAW: A REVIEW OF SELECTED ISSUES

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FOREWORD

This report has been prepared in response to Senate Resolution No. 51, S.D. 1 (2001), which requested the Legislative Reference Bureau to review the laws in other states regarding child support, child custody, and property settlements upon dissolution of marriage and compare them to existing law in Hawaii. The Resolution also requested the Bureau to report any findings concerning whether any of Hawaii's family law statutes should be amended at this time.

In conducting this study, the Bureau solicited input from the Judiciary, the Family Law Section of the Hawaii State Bar Association, and the Child Support Enforcement Agency of the Department of the Attorney General. The Bureau also obtained information from a number of comprehensive sources that provided information on the relevant state family law topics.

The Bureau would like to thank members of the Judiciary and the Family Law Section of the Hawaii State Bar Association for input received on this study. In addition, the Bureau would like to express its appreciation to the courteous and efficient staff members of the National Conference of State Legislatures who provided considerable information and resource materials to the Bureau in preparation for this report.

Wendell K. Kimura
Acting Director

January 2002

FACT SHEET

Highlights

The report provides a broad, general discussion of issues relating to: child support, including enforcement measures and fatherhood initiatives to assist low-income fathers who are unable to meet their child support obligations; child custody and visitation; and marital property division.

Frequently Asked Questions

A. Should Hawaii's child support guidelines be revised?

There is considerable agreement among commentators that child support orders, based upon state guidelines, generally are too low. However, the mandated four-year review process is underway for the Hawaii child support guidelines, with the final report of the review committee due to be completed in 2002. Consequently, the Bureau recommends no action at this time with respect to child support guidelines, pending the outcome of the report by the child support guidelines review committee.

B. There have been a number of complaints by custodial parents and obligors concerning the Child Support Enforcement Agency (CSEA) and the CSEA's automatic child support enforcement (KEIKI) system; should changes be made to the CSEA or to its operations?

The Auditor is conducting a comprehensive study of the CSEA's automatic child support enforcement (KEIKI) system, pursuant to section 41 of Act 259, Session Laws of Hawaii 2001, with the final report due to the Legislature prior to the commencement of the 2002 Regular Session. Given the intended comprehensiveness of the Auditor's study, the Bureau believes any recommendations concerning changes to the CSEA or its operations should await the outcome of the study.

C. Should publicly funded fatherhood initiatives be adopted in Hawaii?

A number of jurisdictions appear to be having considerable success with programs focusing on training, employment, and other assistance to low-income fathers who are unable to pay their child support obligations, and support for fatherhood initiatives appears to be building on a national level. At present, public assistance services provided in the State are parent-focused, not gender-biased, pursuant to Act 301, Session Laws of Hawaii 2001. Moreover, Act 301's emphasis on eliminating preferences that favor one parent over the other, may preclude adoption in Hawaii of fatherhood initiatives by state or county agencies. If the Legislature considers adopting fatherhood initiatives, the Bureau recommends that it revisit the language in Act 301 to ensure no conflict exists. Furthermore, if the Legislature is interested in pursuing such initiatives, the Bureau notes that the National Conference of State Legislature's Nurturing

Responsible Families Project provides informed assistance, including free onsite technical assistance, to policymakers in this area, as well as with other relevant issues such as child support, child custody, and visitation.

D. Should the Legislature adopt the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)?

The UCCJEA is a revision of the Uniform Child Custody Jurisdiction Act (UCCJA) of 1968, to achieve conformity with more recent federal statutes and greater uniformity among the varying jurisdictions' custody proceedings and enforcement procedures. The Bureau recommends that the Legislature closely consider enactment of the major provisions of the UCCJEA.

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PART I. INTRODUCTION

Senate Resolution No. 51, S.D. 1 (2001) (See Appendix A), requested the Legislative Reference Bureau to review the laws in other states regarding child support, child custody, and property settlements upon dissolution of marriage and compare them to existing law in Hawaii. The Resolution also requested the Bureau to report any findings concerning whether any of Hawaii's family law statutes should be amended at this time.

In conducting this study, the Bureau examined relevant sections of the Hawaii Revised Statutes, including chapters 571, 576B, 576D, 576E, 580, and 583. The Bureau also solicited input from the Judiciary, the Family Law Section of the Hawaii State Bar Association, and the Child Support Enforcement Agency of the Department of the Attorney General. The Judiciary and the Bar responded to the Bureau's inquiries; however, the Child Support Enforcement Agency did not. The Bureau also reviewed the Hawaii Divorce Manual and the 2001 update. The expansive scope of this request and the specified timeframe precluded a comprehensive 50-state survey of family law in the areas of child support, child custody, and property settlements upon dissolution of marriage. As an alternative to such a survey, the Bureau obtained information from a number of comprehensive sources that provided information on the relevant state family law topics. Furthermore, given the widespread nature and the sweeping scope of the request, the Bureau felt constrained to restrict its focus to issues or concerns that could be addressed by a legislative solution.

The report on this study is organized as follows:

Part I. Introduction

Part II. Child Support Issues

Part III. Custody Issues

Part IV. Property Issues

Part V. Conclusions

PART II. CHILD SUPPORT ISSUES

Impact of Child Support on Society

The issue of child support has phenomenal significance for modern society. Consider the following statistics from the National Conference of State Legislatures:

- Approximately half of all children will spend time in a single-parent home, either because their parents are separated or divorced or their parents never married;
- Between 1970 and 1996, the number of children under age 18 living with one parent rose from 12% to 28%;
- In 1995, the number of single-parent families ranged from a low of 14% in Utah to a high of 60% in Washington, D.C., with the majority of states having a rate of approximately 25%;
- The marriage disruption rate has been estimated to be as high as 64%;
- Although mothers head 80% of single-parent households nationwide, a 1998 Census Bureau notes that single-parent households are increasingly headed by fathers;
- Of the millions of American children living in poverty, most of these live in single-parent households;[1]
- The 1997 census data reveals the poverty rate for custodial parents who were due child support, but failed to receive it, was 36%; whereas, of the custodial parents who received all the child support due them, only 15% had incomes below the poverty level.[2]

Social research has shown that a parent's financial and emotional involvement is critical to a child's social and emotional well-being. At the same time, the welfare reform movement has focused attention on the reality that financial support from both parents may prevent a child from living in poverty. Clearly, child support payments make a significant difference in the income of single-parent families. Studies also reveal a positive relationship between the amount of child support paid by noncustodial parents and their children's behavior and educational performance. Experts disagree over whether a father's ability to provide financially is the critical and motivating factor to staying connected with his child or whether being involved with the child is the prime motivation for financially supporting the child.

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1. In 1998, nearly 20% of children were considered poor, and the proportion of families living in extreme poverty doubled from 5% in 1975 to 10% in 1992. National Conference of State Legislatures, "Lesson One: Why Do We Need Child Support?," at 2 (hereafter cited as NCSL "Lesson One").

2. *See id*. at 1-2.

Nevertheless, there is nearly universal agreement that fathers playing an active role in financially and emotionally supporting their children result in positive outcomes. Children who experience healthy connections with their fathers have a reduced risk of early parenting, high school dropout, substance abuse and juvenile delinquency.[3] Research also shows that child support payments improve financial stability and emotional well-being, have a symbolic value for children, may decrease conflict between parents, and were positively correlated to the amount of influence the parent had in childrearing matters and the frequency of visits with the child.[4] According to National Conference of State Legislatures, states report that "regular, reasonable child support awards can make the difference between reliance on the state, and self-sufficiency. The key to self-sufficiency is consistent, reliable, reasonable support payments. Above a certain threshold, it is more important that payments are reasonable and regular than that they be large."[5]

Government Involvement in Child Support

Insufficient child support also has a significant financial impact on state government public assistance programs. For example, states realize immediate cost-avoidance savings, as families become self-sufficient and less reliant on other aid programs such as Temporary Assistance to Needy Families (TANF), food stamps, and Medicare. States' investment in child support can be likened to investments in job training, child care, or other programs whose goals are to help families attain self-sufficiency.[6] In addition, state governments realize savings on future costs of child well-being through lower juvenile and criminal court costs, special education resources, and mental health expenditures.[7] Thus states have a real incentive to ensure effective child support programs are in place.

Indeed, when Congress first enacted the Child Support Enforcement and Paternity Establishment Program (CSE) in 1975, its primary objectives were cost recovery and cost avoidance. The federal and state governments retained any child support collected on behalf of families as reimbursement for the cost of providing welfare payments to those families. Where applicable, the government also helped establish paternity and child support orders for children born out of wedlock, to assist these families in avoiding welfare.[8] Although much of the state

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3. Dana Reichert, *Broke But Not Deadbeat: Reconnecting Low-Income Fathers and Children*, National Conference of State Legislatures July 1999, at 5 (hereafter cited as Reichert).

4. *See* Ganow, M. "New Challenges for States in Financing Child Support," 5 Welfare Information Network Issue Notes, at 5 (No. 7, May 2001) (hereafter cited as Ganow); and NCSL "Lesson One."

5. NCSL "Lesson One," at 4.

6. *See* Ganow, at 3; *see also* the HHS report "The Potential of the Child Support Enforcement Program to Avoid Costs to Public Programs: A Review and Synthesis to the Literature," at http://www.act.dhhs.gov/programs/cse/rpt/cs_costavoidance_finalrpt.pdf.

7. Ganow, at 3. Research suggests that children from single-parent homes tend to have more behavioral and emotional problems than those raised in 2-parent families. An analysis and summary of 92 studies found that parental divorce is associated with negative outcomes in academic achievement, psychological adjustment, personal conduct, self-esteem, and social relationships.

8. *See* Ganow at 1-2.

child support efforts focused on recovering payments to reimburse the welfare program, this did not necessarily translate into more monetary support for children.

A major goal of the Welfare Reform Act of 1996[9] was to increase the amount of child support to poor families. To achieve this goal, states were granted greater flexibility in their welfare programs and tougher measures to collect child support. The mission of the CSE has evolved to encompass ensuring income support for low-income families. Families receiving TANF must continue to assign their child support rights to the state, unless exempted for good cause, and must agree to cooperate with the CSE program. The federal and state governments jointly fund the state child support enforcement programs, with the former providing the largest share, matching 66% of allowable state expenditures and providing a higher match for activities such as management information systems and blood tests for paternity establishment.[10] The remainder of the funding comes from state and local government appropriations, federal child support incentive payments, the state's share of retained welfare collections, and application and user fees.[11] To ensure that both parents are able to contribute to the financial support of their children, many states focus their efforts on providing job placement, training, counseling, and other services to noncustodial parents.

Compliance Problems of States

The 1996 welfare reform law also made significant changes to the child support program, including requiring states to create an integrated, computerized information network, and strengthened enforcement tools available to the states. However, government involvement in child support has come with a complex set of rules that govern the assignment and order of distribution of child support collections made on behalf of welfare or former welfare families. Critics of the system argue that it is too complex and confusing for families and caseworkers to understand easily and creates an administrative burden for the states. Several states have also risked audit or litigation as they struggle to bring their automated computer systems into compliance with the assignment and distribution rules. In an attempt to deal with the problems of automating their systems, a number of states have privatized their child support collection functions. See Appendix B.

Illustrative of the problems states have encountered are the following:

Arkansas – The state office of child support was sued by custodial parents because of delay in delivery of support payments. Case is set for trial in federal court in 2002.

California – Los Angeles County – To improve child support collections in L.A., which were 40% below the state average, child support duties were transferred from the District

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9. The Act's official title is Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. No. 104-193).

10. *See* Ganow, at 3.

11. Federal law requires states to charge an application fee of up to $25 to non-TANF families and permits them to charge additional fees to recover costs, but only a few states do so because of the low-income of families receiving child support services. For a compilation of states' fee collection and cost recovery policies, *see* http://www.ncsl.org/programs/cy/fees.htm.

Attorney's Bureau of Family Support to the new county Department of Child Support. The move is expected to save $1.3 million in administrative costs.

Illinois – The state centralized its child support collection and distribution system in October 1999, but the new system was overwhelmed shortly after coming online, leaving thousands of custodial parents without checks. The state handed out more than $9.7 million in emergency checks to 27,000 families, but had no process for recovering the loans. The state was also looking for a new vendor to run the system.

Michigan – The state is one of 10 jurisdictions without a federally certified automated system for child support collection. It faces $38 million in federal penalties. Ten counties remain reluctant to join the system because of concern over possible payment delays and lack of compatibility between the state and county systems.

Ohio – The department of job and family services came under fire for continuing to improperly withhold overdue support payments from recipients, in order to bring the computerized tracking system online in time to avoid federal penalties. The improper withholding resulted in an $8 million fine, and the Association for Children for Enforcement of Support (ACES) plans to file a class action suit in federal court.

Child Support Payment Pass-Through Issues

There is continuing debate over whether states should be required to pass-through to families on welfare a share of the child support payment collected on their behalf. The 1996 welfare reform eliminated the existing federal requirements that the first $50 of child support collected on a family's behalf be passed through to a family and that the $50 be disregarded when calculating the family's eligibility for public assistance. As a result, more than half the states have discontinued their pass-through of child support payments. States may continue to operate their pass-through program, but must bear the full cost of the program, as well as pay the federal share of collections.[12]

Supporters of a pass-through program argue that it:

- Encourages noncustodial parents to make payments that will be passed through to their children rather than retained by the state;
- Helps low-income families stay off public assistance rolls;
- Simplifies distribution of collected child support; and
- Simplifies automation needs, thereby resulting in savings to the state in terms of system structure and consumer service complaint resolution, and creates savings in other sate and federal assistance programs.

12. *See* Ganow, at 4. For a summary of state pass-through policies, *see* http://www.welfare info.org/ChildSupportProvisions.htm.

Under a federal waiver, Connecticut, Vermont, and Wisconsin are experimenting with policies to provide the full current child support payments to TANF families.[13] An evaluation of the full pass-through policy in Wisconsin found that: fathers in the full pass-through group were more likely to make payments and make higher payments than fathers in the partial pass-through group; and the pass-through policy results in little or no government cost due to slight savings in other programs.[14]

Child Support Guidelines

Congress, through the Family Support Act of 1988,[15] mandated that, by October of 1989, each state adopt presumptive child support guidelines for the establishment of all child support orders within the state. The guidelines are formulas that consider the income of the parents, the number of children, and other relevant factors. The guidelines are rebuttable, but any deviation must take into consideration the best interest of the child and be supported by findings either in writing or specified on the record. The guidelines also apply to any negotiated agreement. Federal law did not require that the guidelines be enacted by statute; thus, 17 states have adopted guidelines by court rule, 5 by administrative rule and the remaining 29 by statute.[16] The federal regulations also did not specify the exact guidelines that a state must follow. Rather, it required, at a minimum, that a state's guidelines: consider all earnings and income of the nonresidential parent; be based upon a numeric criteria and result in a computation of the support obligation; and provide for coverage of the child's health care needs.[17]

As a result, jurisdictions have adopted one of the following three models to determine award amounts:

(1) Just under one-third use the percentage of obligor income model, which sets support as a percentage of the non-custodial parent's income, based upon the number of eligible children; Massachusetts and the District of Columbia use a hybrid of the percentage of obligor income model;[18]

(2) Approximately two-thirds use the income shares model, which is based upon the combined income of both parents, as if the family lived together intact; and

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13. For more information, *see* National Conference of State Legislatures, "Issue in Brief: State Child Support Pass-Through Programs," February 1999.

14. *See* Ganow, at 6.

15. Pub. L. 100-485, 102 Stat. 2343 (codified primarily at 42 U.S.C. §§654, and 666-667). *See* 45 C.F.R. §302.56(g).

16. J. Venohr and R. Williams, "The Implementation and Periodic Review of State Child Support Guidelines," 33 FAM. L.Q. 7, 9 (1999) (hereafter cited as Venohr and Williams).

17. *See* 45 C.F.R. §302.56.

18. *See* Venohr and Williams, at 11.

(3) Three jurisdictions (Delaware, Hawaii, and Montana) use the Melson formula, which is a more complicated version of the income shares model, but incorporates several public policy judgments to provide a minimum self-support reserve for the noncustodial parent.

Appendices C and D show the type of guidelines model adopted in each jurisdiction.[19]

The Family Support Act of 1988 also required states to review their child support guidelines at least every 4 years to ensure that they were resulting in appropriate child support amounts.[20] The review is also to include an assessment of the most recent economic data on child-rearing costs and a review of case data to ensure that deviation from the guidelines are limited.[21] Although mandating the review, the federal law does not require that states actually change their guidelines as a result of the review.[22]

Only 4 states have changed their model for determining child support guidelines since 1990, and no state has adopted an entirely new approach. The American Law Institute recently suggested that guidelines awards are too low and has proposed that states either reformulate their income shares models at higher levels or adopt a variant of the Massachusetts guidelines. Although some states reportedly have discussed the ALI's model in their reviews, none have seriously considered adopting it.[23]

Most states appear to have focused more on the adoption or refinement of formulaic adjustments for special factors. There is a growing trend to include work-related childcare, health insurance, extraordinary medical expenses, and shared custody. As of 1998, 37 states had formulas for work-related childcare; 42 had formulas covering the child's share of the health insurance premium; 23 states had formulas for the child's extraordinary medical expenses and 24 had formulas for shared parenting time.[24] In addition, the majority of states address the child's health insurance in their support calculations, because of federal requirements that health insurance coverage for the child be sought in every support order, if the obligor has insurance available through his or her employer at a reasonable cost.[25] See Appendix E.

The majority of states with formula adjustments for childcare and extraordinary medical expenses are Income Shares or Melson models. The most common means of adjusting the support order amount for childcare and extraordinary medical expenses is the pro rata approach.

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19. A comparison of the charts in these appendices reveals some disagreement as to which guideline model is followed in a few jurisdictions. The Bureau has made no attempt to independently verify the information contained within these appendices.

20. For example, Louisiana passed a law in 2001 (HB1398) to revise child support guidelines that set a $100 minimum monthly payment for low-income noncustodial parents and include tables that consider the joint income and number of children of the parties involved.

21. *See* Venohr and Williams, at 23, citing Pub. L. No. 100-485, §128.

22. Venohr and Williams, at 23.

23. *See id*. at 30-31.

24. *See id*. at 18 and table 4 at 19. Compare with Appendix D.

25. *See* 45 C.F.R. §306.51.

The second most common approach is to subtract the child's health insurance premium from the income of the parent paying the insurance expense to the provider.[26] The Percentage of Obligor Income guidelines are designed to be very simple in their application and therefore are less likely to consider adjustments for these types of special factors.[27]

Other frequently discussed issues are shared parenting time adjustments, additional dependents, low-income adjustments, high-income adjustments, and tax credits. With respect to shared parenting time adjustments, one study noted the following concerns:

(1) Visitation-related costs incurred by noncustodial parents are generally variable and unpredictable;

(2) Many noncustodial parents' costs do not reduce custodial parents' costs; rather, these costs are duplicated in two households. This has led states, with respect to shared physical custody adjustments, to incorporate a multiplier for duplicate costs. Other states distinguish between cost categories, such as "variable," "duplicated fixed," and "unduplicated fixed;" and

(3) The lack of credible, direct research on the impact of custody arrangements on expenditures for children and on child-rearing costs generally have hampered the effort to develop improved adjustments for shared parenting time.[28]

Most states with a formulaic adjustment for shared parenting time are Income Share states, and they apply the adjustment based upon actual physical custody not legal custody. See Appendix F concerning state treatment of shared parenting time. Although the precise threshold varies by state, a parent typically must care for the child 25 to 35% of annual overnights to qualify for the adjustment. Most states use a cross-credit mechanism for computing the amount of the adjustment.[29]

Many states attempt to protect low-income obligors from paying child support at a level that will cause them to become impoverished, such as by applying a lower percentage standard to low-income obligors than for high-income obligors. The Melson formula states address this through a self-support reserve built into the basic structure of the formula. This issue is complicated, however, when the obligee also has low-income status and there is insufficient income to provide for the obligor, obligee, and children, especially with limits now imposed on public assistance programs for single parents (TANF). See Appendix G for states' treatment of low-income.

Some states have attempted to address high-income levels in their guidelines, but are hampered by the lack of national expenditure studies, used as the basis for child support

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26. *See* Venohr and Williams, at 20 and table 4 at 19.

27. *See id*. at 19-20.

28. *Id*. at 32-22.

29. *See id*. at 20-21.

guidelines tables, that address high-income households greater than $180,000.[30] Some states' guidelines do not even extend to that income level: 11 states child support guidelines do not consider incomes higher than $100,000, and the highest income in a handful of states is $60,000 net per year. Most states considering high incomes that exceed their guidelines use a case by case approach. A few states (Indiana, New Mexico, Virginia, and West Virginia) have extended formulas to apply to high incomes.[31] However, one commentator has observed that such formulas may be subject to challenge because they are not "grounded in economic evidence."[32] See Appendix H for states' treatment of high income.

The issues of whether and how to adjust for additional dependents of an obligor or obligee involve deep philosophical conflict and are not easily resolved. Traditional principles of family law favor dependents of a "first-born" household. Thus existing child support payments to children of a prior household generally are not reduced to provide support for subsequent dependents of a new household.[33] Nevertheless, states have permitted new dependents to be taken into account in limiting the amount of an upward modification of an existing support order.[34] Despite noncustodial parents' groups pushing for an equal treatment philosophy, however, no state has yet incorporated such a policy into its guidelines. Commentators note that there are also other, subtle issues relating to additional dependents that affect the application of the guidelines, such as children conceived in extra-marital affairs. However, the "intractable" issues arise when there are children of the same obligor in more than two households. Commentators generally agree that such situations are too complex to be addressed satisfactorily by child support guidelines.[35]

While there is no consensus on what the optimal child support policy should be, many commentators agree that child support orders are too low.[36] Furthermore, commentators acknowledge that states are hindered in their review of the guidelines by the "absence of credible new economic studies on child-rearing costs."[37] Only two major economic studies estimating child rearing expenses have been done in the last decade: a report by the U.S. Department of Health and Human Services and a USDA annual report on expenditures on children in families.[38]

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30. This appears to be a particular problem in Income shares states, because the percentage of income allocated to child support decreases as income increases.

31. *See id*. at 33-34.

32. *Id*. at 34.

33. *See id*. at 20.

34. The majority of states that allow formula adjustments for additional dependents are Income Shares or Melson models. *Id*.

35. *See id*. at 34-35.

36. *See* "Symposium Introduction," 33 FAM. L.Q., at 3 (1999); L. Morgan and M. Lino, "A Comparison Of Child Support Awards Calculated Under State's Child Support Guidelines with Expenditures On Children Calculated by the U.S. Department of Agriculture," 33 FAM. L.Q. 197 (1999).

37. *See* Venohr and Williams, at 36; *See* Symposium Introduction, *supra* at 24, n.13 (one problem with child support guidelines is that there is a limited pool of economic studies available to states to assess the most recent data on child rearing costs).

38. *See* Symposium Introduction, at 24, n.13.

There appears to be consensus that new studies are necessary to "update the economic parameters for child support guidelines and to ensure their continued adequacy and fairness."[39]

Child Support in Hawaii

As a practical matter, child support in Hawaii consists of the payment of periodic monetary support, pursuant to the child support guidelines, together with the maintenance of health care insurance for the child, payment of the child's health expenses not covered by insurance, payment of educational expenses of the child, and provision of some type of security for support, in the event of the obligor's death, disability, or voluntary nonpayment of child support.[40]

Sections 571-52.5, 576E-15, and 580-47(b) of the Hawaii Revised Statutes require that, when child support is established or modified, the child support guidelines must be used to determine the monthly amount of periodic monetary support. Hawaii Revised Statutes section 576D-7 requires the Family Court, in consultation with the Hawaii Child Support Enforcement Agency (CSEA), to calculate child support "based on specific descriptive and numeric criteria …." The statute specifies that the following factors may be considered in setting the guidelines:

(1) All earnings, income, and resources of both parents; provided that earnings be the net amount, after deductions for taxes, and social security. Overtime and cost of living allowance may be deducted where appropriate;

(2) The earning potential, reasonable necessities, and borrowing capacity of both parents;

(3) The needs of the child for whom support is sought;

(4) The amount of public assistance that would be paid for the child under the full standard of need, as established by the department of the Attorney General;

(5) The existence of other dependents of the obligor parent;

(6) To foster incentives for both parents to work;

(7) To balance the standard of living of both parents and child and avoid placing any below the poverty level whenever possible;

(8) To avoid extreme and inequitable changes in either parent's income depending on custody; and

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39. *See* Venohr and Williams, at 36.

40. *See* Hawaii State Bar Association, Family Law Section, *Hawaii Divorce Manual* (William Darrah., ed.): Child Support Chapter, at 2 (hereafter cited as *Divorce Manual*: Child Support).

(9) If any obligee parent with a school age child or children in school, who is mentally and physically able to work, remains at home and does not work, thirty (or less) hours of weekly earnings at the minimum wage may be imputed to that parent's income.[41]

Support payments are calculated on the basis of each parent's capacity to contribute income.[42] However, needs-based public benefits (i.e., Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), etc. are excluded from a parent's income.[43] The Hawaii guidelines are based upon the assumption of a normal visitation schedule of up to 143 days per year and provide for a reduction in support if visitation exceeds this norm. However, if the parents share physical custody of a child on an equal basis, each will be considered to have the child for six months during the year. In such case, the "pay out" for each parent for the year is determined by multiplying the monthly support obligation by six months. If one parent's yearly support obligation is greater than that owed by the other, the excess amount is divided by 12 and paid monthly over the course of the year.[44] Departure from the guidelines is allowed *only* when exceptional circumstances warrant.[45]

The Child Support Enforcement Agency (CSEA), a division of the Department of the Attorney General, is responsible for enforcing child support orders. The CSEA was established as part of a federal-state cooperative program of child support enforcement under Title IV-D of

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41. HRS §576D-7. The current Hawaii guidelines have 2 worksheet formats that can be used to determine child support payments. The Simplified Worksheet is used only if: the custodial parent cares for at least 1 child under the age of 3 years who is not in day care; the custodial parent's only income is from a needs-based public assistance program; the custodial parent is not presently working or employed; the non-custodial parent has a total gross monthly income of not more than $1,450; and there is no income imputed to either party. The 2000 Hawaii Divorce Manual indicates that calculation of child support under the Regular Worksheet is a 3 step process:

    1. Determine minimum support needs of child based upon cost of supporting a child at the federal poverty level standard of living, the number of children, the monthly child care expenses actually paid out by parents, the monthly medical and dental insurance costs actually paid out by parents over and above individual coverage. (Minimum child support obligation is $50 per child.)
    2. Calculate standard of living allowance (SOLA), which gives the child (or children) an additional percentage share of both parents' gross incomes to the extent the income exceeds that necessary to cover the parent and child's basic needs.
    3. Determine each parent's support obligations by determining each parent's percentage share of their total combined net incomes and applying the percentage to the child's total support need (basic primary support and SOLA support). This amount is reduced by the monthly child care and health care expensed paid by that parent, if any. The total amount is rounded to nearest $10 figure.

    See Divorce Manual: Child Support at 3 and Guidelines, Appendix 3 at 5-8.

42. *See Divorce Manual* at Appendix 3 – Guidelines p. 2 for definitions of "gross income." *See also* HRS §§571-52(e) and 571-52.2(n).

43. *See Divorce Manual* at Appendix 3 – Guidelines p. 2.

44. *See Divorce Manual* at Appendix 3 – Guidelines instruction (app. 3) at 8.

45. *See* HRS §§571-52.5 and 576E-15 (guidelines established under section 576D-7 shall be applied, except when exceptional circumstances warrant departure.). *See Divorce Manual* at Appendix 3 – Guidelines p. 10 or Section 2 of the 2001 Hawaii Divorce Manual Supplement at 42-45, for a discussion as to what might constitute exceptional circumstances.

the Social Security Act[46] to: recover, from noncustodial parents, the cost of the public assistance benefits paid by the government for the parents' dependent children (first under Aid to Families with Dependent Children, then under Temporary Assistance to Needy Families); and ensure the self-sufficiency of non-welfare custodial parents by assisting them with collection of child support. Despite its original emphasis on recovering welfare expenditures, CSEA's present caseload is comprised of more than half non-welfare clients (about 59%), and many of these receive no services other than the collection and disbursement of payments.[47] The CSEA's primary functions are to:

(1) Act as a clearinghouse, in the vast majority of its cases, to collect and disburse child support payments.[48]

(2) Investigate and track down parents who are responsible for child support, but fail to provide it, and use statutory powers to enforce compliance.

(3) Coordinate its activities with other states' child support enforcement agencies in cooperation with the Office of Child Support Enforcement of the U.S. Department of Health and Human Services.

(4) Assist the office of child support hearings and the courts in initiating proposed child support orders for administrative hearings and certify account balances for court hearings.[49]

The Office of Child Support Hearings, under chapter 576E, Hawaii Revised Statutes, has concurrent jurisdiction with the Family Court with respect to all proceedings in which a support obligation is established, modified, or enforced.[50] The office was established to streamline the administrative processes relating to child support orders and to relieve the overburdened Family Courts. The CSEA is charged with undertaking any legal or administrative action, including commencing or appearing before any court or administrative agency, to secure support for a child by enforcing or modifying an existing child support order or obtaining an order of child support.[51] The CSEA has authority to perform these services on all cases for which it has a responsibility under Title IV-D of the Social Security Act. Generally these cases are those involving custodial parents receiving public assistance, parents who apply directly to the CSEA for services in non-public assistance cases, and interstate requests for services from child support agencies in other jurisdictions. Non Title IV-D cases are all other cases in which the CSEA

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46. HRS §576D-2; *see* 42 U.S.C. §§651-669.

47. Hawaii State Auditor, *Follow-Up Management Audit of the Child Support Enforcement Agency*, Report No. 00-06 (Feb. 2000), at 2 (hereafter cited as CSEA *Management Audit)* (as of July 1999, 52,468 nonwelfare cases made up the CESA's total caseload of 89,065.)

48. *See* HRS §576D-10. Parties may opt out of using the CSEA and providing direct payments, only with approval of the court or the office of child support hearings.

49. CSEA Management Audit at 2-3.

50. HRS §§576E-2 and 576E-10.

51. It may also collect or enforce spousal support if in conjunction with a child support order. HRS §576E-2(3).

receives a court order of support and in which the CSEA acts solely to collect and distribute the support payments. The CSEA also provides the following services in Title IV-D cases: parent locator service to find absent parents and or their assets; establishment of paternity[52] and child support; and enforcement of child support orders.[53]

Except when a support obligor does not receive income on a periodic basis and unless the court orders otherwise, all child support is paid by income assignment through the CSEA.[54] The only exception to the mandatory provisions for income withholding through the CSEA is if the Family Court or the CSEA approves an alternative arrangement for the direct payment of child support from the obligor directly to the obligee.[55] This requires the Family Court or the CSEA either to find "good cause not to require immediate withholding" or a written agreement signed by both parties requesting direct payment.[56] A direct payment arrangement will not be approved if the obligor has a current child support arrearage or a history of late child support payments. Furthermore, direct payment will not be allowed if: either party is receiving services under Title IV-D; dependents of the obligor receive public assistance; or the obligor owes a public assistance debt.[57]

Section 576D-10(e), Hawaii Revised Statutes, requires that any alternative arrangement provide that: either party may void the arrangement at any time and apply to the CSEA for collection services; and if either parent applies for service from the CSEA or if the children of the obligor commence receiving public assistance, the CSEA may immediately void the direct payment arrangement.[58] Some parties use the direct payment arrangement to bypass the CSEA and avoid certain potential delays in receiving child support payment. However, the CSEA is not required to maintain any records regarding payments of child support under the direct payment arrangement. Thus, in the event of a dispute, it is important for the parties, especially

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52. With the exception of Maui, the county governments, under cooperative agreements, provide family support services, primarily establishing paternity. CSEA Management Audit at 6.

53. *Divorce Manual*: Child Support at 19; HRS §576E-2.

54. *See* HRS §§571-52.2, 571-52.3, 576D-10(c), 576E-16(a). For example, §571-52.3, Hawaii Revised Statutes, provides:

> **§571-52.3 Immediate income withholding.** In any case where child support is an issue, and an order for child support is established or modified, and the obligor receives income on a periodic basis, the court shall concurrently enter an order for immediate income withholding which shall operate as an assignment by the person to the child support enforcement agency for the benefit of the child of such amounts at such times as may be specified in the support order. Such order may also include child support arrears and reimbursement of debt pursuant to section 346-37.1. The provisions of section 571-52.2(d), (e), (f), (g), (l), (m), and (n) shall apply to all orders for immediate income withholding issued under this section.

55. *See* HRS §§576D-10(c) and 576E-10(c)(13).

56. HRS §576D-10(d).

57. HRS §576D-10(g) (public assistance includes assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396)).

58. HRS §576D-10(e) (notice given by CSEA through regular mail to parties at last know address, as disclosed in agreement).

the obligor with whom the burden of proof regarding payment lies, to keep accurate records of child support payments.[59]

Each child support order must also include a provision addressing the liability of the support obligor for health insurance and should explicitly allocate responsibility for the payment of child health care expenses not covered by insurance.[60] Under Hawaii Revised Statutes sections 580-12 and 580-13, the court has authority to order an obligor to provide security for such support, including life insurance on the obligor, sequestration of property, and security in specific assets.[61] Hawaii law also provides for the continued support of a child after reaching the age of majority (18), provided the child continues post-high school education on a full-time basis at a university, college or vocational school.[62]

Modification of Child Support

A number of jurisdictions provide for an automatic 3-year review cycle for child support orders. See Appendix I concerning state review and modification of child support orders. Review is not automatic in Hawaii; rather, the law permits a party to request modification, suspension or termination of a child support order upon a showing of substantial and material change in circumstances. However, Hawaii Revised Statutes section 576D-7(d) provides that a material change of circumstances will be presumed if the support amount, as calculated pursuant to the guidelines, is either ten per cent greater or less than the support amount in the outstanding support order.[63] Furthermore, Hawaii Revised Statutes section 576D-7(e) permits the custodial parent to petition the Family Court or the Child Support Enforcement Agency not more than once every three years for review and adjustment of the child support order, without having to show a change in circumstances.[64] Finally, the need to provide for a child's health care needs is a basis for petitioning for a modification of the support order.[65]

Enforcement Efforts

As noted previously, the 1996 welfare reform law strengthened enforcement tools available to the states. These include:

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59. HRS §576D-10(f) and (j).

60. *See* HRS §571-52.6; *Divorce Manual*: Child Support at 5.

61. *See Divorce Manual*: Child Support at 5.

62. HRS §§576-E-14(e) and 580-47(a); *Divorce Manual*: Child Support at 22 (allowing child support to age 23 appears to be based upon a Family Court memorandum issued some years ago and not on statutory or case law. Compare with many states such as Texas, in which child support terminates when the child reaches age 18. *See Divorce Manual*: Child Support at 8.) *See also* Appendix Q, *infra*.

63. *See also* HRS §§576E-14(c) and 580-47(c).

64. This does not prevent the custodial parent from petitioning for review and adjustment more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances. *See also* HRS §§576E-14(a) and 580-47(e).

65. *See* HRS §§576E-14(a) and 580-47(c).

- The national directory of new hires, which matches child support orders to employment records and was used in fiscal 2000 to locate 3.5 million noncustodial parents (See Appendix J);

- The financial institution data match program, which matches the names of delinquent obligors with records of financial institutions, enables states to "freeze and seize" funds, and was used in fiscal 2000 to locate accounts in excess of $3 billion; and

- The tax refund intercepts, which permits states to match delinquent obligors with federal tax refunds and seize those refunds and was used in fiscal year 2000 to collect a record $1.4 billion in overdue support. Most states planning to seize delinquent parents' federal refund checks are anticipating larger arrearage collections this year due to the size of the federal rebate. As an example, Massachusetts has decided to confiscate federal refund checks coming to 70,000 delinquent parents.[66]

Most jurisdictions also permit income-withholding (See Appendix K), liens on real and personal property (See Appendix L), and license restrictions for delinquent obligors (See Appendix M).

Additionally, states have experimented with or adopted new and innovative measures to increase collections from delinquent obligors. According to the National Conference of State Legislatures, the following jurisdictions' CSE agency have authority to publish names of delinquent obligors in the print or electronic media: Alabama, Alaska, Connecticut, District of Columbia, Florida, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Montana, New Mexico, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin. In addition the following states' websites maintain a "most wanted" list on the Internet: Alabama, Alaska, California, Connecticut, Georgia, Kentucky, Louisiana, Massachusetts, Missouri, New Hampshire, Ohio, Okalahoma, South Carolina, South Dakota, Texas, Virginia, Washington and Wyoming.

Furthermore, the National Conference of State Legislatures and other sources report the following recent state efforts:

Alabama – As an option to jail, delinquent parents can be ordered to participate in a program run by the state Department of Human Resources and a nonprofit agency to train low-income parents for jobs so they can pay their child support.

Alaska – In 2000, twelve delinquent obligors were prosecuted on behalf of their children who failed to receive support.

Arizona – In an attempt to target higher income self-employed obligors, Arizona enacted a new law last year (HB2059, 2000) authorizing courts to order self-employed parents to place

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66. *See* Ganow, at 1-2.

an amount equal to not more than 6 months of their child support obligation in an escrow account, to be maintained by the child support agency. Missed payments are paid out to the account. The money is released if the obligor makes complete and timely payments for a 2-year period.

Florida – The state passed a new law (SB400) to increase penalties for nonpayment of child support.

Illinois – A new law (effective 7/1/02) permits the Department of Public Aid to publish a Most Wanted list on its website, which could include any parent who owes more than $5,000 in child support. Written notice must be sent to the delinquent parent 90 days before the name is published.

Kentucky – Delinquent obligors were sent letters demanding payment and detailing the enforcement tools that may be used against them, including property liens, wage garnishment, and asset seizures.

Louisiana – Delinquent noncustodial parent website lists names of more than 45,000 parents who are at least 6 months behind in payments, including the Ten Most Wanted.

Michigan – The Friend of the Court agency in Livingston County is hiring its own warrant enforcement officers to track down deadbeat parents. Their mission will be to focus on getting parents to pay support, not just bringing parents into court. The officers will provide a link to human resources personnel to help parents find jobs. In Van Buren county, the names and birth dates of delinquent obligors is being published in the local papers.

Minnesota – The state Legislature authorized bonuses to counties for meeting goals in: reviewing cases to determine whether child support orders should be modified; establishing paternity; and enrolling children in their noncustodial parent's medical insurance plan.

New Hampshire – The state maintains a Ten Most Wanted Non-Supporting Parents list, which has resulted in the location of 71 of the 80 parents profiled since 1992 and the collection of more than $1 million. Posters of the latest offenders are placed at retail and grocery stores, liquor stores, and post offices, and the state provides a toll-free hotline and guaranteed anonymity to callers.

Oklahoma – To recover back child support, the Department of Human Services has begun a campaign of sending delinquent parents unusual boxes, including a frozen dinner, by certified mail, on the theory that the parents are more likely to sign for a box than a letter. Also to improve collections, the state is implementing a toll-free statewide calling system to handle questions about child support cases to enable caseworkers to concentrate on enforcing payments.

Texas – The state recently passed a new law (HB899) allowing the court to limit the payment of retroactive child support to four years, on the rationale that limiting past due orders will result in more money being paid back. Texas also has a most wanted list and maintains a

toll-free most wanted child support evaders hotline; reportedly 14 of the past 30 top evaders have been arrested.

Virginia – The state has a statewide program of "booting" cars of delinquent obligors. This is the last step before incarceration is sought and the "threat of booting" appears to work well in bringing in delinquent payments.[67]

Wisconsin – The state has instituted a program that lists liens placed against property owned by parents who owe more than $12,500 in back child support and deducts the amount owed from the sale of their property. The program has prompted many parents to pay voluntarily and has resulted in collections of nearly $1 million in delinquent support in its first nine months of operation. In Racine, Wisconsin, law enforcement officers staged a sting operation designed to trick persons with outstanding warrants into thinking they were to receive a government rebate. Many of those with outstanding warrants were parents delinquent in child support payments. Also, the Wisconsin Supreme Court recently upheld a ruling that, as a condition of his probation, a father who owes $25,000 in child support for his 9 children could not procreate.

A number of states have taken other steps to improve their Child Support Enforcement Agency's performance. For example, Florida has instituted a pilot project to streamline establishment of child support orders and cut back on formal hearings. Program aspects include allowing child support agencies to set child support payments, giving parents 20 days to request an administrative hearing to contest order or set payment schedule, and allowing appeals to a judge. The Illinois House of Representatives has established a Task Force to consider measures to improve the performance of the child support division, presently located within the Department of Public Aid. Ideas include creating a new state agency solely responsible for child support, privatizing collections, or turning responsibility over to the Attorney General's office. Oklahoma added additional personnel to its child support enforcement offices and District Attorney offices that handle child support cases. Virginia has launched a website that allows parents to view the status of their child support cases as part of a broad effort to make information more accessible online. It will continue to operate an 800-number customer service center, which currently receives 650,000 calls monthly. State officials estimate that 70% of these inquiries could be handled through the website. Washington has a new website that is offering expanded services and access for state residents who use Community Service Offices for information about programs, including child care and child support.

In addition, see Appendices N, O, and P concerning Child Support Enforcement Agency authority for expedited procedures and access to information. See Appendix Q concerning state procedure for collection of arrearages.

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67. Wayne County, Michigan and Cape May County, New Jersey have also used car booting programs.

Use of Criminal Penalties

Although most laws concerning child support guidelines and most child support enforcement mechanisms are civil in nature, the failure to pay child support may subject a delinquent obligor to criminal sanctions by: prosecution under a state criminal "failure to provide support" statute; prosecution under the federal Child Support Recovery Act of 1992 (CSRA); or a finding of contempt of court for failure to comply with the court's child support order.[68]

All states have criminal laws setting felony or misdemeanor penalties for failure to support a child or family, although most of these were originally intended for parents who abandoned or neglected their children.[69] Most states selectively use their state criminal nonsupport laws to target parents who purposely hide assets, avoid employment, or otherwise attempt to avoid their child support responsibilities. A few states reportedly have conducted high profile trials and "sting" operations to locate and prosecute parents with large child support debts -- in some cases several hundreds of thousands of dollars.[70]

In addition federal officials have begun to crack down on wealthy child support obligors in interstate cases. Project Save Our Children (PSOC)[71] was established by the Inspector General's Office, the Office of Child Support Enforcement of the U.S. Department of Health and Human Services, and the U.S. Department of Justice, to investigate and prosecute high-profile criminal nonsupport cases with interstate circumstances, typically under the Child Support Recovery Act of 1992.[72] Parents who wilfully avoid child support payments for a child in another state and owe the greater of a year's worth of child support or $5,000 may be prosecuted under the federal Child Support Recovery Act of 1992. The crime was originally classified as a misdemeanor, and delinquent parents risked a maximum jail term of six months. However, the passage of the Deadbeat Parents Punishment Act of 1998,[73] upgraded the federal crime to a felony, carrying a maximum prison sentence of two years for parents who owe at least $10,000 or who are at least two years behind in their child support obligation and possess two contempt citations for failure to obey their child support order. The 1998 Act also expanded the original offense to include delinquent parents who cross state lines to evade child support responsibilities, in addition to those living in different states from the children.

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68. Myers, T., "Case in Brief: Courts Uphold Criminal Penalties for the Failure to Pay Child Support," National Conference of State Legislatures, Child Support Project at 2.

69. *Id*. at 3 (maximum penalties under these laws vary greatly, from 14 years in prison for a felony conviction in Idaho to six months in prison for a misdemeanor in Rhode Island). Hawaii's persistent nonsupport offense is a misdemeanor. *See* HRS §709-903.

70. *Id*.

71. PSOC is intended as "a nationwide comprehensive and coordinated health and human services and criminal justice response to unresolved child support enforcement cases." The majority of parents arrested and prosecuted by PSOC are wealthy individuals with substantial assets. *See id*. at 2.

72. *See* 18 U.S.C. §228.

73. *Id*.

Enforcement of Support Payments in Hawaii

Income Withholding

The CSEA collects the employer withholding of the obligor's child support amount and makes direct payment to the appropriate parties. If an obligor becomes delinquent in making payments in an amount equal to the support payable for one month, the CSEA is authorized to issue an income withholding order with an additional amount sufficient to satisfy the delinquency.[74] Hawaii Revised Statutes sections 576D-14(i) and 576E-16(2)(d) require that the income withholding order be in the standard format prescribed by Title IV-D of the Social Security Act.

Interception of Income Tax Refunds

Federal law requires that obligors who either owe $150 or more for 3 months or longer or owe $500 or more to the obligee will have the past due support amount referred to the Secretary of the United States Treasury for collection by federal tax refund offset.[75] Other federal payments may be intercepted for administrative offset when child support arrearages of at least $25 are owed for more than 30 days.[76] An obligor who owes support arrearages in an amount exceeding $5,000 may have the obligor's passport revoked or restricted or may be denied a passport.[77] A delinquent obligor's state tax refund is also subject to interception by the CSEA to satisfy past due child support payments.[78]

Financial Institution Data Match

Section 576D-15, Hawaii Revised Statutes, authorizes the CSEA to enter into agreements with financial institutions doing business in the State and to obtain name, address, and social security number or other taxpayer identification number and other information for each obligor who maintains an account at the institution and is delinquent in child support payments.[79] In response to a notice of lien or levy, the financial institution is required to surrender or encumber assets held by it.

Liens on Real and Personal Property

When an obligor becomes delinquent in child support payments, a lien arises on any real or personal property then owned or subsequently owned by the obligor.[80]

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74. HRS §576D-10.

75. *See* 45 C.F.R. §303.72(a).

76. *See* 31 C.F.R. §285.

77. *See* 42 U.S.C. §652(k).

78. *See* HRS §231-53 and Hawaii Admin. Rule §5-31-31 (Attorney General).

79. Section 4 of Act 95, SLH 2001, amended this provision to require the financial institution to include the name and last know address of all account holders of any account reported under this section.

80. *See* HRS §576D-10.5. Section 1 of Act 95, SLH 2001, made a number of amendments to strengthen this provision.

Reporting to Credit Bureau

The CSEA is authorized to report the name and amount of delinquent child support owed by an obligor residing in the state to a consumer reporting agency.[81]

Medical Insurance Coverage

If a parent who is ordered to provide medical insurance coverage for the child fails to provide written proof that the insurance has been applied for or obtained, the CSEA is authorized to serve a copy of the order on the employer or applicable union, requiring that the child be enrolled as a beneficiary in the employer's group medical insurance plan and any required premium be withheld from the parent's income.[82]

License Suspension

CSEA is authorized to notify a licensing authority to suspend a license of or deny a license to an obligor who is not in compliance with a child support order.[83]

New Hire Reporting

Within 20 days of hiring a new employee, all employers in the State are required to report the name, address, and social security number of the new employee to the CSEA.[84]

Fathers/Effectiveness of Child Support Efforts

Despite states' recent efforts, collection rates have risen to only approximately 37%, and enforcement is particularly difficult for low-income families in which the obligor may not have a steady income or additional assets. While 54% of welfare families have received an order of support, only about 13% receive any regular child support. For those families not on welfare, close to 60% have established support orders, but less than 20% actually receive support.[85]

Experts also agree that the majority of fathers want to stay connected with their children, but face multiple barriers to providing emotional and financial support.[86] Contrary to popular

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81. *See* 15 U.S.C. §1681(a)(f) and HRS §576D-6(6) (notice and opportunity for an administrative hearing is provided to the obligor.)

82. *See* HRS §576E-17.

83. HRS §576D-13(a). The phrase "not in compliance with an order of support" means: is delinquent for 3 month period with regard to driver's and recreational license and for a 6-month period with regard to professional or vocational license; is delinquent in making periodic payments pursuant to written agreement on a support arrearages; or has not obtained or maintained health insurance coverage. *See* HRS §576D-1.

84. *See* HRS §576D-16 (civil penalties imposed for failure to report).

85. Reichert, *supra* note 3, at 3-4.

86. *See id*. at 5-7.

assumption, the majority of low-income fathers are connected with their child at birth, but most lack the wherewithal to assume the role of financial and emotional provider. Many of these fathers have a poor work history, low levels of literacy, sporadic employment or unemployment. Approximately one-third of all non-custodial fathers are considered low-income (i.e., earn less than $8,000 per year) and more than 50% had not completed high school and had never married. Although most low-income fathers have some employment history, most of the jobs are seasonal or temporary and tend to be low wage without benefits. Only 25% work full-time for the entire year.[87] Furthermore, many grew up without their own fathers and thus lack a suitable role model. Most social service systems that focus on children or poverty target only women; low-income fathers lack a parallel social network to help them understand the responsibility of raising children. In addition, many fathers of children receiving welfare funds report little incentive to pay support through formal mechanisms because, in a majority of states, any child support collected is retained by the state to offset the state's expenditures for cash assistance. Instead, many of these fathers provide what they can directly to the child's mother.

Programs

Policymakers are increasingly distinguishing between obligors who have the ability to pay child support but refuse to do so and those who are unable financially to meet their child support obligation. This has led to recognition that many low-income fathers are in need of similar employment and family support services, such as job training and placement, education, and substance abuse treatment, that are being offered to mothers making the transition from welfare to employment. Furthermore, the increased awareness of the effect of absent fathers on the lives of their children has led to the development of many programs that target services toward low-income, never married fathers. As a result, states and communities are experimenting with a variety of programs to assists low-income parents in meeting their child support obligations. While some programs provide employment assistance or job training, others offer parenting and child development education. Still others provide a broad array of services including assistance with modifying child support orders to manageable levels. Although some programs have formal connections to state agencies, such as child support agencies or the court systems, most are operated by local, community organizations and may be less successful in assisting fathers dealing with legal issues, such as child support modification or arrearages or paternity.

Notable exceptions to the decentralized and segregated approach to fatherhood services in many states are Florida and Massachusetts, which have established commissions to develop strategies to address issues of fatherhood statewide. For example, the 25-member Florida Commission of Responsible Fatherhood is directed by statute to identify critical issues facing fathers and their children, including systemic obstacles or barriers, and recommend policy changes or restructuring the framework or delivery of services to assist fathers. Recent recommendations include: restructuring child support guidelines to be more responsive to low-income fathers; changing visitation to interaction time, and targeting contraceptive services and education to boys instead of focusing primarily on girls. The Commission, which has authority

87. *See id*. at 3-4; NCSL, "Lesson One," *supra* note 1, at 3-4.

to fund local initiatives based upon the statewide strategic plan to serve fathers, has funded programs that provide mentoring, job training, parenting, and family counseling.[88]

Financial Resources Available

The sharp drop in welfare caseloads as a result of welfare reform[89] has left states with unprecedented resources, which otherwise would have been spent on cash assistance programs, to fund a variety of programs and services targeting fathers. Unlike the restrictive Aid to Families with Dependent Children program, the Temporary Assistance to Needy Families (TANF) block grant and state maintenance of effort (MOE) funds allow states flexibility to develop new programs and services and determine eligibility for those programs and services in a manner that best meets the needs of their populations, without prior federal approval. States also have the flexibility to establish different eligibility standards for different programs or services. Thus, states can use funds to support poor families, not just those who receive cash assistance. Furthermore, if states choose to include non-custodial fathers in their eligibility definitions, they can target low-income fathers even if they are not married to or living with the mothers of the children. Moreover, fathers who are provided services that do not have a direct cash value, such as job training or job hunting, are not subject to time limitations and work participation rate requirements.[90] State MOE funds have even more flexibility because they do not trigger time limits or work participation rates, as long they are not combined with federal funds. State MOE funds can be used on anything that accomplishes the broad purposes of TANF (i.e., end welfare dependency; promote employment; encourage two-parent families; and reduce out-of-wedlock pregnancies). Thus, the following services can be funded with TANF or MOE: employment assistance; job placement; job training; substance abuse treatment; mentoring; counseling; marriage counseling; pregnancy prevention; abstinence education; mediation; transportation and child care; activities that promote access and visitation; and pass-through of collected amounts of child support.

State legislatures have used their appropriation authority over both TANF and MOE to direct agencies to develop services or programs targeted at specific groups, such as non-custodial fathers, and can redirect resources or create participation requirements through the budget process, to ensure spending on fathers. For example, California has redirected some of its TANF savings from welfare caseload declines to fund several county programs aimed at fathers. Employment services offered include expedited paternity establishment, career planning and counseling, basic education, subsidized work experience, community services and vocational training. Other supportive services may include transportation, job retention hot-line, and mental health and substance abuse services, parenting skills development training, anger and conflict management, relationship building, and problem solving. Arizona, Florida, and Iowa are using welfare funds for programs focusing on services to fathers. In Florida, for example, local Work and Gain Economic Self-Sufficiency (WAGES) coalitions, which have authority for

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88. Reichert, at 16-17.

89. *Id*. at 43 (welfare reform has resulted in a drop of welfare caseloads by more than 40% nationwide).

90. *Id*. at 44. HHS final regulations indicate that federal time limits and work requirements apply only for programs or services that have a direct monetary value (i.e., cash assistance, vouchers, or assistance used to meet ongoing basic needs).

administering the TANF program, have funded programs targeting fathers. For example, two employment-focused programs mandate that fathers either find work and pay child support or go to jail. Another focuses on fathers of Head Start children and assists them with computer training, entrepreneurial skills, and self-empowerment.[91]

Other sources of funding for services to fathers include: the Social Services Block Grant; Welfare-to-Work grants; Workforce Investment Act funds; Child Support Enforcement funds; Community Services Block Grant funds; and private foundations and entities.[92] Some of these sources are more flexible than others. For example, since states define eligibility for the Social Services Block Grant (SSBG or Title XX, as it is commonly known), it could be used to fund other services for program recipients, including low-income fathers, related to employment or parenting, without triggering time limits or work participation rates.

The federal Welfare-to-Work (WtW) grant also explicitly allows eligibility for services to noncustodial fathers whose children receive TANF. However, the WtW funds lack the scope of flexibility of TANF and MOE funds. Seventy percent of the WtW funds must be spent on recipients or noncustodial fathers who meet the following criteria: have not completed high school or have low reading or math skills; require substance abuse treatment; or have a poor work history.[93] The remaining 30% may be spent on participants who have characteristics associated with long-term welfare dependency, such as teen pregnancy, school dropout, or poor work history. Arizona is using WtW funds to develop an intensive array of services to help noncustodial fathers. The statewide program involves partnerships with the court and child support systems to mandate participation and the services offered deal with employment and parenting issues. There is concern, however, by administrators that not all the WtW participation slots will be filled because an insufficient number of fathers are able to satisfy the eligibility criteria. This concern is shared by other states and has kept some states from fully utilizing the grants.[94] Networking with union employment and employer-sponsored training, Oregon is using its WtW grant to arrange apprenticeships and vocational skills training for noncustodial fathers. Wisconsin is focusing its services to noncustodial fathers on employment, such as wage subsidies, job readiness and post-employment/job retention. New York is using its WtW grant to extend eligibility for safety net services (case management and vouchers) to fathers.[95]

Another challenge faced by states in implementing these programs is recruiting fathers. In addition to mandating participation, states use various methods to reach would-be participants, including cross checking TANF and child support cases and recruiting through Head Start or child care providers, media outreach, fliers and brochures placed in employment offices, community centers homeless shelters, and food banks, and through correctional facilities.

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91. *Id*. at 46.

92. For more information on funding sources, *see* Welfare Information Network, "funding Sources for Fatherhood Programs," at http://www.welfareinfo.org/fatherhoodprogramsresource.htm.

93. Reichert, at 48.

94. *Id*. at 48. *See* figure 5 for states that have not applied for WtW block grants and for states that target services to noncustodial parents.

95. *Id*. at 49.

The most successful programs are those that have fostered collaborative relationships with other relevant partners, such as the child support agencies and the courts. Such relationships enable programs to deal with the full scope of a father's situation: employment, dealing with child support arrearages, establishing payment plans, modifying support, and helping fathers learn life skills or parenting skills. These include the following:

- Counties in Florida and Indiana have instituted programs through the courts that require fathers who are behind in child support payments to work or go to jail. For example, in Indiana, the courts and prosecutors work with private employers who agree to hire fathers through the program. Fathers, who have multiple barriers to employment or need help with résumé writing, literacy skills, or obtaining a GED or basic or advanced skills, are referred to Goodwill Industries or America Works.

- In Illinois, unemployed fathers who come before the courts are referred directly to the Child Support Enforcement Agency which has partnerships with community organizations to provide job training and assist with life skills. The agency also works to connect fathers to supportive services to deal with barriers such as substance abuse or mental health issues.

- The Georgia Fatherhood Program is a partnership between the state Department Adult Education, the Department of Human Resources, and the Child Support Enforcement Agency to aid fathers reevaluate their relationships with their children and the child support system. The program provides fathers with job training and life skills to help them find work, assume parental responsibilities, and gain self-esteem. Sixty-eight per cent of the program participants reportedly are paying child support.

- The Texas Fragile Families Initiative is a partnership among private/public funding entities and non-profit/government service providers to: foster an integrated state network of local programs for young fathers and their children; and develop the infrastructure necessary to support those programs dedicated to fragile families.

- Missouri's Parents' Fair Share program and San Antonio Texas's Child Support Probation Unit program also address barriers that prevent noncustodial parents from financially or emotionally supporting their children.

The National Conference of State Legislatures maintains that it will take time for states to develop a successful approach to help low-income, noncustodial fathers. It will require shifting paradigms and commitment from all relevant players, including policymakers and child support enforcement officials. Broadening the focus of child support agencies from that of revenue driven entities to that of service providers will not occur overnight. "Because collection efforts for low-income families are so low, states have everything to gain by making an investment in fathers. Children of these fathers have far more to gain, not just by getting regular support, but

by possibly reconnecting with fathers that many states have been too quick to label deadbeats."[96] The National Conference of State Legislatures urges that policymakers assist state agencies and local administrators in understanding the flexibility they now have, and concomitantly, the possibilities that are open to them, in trying new approaches to serve families. To further these goals, the NCSL has established the Nurturing Responsible Families Project to assist policymakers to develop informed solutions and provide free onsite technical assistance on this issue, as well as on other family law issues, such as custody, visitation, and child support. See Appendix R. It also should be noted that this issue continues to gain momentum nationally, with a number of bills relating to fatherhood issues having been introduced in Congress over the last several years. See Appendix S for a comparison of some of these. Additionally, the United States Department of Health and Human Services has approved grants and waivers for efforts promoting responsible fatherhood by helping non-custodial fathers support their children financially and emotionally.[97]

The State of Hawaii apparently does not presently participate in or fiscally support any publicly funded programs targeted solely to fathers. According to a spokesperson for the state Department of Human Services, the public assistance programs and services provided are parent focused, not gender-biased, pursuant to Act 301, Session Laws of Hawaii 2001. Although the prefatory language in section 1 of Act 301 states that its purpose is to "help prevent the inadvertent neglect of fathers' involvement in their children's lives by asking all state and county agencies to review their contracts, programs, and services to ensure that fathers are included, where possible, in their children's lives," the statutory language of section 2 of the Act, which is codified as section 577-7.5 of the Hawaii Revised Statutes, appears to emphasize "eliminat[ing] any preference in a state or county executive agency contract, program, or service that favors one parent over the other in terms of child-rearing." This language evidently raises concern that any fatherhood initiative would conflict with the intent of Act 301.

Uniform Interstate Family Support Act (UIFSA)

Pursuant to section 321 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996,[98] Congress required the states to enact the Uniform Interstate Family Support Act (UIFSA) as a condition of receiving federal funding for child support programs. All United States jurisdictions have adopted the UIFSA, including Hawaii, which has codified the law as chapter 576B of the Hawaii Revised Statutes.

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96. *Id*. at 52.

97. For example, under HHS's Partners for Fragile Families demonstration project, 10 states will examine ways for child support enforcement programs and community and faith-based organizations to work together to help young unmarried fathers obtain employment, provide financial support to their families, and improve parenting skills. Furthermore, HHS has given demonstration grants or waivers to eight states, to test comprehensive approaches to encourage more responsible fathering by non-custodial parents, including a range of needed services, such as job search and training, access and visitation, social services, and child support. *See* HHS Fact Sheet, "HHS Role in Child Support Enforcement," at http://www.os.dhhs.gov/news/press/ 2001pres/01fssupport.html.

98. Pub. L. No. 104-193.

The purpose behind UIFSA was to reduce the number of interstate support cases and multiple and conflicting support orders, caused when transient obligors had several different support orders with overlapping time periods. This situation resulted in chaotic enforcement, as courts differed on which order to enforce. The UIFSA promoted the "one order" concept, by allowing registration of a foreign support order for enforcement purposes. Once a foreign order was registered, the tribunal in the registering state lacked authority to modify or change the terms of the support order, except under limited circumstances set out in the Act.[99] The UIFSA also provides for several expanded bases for long-arm jurisdiction over a nonresident obligor[100] and for one-state enforcement by direct wage withholding, resulting in a nonresident obligor's employer located in this State being required to honor another state's wage withholding order.[101]

Thus an enforcing party in a support case may directly reach the obligor's employer in another state, without having to request assistance from the support enforcement agency or the attorney in the employer's state.[102] To encourage and facilitate the establishment of paternity where one party resides in another state, the UIFSA's basis for long-arm jurisdiction also applies to paternity cases.[103] The UIFSA and the PRWORA also provide procedures for the nondisclosure of address and other identify information of a party and child subject to domestic violence.[104]

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99. *See* HRS §576B-603(c) and §§576B-609 through 576B-614.

100. HRS §576B-201.

101. *See* HRS §§576B-501 and 576B-502 (require an obligor's employer to honor a direct income withholding order from another state).

102. Compare with the Full Faith and Credit For Child Support Orders Act (FFACCSOA), which was passed at a time when few states had enacted UIFSA. The FFACCSOA required each state's courts to enforce a child support order of another state that meets the Act's requirements and further limited the circumstances in which another state's order could be modified. The provisions of the FFACCSOA, as amended, are consistent with those of the UIFSA. Consequently, the application of the FFACCSOA is less significant now that all U.S. jurisdictions have enacted the UIFSA.

103. *See* HRS §576B-201.

104. *See* HRS §576B-312 and 42 U.S.C §653.

PART III. CUSTODY ISSUES

Custody Generally

Legal custody refers to who has the authority to make major legal decisions on behalf of a child. Physical custody refers to where the child actually resides the majority of the time. Usually the parent with physical custody is responsible for decisions relating to the day-to-day care of the child. Joint legal custody means that the major decisions affecting a child's welfare (i.e., school, religion, and health care) are made jointly by both parents. An award of joint legal custody may or may not include joint physical custody. Joint physical custody usually refers to an arrangement in which the child's time-share plan involves significant time with both parents, who participate actively and cooperatively with each other and the child. A joint legal custody award may provide for an extended period of time for the child to live with each parent. On the other hand, the physical custody arrangement may more resemble a situation where legal custody is awarded to only one parent, with the child spending most of the time with that parent and having periods of "visitation" with the other parent. In such case, the parent in-residence would probably make the day-to-day decisions, whereas both parents would jointly make any major decisions.

The general standard for awarding child custody in all states remains the "best interest of the child."[1] There is a preference for joint custody in a number of jurisdictions; and a judge failing to award joint custody must state why it is not in the child's best interests.[2] However, joint custody awards may be denied when parents have a history of violence and acrimony.[3] See Appendix T concerning custody criteria in the various jurisdictions.

Several states have adopted a statutory requirement that parents seeking custody must file a "parenting plan" that generally outlines how parental responsibilities and parenting time will be shared.[4] Details typically include: residential schedule; holiday, birthday, and vacation planning, as well as non-school time; allocation of decision making and responsibility; information sharing and access; relocation of parents; transportation issues; and methods for resolving disputes.

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1. L. Elrod and R. Spector, "A Review of the Year in Family Law: Redefining Families, Reforming Custody Jurisdiction, and Refining Support Issues," 34 Family Law Quarterly 607, 626 (Winter 2001) (hereafter Elrod: 2001).

2. Elrod: 2001, at 626, citing Mixon v. Mixon, 602 N.W.2d 406 (Mich. Ct. App. 1999); In re Marriage of Robinson, 16 S.W.3d 451 (Tex. App. 2000) (presumption rebutted by evidence of conflict and geographical distance). *But see* Morris v. Morris, 758 So.2d 1020 (Miss. Ct. App. 1999) (trial court erred by awarding joint custody absent parties' agreement or request).

3. L. Elrod and R. Spector, "A Review of the Year in Family Law: Century Ends with Unresolved Issues," 33 Family Law Quarterly 865 (Winter 2000) (hereafter cited as Elrod: 2000), at 881.

4. *Id. See also* Fla. Stat. Ann. §61.21 (1998); Kan. Stat. Ann. 60-1625 (2000 Supp.); Ore. Rev. Stat. §107.102 (1999); Ohio Rev. Code §3109.04(D) (2000); Wash. Rev. Stat. Ann. §26.09.181 (1997); W.Va. Code Ann. §48-11-203, 204 (1999).

A number of states are also requiring parenting agreements to include provisions for alternative dispute resolution, such as mediation. However, the American Bar Association recommends that court mandated mediation include a provision to opt out if one party has perpetrated domestic violence upon the other.[5] Some states have experienced great success with mediation programs. For example, the Texas Supreme Court has established a model divorce mediation program to help parents handle disagreements over issues such as visitation and child support, without returning to court. As evident from Appendix U, a number of states have recently passed laws relating to parenting classes, family counseling, including certification or licensure of counselors, and incentives for premarital education/counseling.

Custody in Hawaii

Section 571-2, Hawaii Revised Statutes, defines legal custody as:

> The relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the minor and the duty to protect, train, and discipline the minor and to provide the minor with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities and the rights and responsibilities of any legally appointed guardian of the person.

As in most states, the standard for awarding custody in Hawaii is the "best interest of the child," and the Family Court has wide discretion in this regard.[6] This standard, as well as other considerations and procedures, is set forth in Hawaii Revised Statutes section 571-46. According to the 2000 Hawaii Divorce Manual, the court generally will consider the following factors in determining which custody arrangement best meets the child's needs:

(1) Child's physical (i.e., food, shelter clothing, education supervision protection, health care) and emotional (dependency, independence, responsibility, self esteem, friendships, social relationships) needs;

(2) Child's preferences -- section 571-46(3), Hawaii Revised Statutes, allows the court to consider wishes of the child. However, the child must be of sufficient age and capacity to make an intelligent preference;

(3) Parents versus third-parties. Parents are given priority in custody disputes in the absence of a court order awarding custody to a person other than the parents. A third party who does not have custody must allege the parents are not fit and proper persons or that the parents' homes are not stable and wholesome;[7]

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5. Elrod: 2001, at 620, citing, as an example, Minn. Stat. Ann. §518.09.

6. Rezentes v. Rezentes, 88 Haw. 200, 965 P.2d 133 (App. 1998); *accord*, in the Interest of John Doe, Born on September 14, 1996, 89 Haw. 477, 974 P.2d 1067 (App. 1999), quoting In re Doe, 7 Haw. App. 547, 558, 784 P.2d 873, 880 (1989) ("the decision as to what custodial arrangements are in the best interests of a child is a matter or question of ultimate fact reviewable under the clearly erroneous standard of review.").

7. *See* Hawaii State Bar Association, Family Law Section, *Hawaii Divorce Manual* (William Darrah, ed.): Custody Chapter, at 9 (hereafter cited as *Divorce Manual*: Custody); Section 2 of the 2001 Hawaii Divorce

(4) Stability of the child's physical and emotional environment; and

(5) Parental alienation - i.e., conduct by one parent that denigrates the other parent to the child. Such conduct may range from unintentional, relatively innocent naïve conduct communicating lack of confidence in the other parent to "appalling, vitriolic misconduct, including false allegations of sexual or physical abuse by the perpetrator parent or untrue allegations of other misconduct by the non-custodial spouse ('target parent') and may also involve outrageous misconduct by the child involved against the target parent."[8]

According to the 2000 Hawaii Divorce Manual concerning custody, if the parties are in agreement on the issue of joint custody, the court generally will order joint legal custody.[9] However, if the parties are not in agreement and have serious parenting differences, it is unlikely the court will order it. Furthermore, if the custodial parent appears intent on completely excluding the noncustodial parent from the child's affairs, the court may order joint legal custody over the custodial parent's objection.

Child Custody Evaluation Report

Hawaii Revised Statutes sections 571-45 and 571-46(4) and family court rule 16(b) authorize the court to order a social study concerning the care, welfare, and custody of the child. The Family Court of the First Circuit assigns social studies to private custody evaluators and has implemented a Parenting Counseling Project, which has been described as "akin to mediation, with an educational component."[10] The goal is to guide parents toward a voluntary, mutually agreeable parenting plan that is in the child's best interest. When necessary, custody guardian ad-litems are appointed, pursuant to Hawaii Revised Statutes section 571-46(8), to represent the interest of the child in divorce or paternity custody proceedings. Evaluations of the use of private custody evaluators and custody guardian ad-litems have indicated that their involvement in cases have resulted in reductions of: conflict; adversarial relations between parties; harm to children; and time spent in court, and have significantly assisted in the settlement of the majority of the cases.[11]

Manual Supplement at 19-20, citing In the Matter of the Guardianship of Jan Doe, 93 Hawaii. 374, 4 P.3d 508 (App. 2000).

8. *Divorce Manual*: Custody, at 9-11. *See also* In the interest of Jane Doe born June 20, 1995, 95 Haw. 183, 20 P.3d 616 (2001), *rev'g*, 95 Haw. 201, 20 P.3d 634 (App. 2000).

9. *Divorce Manual*: Custody, at 27. *But see*, Hall v. Hall, 96 Haw. 105, note 1 (dicta), 26 P.3d 594 (App. 2001), aff'd on other grounds, 95 Haw. 318, 22 P.3d 965 (2001) ("Custody/visitation of the children 'should be awarded to either parent or to both parents according to the best interests of the child[.]' Hawaii Revised Statutes §571-46 (Supp. 1999). The agreement of the parties is not determinative. In our view, rare is the situation where a 50/50 physical custody/visitation arrangement is in the best interests of the child.")

10. *Divorce Manual*: Custody, at 7. On the neighbor islands, the Judiciary's Adult Services Branch continues to conduct the social studies.

11. *Id.* at 7.

Education

Like most other jurisdictions, the family courts in the First, Second, and Third circuits provide effective, mandatory educational programs for divorcing parents and children to educate them about the effects of divorce on children and how to make child-centered decisions.

Family Violence Issues

Hawaii Revised Statutes section 571-46(9) creates a rebuttable presumption that placing a child in the sole legal or physical custody or the joint legal or joint physical custody of a perpetrator of family violence is detrimental to the child and not in best interest of the child. This applies where there is a dispute as to custody and the court makes a determination that a parent has committed family violence. In such instance the court also is required to:

(1) Consider as primary the safety and well-being of the child and of the parent who is the victim of family violence;

(2) Consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another;

(3) Not consider the absence or relocation of a parent who is absent or relocates because of an act of family violence, as a factor that weighs against the parent in determining custody or visitation.

In addition, Hawaii Revised Statutes section 571-46(10) substantially curtails the visitation rights of a parent who has committed family violence, by providing that the court, in such instance, may award visitation to such parent only if it finds that adequate provisions can be made for the safety of the child and the parent/victim. To that end, Hawaii Revised Statutes section 571-46(11) authorizes the court to do any of the following to ensure the safety of the child and the parent/victim:

(1) Ordering that the exchange of the child occur in a protected setting;

(2) Ordering supervision of the visitation by another person or agency;[12]

(3) Ordering the perpetrator of family violence to attend and complete a program of intervention or counseling as a condition of visitation;

(4) Ordering the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances for 24 hours preceding and during the visitation;

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12. If a family or household member is allowed to supervise the visitation, the court must establish conditions to be followed during the visitation. Hawaii Revised Statutes §571-46(13). *Also see* Hawaii Revised Statutes §571-46(14) for minimum safety requirements for a supervised visitation center.

(5) Ordering the perpetrator of family violence to pay a fee to defray the cost of supervised visitation;

(6) Prohibiting overnight visitation;

(7) Requiring a bond from the perpetrator of family violence for the safe return of the child;[13]

(8) Imposing any other condition deemed necessary for the safety of the child, victim of family violence, or other family or household member; and

(9) Ordering that the address of the child and the victim be kept confidential.

Hawaii Revised Statutes section 571-46(12) also provides that, although a court may refer, it shall not require that, as a condition of receiving custody or of visitation, an adult victim of family violence attend, either individually or with the perpetrator, counseling relating to the victim's status or behavior as a victim.[14] Similarly, Hawaii Revised Statutes section 580-41.5(c) provides that, in any proceeding concerning custody or visitation, if a protective order is in effect, the court shall not require a party alleging family violence to participate in any component of mediation against the wishes of that party.[15] If a protective order is not in effect, the court may order mediation or refer the party to mediation *only* if:

(1) Mediation is authorized by the alleged victim of family violence;

(2) Mediation is provided in an manner that protects the victim's safety, by a mediator trained in family violence; and

(3) The victim is permitted to have a supporting person of the victim's choice in attendance, including an attorney or advocate.[16]

The law also imposes an affirmative duty upon any mediator, receiving a referral or order from a court to conduct mediation, to screen for the occurrence of family violence between the parties. Furthermore, a mediator is prohibited from engaging in mediation, except under the conditions noted above, if it appears to the mediator, or if either party asserts, that family violence has occurred.[17]

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13. Court must consider the perpetrator's financial circumstances in setting the bond. Hawaii Revised Statutes §571-46(11)(G).

14. *See* note 5 *supra* and accompanying text.

15. HRS §580-41.5(c).

16. HRS §580-41.5(d). This option, if the victim exercises it, shall be available to any other party to the mediation. HRS §580-41.5(d)(3).

17. HRS §580-41.5(b).

Modifying Custody

Under Hawaii Revised Statutes section 571-46(6), an award of custody may be modified whenever the best interest of the child requires or justifies modification or change. Although not a statutory rule, the Hawaii Intermediate Court of Appeals has ruled that a finding of a material change in circumstances is necessary to support a modification or change of custody.[18]

Visitation Issues

Visitation refers to court awarded access by the noncustodial parent to the child. Visitation is a right of a parent to have access to a child and the right of a child to have access to a parent. Like most states, visitation in Hawaii is not conditioned upon the payment of child support by the noncustodial parent and the custodial parent may not deny visitation on the grounds of nonpayment of child support.

Third Party Rights

In *Troxel v. Granville*,[19] the United States Supreme Court decided that Washington's third party visitation statute, which allowed *any person* to petition for visitation rights at any time and for visitation to be granted if in the child's best interest, was unconstitutional "as applied" under the Due Process Clause, because it infringed upon fundamental parental rights of privacy and autonomy in child rearing.[20] The Court found that the Washington nonparental visitation statute "effectively permits any third party seeking visitation to subject any decision by a parent concerning visitation of the parent's children to state-court review."[21] Justice O'Connor, writing for the plurality, expressed particular concern that, under the statute, "a parent's decision that visitation would not be in the child's best interest is accorded no deference."[22]

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18. *See* Nadeau v. Nadeau, 10 Haw. App. 111, 861 P.2d 754 (1993).

19. No. 99-138 (S. Ct. June 5, 2000), to be reported at 530 U.S. 57 (2000). Copies may be found, and are cited to herein, at http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=99-138 (hereafter cited as *Troxel*, findlaw).

20. *Troxel*, findlaw, at 6. Justice O' Connor, writing the plurality opinion, emphasized the "breathtakingly broad" nature of the Washington statute that let "any person" seek visitation at "any time." *Id. See,* Washington Rev. Code §26.10.160(3). As of November 1999, 12 other states allow "any person" to seek visitation: Alaska, California, Connecticut, Hawaii, Illinois, Maine, Michigan, Ohio, Oregon, Virginia, Washington, and Wisconsin. *See also* Jeff Atkins, *Modern Child Custody Practice*, 2nd Ed. §9-13.

21. *Troxel*, findlaw, at 6.

22. *Id*. Justice O'Connor further wrote:

> Section 26.10.160(3) contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent's estimation of the child's best interests, the judge's view necessarily prevails. Thus, in practical effect, in the State of Washington a court can disregard and overturn any decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interests.

Justice O'Connor also noted that the lower court's order "was not founded on any special factors" that might justify the State's interference with the mother's fundamental right to make decisions concerning the rearing of her two daughters.[23] Justice O'Connor relied upon several factors to conclude that the Washington statute, as applied, exceeded the bounds of the Due Process Clause. First, the grandparents did not allege, and the court did not find, that the mother was an unfit parent. Justice O'Connor maintained that this "aspect of the case is important, for there is a presumption that fit parents act in the best interests of their children."[24] She pointed out that the lower court not only gave no special weight at all to the mother's determination of her daughters' best interests, but more importantly, applied exactly the opposite presumption, by placing upon her the burden to disprove that visitation would be in the best interest of the children.[25] She concluded that the "decisional framework employed by the [lower court] directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child. In that respect, the court's presumption failed to provide any protection for Granville's fundamental constitutional right to make decisions concerning the rearing of her own daughters."[26] Accordingly, the Supreme Court concluded that, assuming a parent is fit, the

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Id. She also noted that the Washington Supreme Court declined the opportunity to give §26.10.160(3) a narrower reading, instead interpreting it as "allow[ing] any person, at any time, to petition for forced visitation without regard to relationship to the child, without regard to changed circumstances, and without regard to harm" with "the only requirement being that the visitation serve the best interest of the child. *Id*. *See* 137 Wash. 2d, at 5, 20, 969 P. 2d, at 23, 30.

23. *Troxel*, findlaw, at 7.

24. *Id*.

25. *See id*. at 7-8. *See also* Elrod: 2001, at 608-09, noting that the dispute was over the amount of visitation, not whether it should be cut off entirely.

26. *Troxel*, findlaw, at 7-8, citing the following state statutes as according "at least some special weight" to the parent's opinion:

> *cf., e.g.*, Cal. Fam. Code Ann. §3104(e) (West 1994) (rebuttable presumption that grandparent visitation is not in child's best interest if parents agree that visitation rights should not be granted); Me. Rev. Stat. Ann., Tit. 19A, §1803(3) (1998) (court may award grandparent visitation if in best interest of child and "would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child"); Minn. Stat. §257.022(2)(a)(2) (1998) (court may award grandparent visitation if in best interest of child and "such visitation would not interfere with the parent-child relationship"); Neb. Rev. Stat. §43-802(2) (1998) (court must find "by clear and convincing evidence" that grandparent visitation "will not adversely interfere with the parent-child relationship"); R. I. Gen. Laws §15-5-24.3(a)(2)(v) (Supp. 1999) (grandparent must rebut, by clear and convincing evidence, presumption that parent's decision to refuse grandparent visitation was reasonable); Utah Code Ann. §30-5-2(2)(e) (1998) (same); Hoff v. Berg, 595 N. W. 2d 285, 291-292 (N. D. 1999) (holding North Dakota grandparent visitation statute unconstitutional because State has no "compelling interest in presuming visitation rights of grandparents to an unmarried minor are in the child's best interests and forcing parents to accede to court-ordered grandparental visitation, unless the parents are first able to prove such visitation is not in the best interests of their minor child").

parent's determination of such issue "must be accorded at least some special weight" by a reviewing court.[27]

The United States Supreme Court in *Troxel* reaffirmed the rights of a fit parent to the care, control, and custody of the parent's child and to make decisions for the child. Relying upon *Troxel*, several states have limited their own third party visitation statutes, finding them "'unconstitutional as applied' to the situations presented"[28] or finding that they violate parents' right to privacy.[29] Generally, parents are entitled to custody of their children absent a showing of unfitness or inability to care for the child.[30] Washington, Florida, Oklahoma, North Dakota and Tennessee found that statutes authorizing grandparent visitation impinged on parental rights.[31] Also see Appendix V concerning state legislation recently passed in response to *Troxel*. Hawaii's statutory provision dealing with grandparent visitation is found in section 571-46.3 of the Hawaii Revised Statutes, which permits the court to award reasonable visitation rights to a grandparent or the grandparents of a minor child; provided that: Hawaii is the home state of the child at the time of the commencement of the proceeding; and reasonable visitation rights are in the best interests of the child.[32]

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27. *Troxel*, findlaw, at 8. *See id*. at 7, citing *Flores*, 507 U.S., at 304 ("normally ... no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.").

28. Elrod: 2001, at 631, citing Kyle O. v. Rondald R., 102 Cal. Rptr. 2d 476 (Ct. App. 2000); Lulay v. Lulay, 739 N.E. 2d 521 (Ill. 2000); SRS v. Paillet, 16 P.3d 926 (Kan. 2001); Brice v. Brice, 754 A.2d 1132 (Md. Ct. Spec. App. 2000); Rideput v. Riendeau, 761 A.2d 291 (Me. 2000).

29. Elrod: 2001, at 631, citing Saul v. Brunetti, 753 So.2d 26 (Fla. 2000) (grandparent visitation for child born out of wedlock was unconstitutional violation of parent's state privacy rights). *See also*, In re G.P.C., 28 S.W. 2D 357 (Mo. Ct. App. 2000) (minimal visitation not infringement on parent's rights); Sicking v. Sicking, 996 P.2d 471 (Okla. Ct. App. 2000), cert. denied (award of visitation to parents of noncustodial parent during time noncustodial parent is unable to exercise visitation is not unconstitutional).

30. Troxel v. Granville, 530 U.S. 57 (2000). *See also* Young v. Young, 14 S.W.3d 261 (Mo. Ct. App. 2000); Watkins v. Nelson, 748 2d 558 (N.J. 2000); Montgomery v. Montgomery, 524 S.E. 2d 360 (N.C. App. 2000). Courts have generally held that the presumption may be rebutted by evidence of unfitness, long acquiescence by parent to another caregiver, or lengthy voluntary relinquishment that has created a strong bond that would cause harm to the child if severed. *See* Elrod: 2001, at 630, citing In re Marriage of Huber, 7832 N.E.2d 973 (Ind. Ct. App. 2000); Hamers v. Guttormson, 610 N.W. 2d 758 (N.D. 2000).

31. *See* Elrod: 2000 and cases cited at 884-885.

32. HRS §571-46.3 reads:

> **§571-46.3 Grandparents' visitation rights; petition; notice; order.** A grandparent or the grandparents of a minor child may file a petition with the court for an order of reasonable visitation rights. The court may award reasonable visitation rights provided that the following criteria are met:
>
> (1) This State is the home state of the child at the time of the commencement of the proceeding; and
>
> (2) Reasonable visitation rights are in the best interests of the child.
>
> No hearing for an order of reasonable visitation rights under this section shall be had unless each of the living parents and the child's custodians shall have had due notice, actual or constructive, of the allegations of the petition and of the time and place of the hearing thereof.

Third party rights, especially as to visitation, have come up in other contexts as well. For example, New Jersey's high court, in allowing a lesbian partner to seek visitation as a psychological parent, adopted Wisconsin's definition of a de facto parent. The court noted that "[f]undamental to a finding of the existence of that status is that a parent-child bond has been created."[33] The decision is similar to a recent Massachusetts Supreme Court ruling that granted visitation rights to a lesbian who assisted in raising her ex-partner's son. Likewise, the Rhode Island Supreme Court ruled recently that a lesbian co-parent was entitled to permanent visitation rights of a child she had helped raise. In Minnesota, the court granted the sperm donor and the former lesbian partner visitation rights with a six-year-old child, indicating that the child's welfare takes precedence over a custody agreement by the parties.[34] The Pennsylvania Supreme Court recently recognized that the former female partner of the birth mother has legal standing as a parent to seek partial custody of the child conceived through artificial insemination.[35] The women lived in a home they bought together, shared a bank account, raised the child jointly, and the partner was listed as the child's guardian in the mother's will. Several states, however, continue to follow the traditional strict construction of existing statutes, finding that, absent a statutory right, parents are entitled to the custody and control of their children and former lesbian partners are not entitled to visitation.[36]

Other Recent Visitation Issues

Courts in New Jersey and Tennessee were considering "virtual visitation" as an option for divorced couples who live in different locations. New Jersey's appeals court asked a lower court to reconsider its rejection of a virtual visitation proposal, while Tennessee's court of appeals backed Internet visitation. Also, a federal court approved virtual visitation in a case where one parent lived in Colorado and the other in Spain.

In Nebraska, a court is grappling with a mother's right to overnight visitation by her six-year-old son while she is in prison for killing her estranged husband's girlfriend and a passer-by.

> An order made pursuant to this section shall be enforceable by the court, and the court may issue other orders to carry out these enforcement powers if in the best interests of the child.

33. V.C. v. M.L.B., 748 A.2d 539, 555 (N.J. 2000). The court also noted that the legal parent must consent to and foster the relationship between the third-party and the child and the third party must perform parental functions for the child to a significant degree.

34. LaChappelle v. Mitten, 607 N.W. 2D 151 (Minn. Ct. App. 2000).

35. *See* "Same-sex parental rights extended," Post Gazette News (January 3, 2002) at http://www.post-gzette.com/regionstate/20020103custody0103p6.asp; and "State Supreme Court Rules on Lesbian's Visitation Rights," Human Rights Campaign, Family Net at http://www.hrc.org/familynet/newsstand.asp?ID=1313.

36. Elrod: 2001, at 632, citing Kathleen C. v. Lisa W., 84 Cal. Rptr.2d 48 (Ct. App. 1999) (no visitation rights for mother's former lesbian partner who is not an adoptive or biological parent; In re Matter of Visitation of Girl Baby, 723 N.E.2d 316 (Ill. App. Ct. 2000); Thompson v. Thompson, 11 S.W.3d 913 (Tenn. Ct. App. 1999). According to ABC News.com, state courts in New York and Florida also have ruled recently that lesbian ex-partners are not entitled to visitation rights with children they helped nurture, regardless of how deep the emotional bond. *See* "Same-Sex Ex's Given Custody Rights," at abcnews.go.com/sections/us/Daily News/lesbians000406.html.

The correctional center allows overnight stays by a child up to age 8 and the divorce agreement allows the mother parenting time that includes overnight stays, but the father is refusing to allow the son to stay overnight. The court is considering possible contempt charges and jail time for the father.

Relocation Issues

Given the mobility of modern society, the effect of the relocation of custodial parents has become a recurring issue. Whether a custodial parent should be allowed to relocate without a modification in the custody arrangements involves two competing propositions. One theory holds that, to prosper socially and emotionally, children need both parents to remain actively involved in their lives. This theory supports daily involvement and/or frequent and continuing contact with the child. The second proposition is that the quality of the relationship between the non-custodial parent and the child may be far more important than daily contact, and the child's well-being is affected more by the stability of the new family unit.[37]

Over the last five years, as society has become increasingly more mobile, a clear national trend has developed in support of allowing the primary custodial parent to relocate. This shift from more restrictive relocation policies to more liberal and flexible policies reflects recognition by social scientists that the divorced family is "a fundamentally different unit than the marital family and that a child's circumstances may actually be improved by a relocation when other positive factors are present."[38]

Some state statutes specifically address relocation. For example: Texas requires that the primary residence be specified in an agreement or by the court and geographical restrictions be included; and North Dakota and Connecticut place the burden on the custodial parent to prove relocation is consistent with the child's best interest. In addition, several states have recently amended their relocation statutes to require notice and to list factors for the court to consider.[39] Missouri reportedly is considering whether to modify or abolish a 1998 law requiring a custodial parent to give 60 days' written notice to the noncustodial parent if the custodial parent intends to move. Some lawmakers reportedly want to amend the law to apply only to out-of-state moves or those over a certain distance. Critics of the law maintain that: the law restricts the lives of custodial parents, preventing them from relocating for better jobs, new marriages, or the support network of an extended family; and the power to block relocation can be dangerous in abusive situations.

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37. *See Divorce Manual*: Custody, at 11.

38. *See id*. at 12.

39. *See* Ariz. Rev. Stat. §25-408 (2000) (exempts parties from the notice provisions if they have a written agreement relating to relocation within one year on the proposed relocation and adds the potential effect of relocation on child's stability as a factor to consider); Kan. Stat. Ann. §60-1620 (Supp 2000) (30 days notice required of any move and court must consider the effect on the best interest of the child, parenting time, and the increased costs); Minn. Stat. §518.1705 (2000) (parenting plan can direct best interest standard to govern relocation if both parties were represented by counsel or were fully informed, agreement was voluntary, and the parents were aware of the implications).

In considering relocation issues, courts generally continue to rely upon the best interest of the child standard. In determining the "best interest," courts have typically examined factors such as: whether the improvement in the general quality of life of the custodial parent would indirectly benefit the child; the potential negative impact on the relationship between the child and the noncustodial parent; whether there is reasonable opportunity for visitation/communication that can provide an adequate basis for preserving and fostering the child's relationship with the noncustodial parent; and the likelihood that each parent will comply with alternate visitation.[40] The majority of appellate cases that have faced the issue have allowed the relocation of the child with the parent.[41] The following is a synopsis of some of the seminal cases on the issue of relocation:

Tropea v. Tropea[42]

Long considered one of the most restrictive jurisdictions against the relocation of custodial parents, New York's state law had required parents to meet very high burdens to justify their request to relocate as an exceptional circumstance. The New York Court of Appeals held that the decision to allow relocation would be based upon consideration of all relevant facts, with predominate emphasis placed on what outcome is most likely to serve the best interest of the child.[43] The court stated that summarily rejecting the custodial parent's motive to relocate "overlooks the value for the children that strengthening and stabilizing the new, post-divorce family unit can have in a particular case."[44]

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40. *See* Elrod: 2000, at 883.

41. *See, e.g*., Pearson v. Pearson, 5 P.3d. 239 (Alaska 2000) (mother allowed to move to Pennsylvania and father's visitation modified); Johnson v. Johnson, 759 So.2d 257 (La. Ct. App. 2000) (permitted mother to relocate to Missouri with nine year old child, who had primarily resided with her, child wanted to stay with her, and she was more aware of his socialization problems); Walkowaik v. Walkowaik, 749 So.2d 749 (La. Ct. App. 1999) (not error to allow mother to relocate, to home state with child); In re Ludwinski, 727 N.E.2d 419 (Ill. Ct. App. 2000) (allowed father to move children to another state for career and salary advancement and to be near second wife's family, where mother had history of psychologically manipulating the children and visitation could preserve mother's relationship); Farnsworth v. Farnsworth, 597 N.W. 2d 592 (Neb. 1999) (permitted mother to move for career opportunities); Thomas v. Thomas, 705 N.Y.S.2d 435 (N.Y. 2000) (possibility of relocation considered in awarding mother primary physical custody); McGuiness v. McGuiness, 970 P.2d 1074 (Nev. 1998) (error to deny mother's petition to relocate, solely because it would render current joint custody arrange impossible when court should have considered possibility of reasonable alternate visitation). *But see* Braun v. Headley, 750 A.2d 624 (Md. Ct. Spec. App. 2000) (constitutional right to travel is a qualified right, subject to best interest of the child, and a proposed relocation might constitute a change of circumstances sufficient to trigger a review of custody award); Lackey v. Fuller, 755 So.2d 1083 (Miss. 2000) (mother's relocation to distant foreign state was material change of circumstances with adverse effect on children, thus requiring modification of grant of joint legal custody).

42. 665 N.E. 2d 145 (N.Y. 1996).

43. *Id.* at 150.

44. *Id.* at 151.

Burgess v. Burgess[45]

The California Supreme Court held that a custodial parent has a right to change the residence of the child, except in the case of a move detrimental to the child or intended to deprive the non-custodial parent of contact.[46] Therefore, a custodial parent seeking to relocate bears no burden of establishing that the move is necessary. A parent seeking to change custody because of the move bears the burden of establishing that the changed circumstances make it expedient or essential to the welfare of the child that custody be changed.[47]

Stout v. Stout[48]

Reversing the trial court's decision preventing the custodial parent from relocating to Arkansas, the North Dakota Supreme Court concluded that the non-custodial parent's right to maintain and develop a relationship with the child can be achieved by modification of the visitation schedule to include less frequent, but longer, periods of time.[49] The Supreme Court further stated that the child's best interests were considered to be "inextricably interwoven with the quality of life of the custodial parent, with whom the child lives and upon whom the child relies emotionally."[50]

Hayes v. Hayes[51]

The Alaska Supreme Court refused to accept the proposition that a parent seeking to relocate should be required to show by clear and convincing evidence that a move is in the child's best interests. It ruled instead that a court must consider the best interests of the child and whether a legitimate reason exists for the move.[52]

Hawaii

No Hawaii statutes specifically address relocation. There also is little case law to provide guidance. In one of the few reported appellate decisions, *Maeda v. Maeda*,[53] the Intermediate Court of Appeals upheld the trial court's decision that the mother would lose custody if she relocated. Although there was virtually no analysis in the opinion, the case apparently turned on the mother's inability at trial to furnish relevant information regarding her proposed relocation.

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45. 913 P.2d 473 (Cal. 1996).

46. *Id.* at 476.

47. *Id.* at 482.

48. 560 N.W. 2d 903 (N.D. 1997).

49. *Id.* at 913.

50. *Id.* at 915.

51. 992 P.2d 890 (Alaska 1996).

52. *Id. See also*, Vachone v. Prigliese, 931 P.2d 371 (Alaska 1996). *See e.g.*, Russenberger v. Russenberger, 669 So.2d 1044 (Fla. 1996); On re Marriage of Francis, 919 P.2d 776 (Colo. 1996); Sillbaugh v. Sillbaugh, 543 N.W.2d 639 (Minn. 1996).

53. 8 Haw. App. 139, 794 P.2d 268 (1990).

She only offered a plan to move with the child as soon as possible to somewhere in California or Florida and presented no relevant evidence of the effects the move would have on her son.[54]

In an earlier case, *Estrella v. Estrella*,[55] the Hawaii Supreme Court reversed a trial court's refusal to grant a mother's post-divorce petition to remove the children from Hawaii, due to her remarriage to a California resident. The Court held that "the privilege of visitation is an important one, but it is not an absolute right, nor is it the paramount consideration. The privilege of visitation is subordinate to the rule that the general welfare of the children is paramount."[56] The Hawaii Divorce Manual concludes that "[a]ll that can be said about Hawaii law ... is that Hawaii, unlike some states does not impose a presumption either in favor of or against relocation, and that relocation must be based upon a 'best interest' analysis, in light of the totality of circumstances."[57]

The American Academy of Matrimonial Lawyers has proposed a Model Relocation Act, as a conceptual framework for compiling and presenting evidence, arguments, and recommendations in relocation disputes. The Model Act designates the following eight factors for the courts to consider in deciding whether to permit relocation:

(1) The nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the non-relocating person, siblings, and other significant persons in the child's life;

(2) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

(3) The feasibility of preserving the relationship between the non-relocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;

(4) The child's preference, taking into consideration the age and maturity of the child;

(5) Whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship of the child and the non-relocating person;

(6) Whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity;

(7) The reasons of each person for seeking or opposing the relocation; and

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54. *See Divorce Manual*: Custody, at 14.

55. 43 Haw. 210 (1959).

56. *Id.* at 215.

57. *See Divorce Manual*: Custody, at 14.

(8) Any other factor affecting the best interest of the child. [58]

In proposing the Act, the Committee noted that a child has a "compelling interest in stability, remaining with the custodial parent, and in maintaining frequent contact with the noncustodial parent."[59]

The court will be unlikely to approve a proposed relocation that it suspects is based upon an intent to thwart a child's relationship with the noncustodial parent. Consequently, as a practical matter, an access plan that provides for full cooperation and details all the logistics and methods of maintaining unrestricted, normalized, and effective communication and access between the child and noncustodial parent will play an important role in any relocation plan. The Divorce Manual recommends that any access plan include specific duties and tasks that address the following:

- Visitation scheduling;
- Responsibilities for travel arrangements;
- Allocation of costs;
- Telephonic, email, and other medium of communication;
- Video and audio tapes and photo albums;
- Detailed logs and reports;
- Shared magazine subscriptions, collections, and TV shows; and
- Access to teacher and school materials.

Recent Issues of Interest

There are several other topics of interest relevant to this study topic that bear mentioning.

Assisted Reproduction Issues

In the area of assisted reproduction, public policy and the best interest of the child may affect a court's interpretation of the parties' agreements. Many courts seem reluctant to enforce

58. *Id.* at 15.

59. *See Divorce Manual*: Custody, at 14, citing American Academy of Matrimonial Lawyers, Proposed Model Relocation Act (1997) 15 Journal American Academy of Matrimonial Lawyers (1998).

agreements that compel a sperm or embryo donor to become a parent against his or her will.[60] For example, the New Jersey Supreme Court, after first determining that the man could still father children, ruled unanimously in favor of a woman wanting to prevent her ex-husband from using their frozen embryos in the future.

On the other hand, legal and biological parents have had less success with the premise that they should not be forced to pay child support for a child who is the product of assisted reproduction. For example, an Ohio court held that, to avoid child support, a divorcing man must prove he withdrew his consent for his wife to be artificially inseminated.[61] It may be that there is a need for more clarification of the rights and responsibilities with current human reproductive technology and the enforceability of private contracts in this area.

Social Security

Pursuant to the federal Welfare Reform Act of 1996, most states require the collection of Social Security numbers on license applications and legal certificates, including child support orders, paternity establishments, and divorce decrees.[62] This provides the state with a unique number to link with a unique individual and is used in identifying custodial parents who are eligible to obtain or receive a child support award, parents eligible for state paternity establishment services, or persons who are child support obligors. Act 95, Session Laws of Hawaii 2001, amended section 576D-13, of the Hawaii Revised Statutes, to require that the Social Security number of any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application for those licenses.[63] See Appendix W concerning state collection of Social Security numbers (Note: the information with respect to Hawaii does not reflect Act 95).

In recent years, however, there has been growing concern over the use and collection of Social Security numbers for child support enforcement purposes, chiefly because of the risk of identity theft and invasion of personal privacy. A state may apply to the federal Office of Child Support Enforcement for an exemption to the requirement, but exemptions are granted only

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60. *See e.g*., A.Z. v. B.Z., 725 N.E.2d 1051 (Mass. 2000); R.R. v. M.H., 689 N.E.2d 790 (Mass. 1998) (surrogacy agreement between surrogate mother and father was unenforceable); J.B. v. M.B., 751 A.2d 613 (N.J. Super Ct. App. Div. 2000) (in vitro agreement unenforceable as against public policy where parties agreed to relinquish embryos to IVF program if marriage dissolved); *But see* Cahill v. Cahill, 757 So.2d 465 (Ala. Civ. App. 2000) (contract giving university zygotes if marriage dissolved was enforceable).

61. Jackson v. Jackson, 739 N.E. 2d 1203 (Ohio App. 2000).

62. Section 317 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) (Welfare Reform Act) provides that state child support enforcement procedures require the collection of SSN: of any applicant for a professional license, commercial driver's license, occupational license, or marriage license; of any person subject to a divorce decree, support order, or paternity determination or acknowledgement; or on death certificates. States' receipt of federal funding for TANF is contingent upon their compliance with this requirement. Additionally, the Act expanded the Federal Parent Locator Service, an automated database searchable by SSN, to include information helpful for tracking delinquent parents across state lines. Finally, section 451 provides that an individual must include a SSN on his or her tax return in order to be eligible for the Earned Income Tax Credit.

63. *See* HRS §576D-13(i) (also requires that the Social Security number shall be used solely for purposes of this chapter for child support enforcement and identification).

under unique circumstances. Alaska has received a waiver from the federal requirement to collect Social Security numbers on sport hunting and fishing license applications, as a means of locating parents who fall behind in child support payments.[64] Montana has received an exemption that is limited in its scope to certain death certificates. In 2000, the Michigan Secretary of State, after learning that her request to obtain a federal exemption was denied, sought a temporary restraining order and injunctive relief in U.S. District Court to block the provision of the federal Welfare Reform Act, requiring states to record residents' Social Security numbers on driver license applications to track delinquent child support obligors. The federal District Court rejected the challenge in October 2001. As a result of the decision, the Michigan Secretary of State branch offices were to begin collecting Social Security numbers of motorists applying for or renewing their driver license, as soon as systems and processes were in place to collect and store the information.

Because of these concerns, federal law requires states to enact laws providing safeguards for Social Security numbers. The most common of these are: restricting training to only a limited number of persons to access and use the information; instituting frequently changing security passwords for information access; compartmentalizing information and allowing information access only on an "as needed" basis; monitoring access to information; and locating sensitive information away from public areas and in physically secure areas. As an example, in Nebraska, four bills were introduced this past session to protect access to Social Security numbers by limiting the use of Social Security numbers on documents that are readily viewed by the public or easily obtained by thieves.

Uniform Child Custody Jurisdiction Act

A version of the Uniform Child Custody Jurisdiction Act (UCCJA) has been adopted in all 50 states and the District of Columbia. The UCCJA was intended to avoid jurisdictional conflicts in custody cases. The principal rationale underlying the UCCJA is that only one state should have primary responsibility for a custody case and another state may obtain jurisdiction only under specifically enumerated circumstances. Consequently, once a state issues a valid custody decree, based upon proper jurisdictional standards as provided in the UCCJA, all other states are obliged to recognize and enforce the decree, rather than modify it.

Hawaii's version of the UCCJA has been codified in Chapter 583, Hawaii Revised Statutes. Section 583-1(a) states the specific purposes of the Act are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody, which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

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64. The exemption was granted by the federal Office of Child Support Enforcement, on the basis that the state's Permanent Fund Dividend application database provides better access to the needed information than collecting it from sport hunting and fishing license applications. *See* Office of the Governor Press Release (Alaska), "State Protects Privacy of Sport License Holders," at http://www.gov.state.ak.us/press/01005.html.

(2) Promote cooperation with the courts of other states, to the end that a custody decree is rendered in that state that can best decide the case in the interest of the child;

(3) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and the child's family have the closest connection and where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available, and that courts of this State decline the exercise of jurisdiction when the child and the child's family have a closer connection with another state;

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) Avoid relitigation of custody decisions of other states in this State insofar as feasible;

(7) Facilitate the enforcement of custody decrees of other states;

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this State and those of other states concerned with the same child; and

(9) Make uniform the law of those states which enact the UCCJA.

The Hawaii UCCJA applies only to custody and visitation cases, not to child support or to other issues associated with divorce.

Generally, under the UCCJA, a court has jurisdiction over a custody matter if: the court is in the home state; a significant connection exists between the child and the state; there is an emergency basis; or no other state has jurisdiction.[65] Even if a court has proper jurisdiction, it

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65. For example, the jurisdictional provision under Hawaii's UCCJA, provides as follows:

> **§583-3 Jurisdiction.** (a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:
>
> (1) This State (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child's home state within six months before commencement of the proceeding and the child is absent from this State because of the child's removal or retention by a person claiming the child's custody or for other reasons, and a parent or person acting as parent continues to live in this State; or
>
> (2) It is in the best interest of the child that a court of this State assume jurisdiction because (A) the child and the child's parents, or the child and at least one contestant, have a significant connection with this State, and (B)

may decline to exercise such jurisdiction because of simultaneous proceedings in another state;[66] another state is a more appropriate forum;[67] or a party has engaged in misconduct, such as child snatching.[68]

Federal Parental Kidnapping Prevention Act

The Federal Parental Kidnapping Prevention Act (PKPA)[69] applies to all states and takes precedence over conflicting state laws. Jurisdictional provisions differ from the UCCJA. The PKPA gives priority to the home state, and the state that issued the original decree continues to have jurisdiction as long as one party or the child continues to reside there. The PKPA provides for federal assistance in locating and returning children kidnapped by a party through the Federal Parent Locator Service (PLS) of the U.S. Department of Health and Human Services. The PLS provides a computer search of federal records using Social Security numbers. It was previously used solely to trace parents delinquent in child support payments, but has been expanded to help track parties who kidnap their children in connection with custody disputes. A party must request the court to ask the CSEA to request help from the PLS and pay a fee for the services.[70]

Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was promulgated by the National Conference of Commissioners on Uniform State Laws in 1997, as a revision of the Uniform Child Custody Jurisdiction Act (UCCJA) of 1968. The Uniform Law Commissioners felt the revision was necessary to bring the provisions of the UCCJA into

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there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) The child is physically present in this State and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(4) (A) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (B) it is in the best interest of the child, that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State if the child, or of the child and of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine the child's custody.

66. *See* HRS §583-6.

67. *See* HRS §583-7.

68. *See* HRS §583-8.

69. 28 U.S.C. §§1738A *et seq*.

70. *See Divorce Manual*: Custody, at 35.

conformity with federal statutes, such as the Parental Kidnapping Prevention Act (PKPA) and the Violence Against Women Act, and to bring consistency to varying court interpretations.

The provisions of the UCCJEA:

- Assign priority to home state custody;
- Provide continuing exclusive jurisdiction to the state that makes the initial custody determination, so long as a party to the original custody determination remains in that state;
- Authorize enforcement proceedings in a state other than the state issuing the custody order;
- Provide an expedited process to enforce interstate child custody and visitation orders;
- Provide protection for victims of domestic violence;
- Authorize prosecutors to locate the child and enforce custody orders; and
- Provide uniformity among the states.

As of last year, twenty-one states and the District of Columbia had adopted the UCCJEA; these states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Iowa, Kansas, Maine, Minnesota, Montana, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, and West Virginia.[71] Bills to enact the UCCJEA were introduced in both houses of the Hawaii Legislature during the Regular Session of 2001. The Regular Session of 2001 ended with H.B. No. 1538 in Conference Committee, when the House of Representatives disagreed to the amendments made to it by the Senate, and with S.B. No. 725, S.D. 1, still in the House Judiciary Committee. Both bills remain alive for consideration during the Regular Session of 2002.

71. *See* Elrod: 2001, at 613-614 and n. 37.

PART IV. PROPERTY ISSUES

The division of property upon marital dissolution is very fact specific. It is decided differently in the various jurisdictions, based upon specific fact patterns. In many cases, it involves complicated and esoteric issues with which courts are just beginning to grapple. The issue of property division presents an example of how the judicial system adapts to "real life" and, moreover, demonstrates that it does so slowly. Furthermore, the search for new forms of property lead to classification problems of what is or is not marital property. See Appendix X concerning property division in the various states.

The following are illustrative of recent issues addressed by states in attempting such classification:

- Alaska continued to hold that an individual fishing quota (IFQ) constitutes marital property;[1]

- Likewise, a husband's Exxon Valdez claim was classified as marital property, although his "set net" permit obtained prior to the marriage remained his separate property;[2]

- The Fifth Circuit Court held that, while a divorced husband/artist retains exclusive control over paintings created during the marriage, the economic benefit belongs to the marital community act;[3]

- In Missouri, a court held that the proceeds of a sale of calves born during the marriage to the wife's separate cattle were marital property because they were acquired subsequent to the marriage;[4]

- A New York court determined that a tax loss carry forward constituted martial property;[5] and

- The Washington Appellate Court ruled that the lower court had no jurisdiction to divide Indian trust land, despite an agreement between the parties to do so.[6]

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1. McGee v. McGee, 974 P.2d 983 (Alaska 1999).
2. Edelman v. Edelman, 3 P.3d 348 (Alaska 2000).
3. Rodrigue v. Rodrigue, 218 F.3d 432 (5th Cir. 2000), overturning a holding that Louisiana's community property law, which would have awarded the wife a half-interest in the husband/artist's paintings, was preempted by the Federal Copyright Act. *See* 55 F. Supp. 2d 534 (E.D. La. 1999).
4. Rhodus v. McKinley, 16 S.W. 3d 615 (Mo. Ct. App. 2000).
5. Finkelstein v. V, 701 N.Y.S. 2d 52 (App. Div. 2000).
6. Landauer v. Landauer, 975 P.2d 577 (Wash. Ct. App. 1999).

Other litigated issues concern how to: classify the following -- degrees and professional licenses, disability benefits, personal injury awards, stock options, contingency fees, increases in value of separate property during marriage, and increases in pension benefits following marriage; and define dissipation in determining distribution of marital property. Valuation of a pension plan or an asset also poses a fact-specific problem.

In Hawaii, section 580-47(a), of the Hawaii Revised Statutes, addresses the division of property upon dissolution of marriage. The section provides in pertinent part as follows:

> Upon granting a divorce, … the court may make any further orders as shall appear just and equitable … (3) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate, and the attorney's fees, costs, and expenses incurred by each party by reason of the divorce. In making these further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case.

However, it is case law that has shaped the division of marital property in Hawaii. Time constraints and the broad scope of this study do not lend themselves to a proper discussion of that case law.[7] Several principles bear mentioning herein however:

- The division and distribution of marital property must be just and equitable;[8]
- Partnership principles generally apply to the division of marital property in Hawaii, absent an agreement of the parties;[9]
- Appreciation of property, even though separately owned by one spouse, is nevertheless a marital asset subject to division between the parties;[10] and
- Consistent with the partnership model of marriage, any final division of appreciation of marital assets can be decreed only when the partnership is finally dissolved, not at the time of separation.[11]

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7 For a concise summary of Hawaii case law relating to marital property division, *see* Section 2 of the 2001 Hawaii Divorce Manual Supplement, at 21-39.

8. *See e.g*., Rodrigues v. Rodrigues, 7 Haw. App. 102, 747 P2d 1281 (1987); Sheedy v. Sheedy, 1 Haw. App. 595, 623 P2d 95 (1981); Au-Hoy v. Au-Hoy, 60 Haw. 354, 590 P.2d 80 (1979).

9. *See e.g*., Tougas v. Tougas, 76 Haw. 19, 868 P.2d 437 (1994); Gardner v. Gardner, 8 Haw. App. 461, 810 P.2d 239 (1991); Myers v. Myers, 70 Haw. 143, 764 P.2d 1237, reconsideration denied, 70 Haw. 661, 796 P.2d 1004 (1988).

10. *See e.g*., Gussin v. Gussin, 73 Haw. 470, 836 P.2d 484 (1992); Myers v. Myers, 70 Haw. 143, 764 P.2d 1237, reconsideration denied, 70 Haw. 661, 796 P.2d 1004 (1988); Cassidy v. Cassidy, 68 Haw. 383, 716 P.2d 1133 (1986).

11. Myers v. Myers, 70 Haw. 143, 154, 764 P.2d 1237, 1244, reconsideration denied, 70 Haw. 661, 796 P.2d 1004 (1988) ("A presumption that the non-owning spouse is not entitled to any part of the appreciation in

Prior to the 1988 Hawaii Supreme Court decision in *Myers v. Myers*,[12] the Family Court apparently presumed that the legal owner spouse was entitled to the appreciation in marital assets between the date of final separation and the final dissolution of marriage. The spokesperson for the Family Law Section of the Hawaii Bar Association observed that forcing an owner spouse to share the appreciation in separately owned property after the date of final separation in contemplation of divorce on a 50-50 basis is counter-intuitive. He suggested that this was one area the Legislature should examine for change.

The Bureau agrees that such a principle could lead to possible abuse. However, given the complexity and abstruseness of the issue of marital property division, the Bureau is reluctant to make any further comment or conclusion on this issue, without having conducted a far more in-depth examination than it has been able to do herein.

---

property legally owned by the other after a declaration by either that the marriage has ended is inconsistent with the partnership model of marriage we have accepted and the rule that a final division of marital property can be decreed only when the partnership is dissolved."); *accord*, Jackson v. Jackson, 84 Haw. 319, 335, 933 P.2d 1353 (App. 1997) ("Since the marital partnership continues until the DOCOEPOT, it follows that one party's post-DOFSICOD, pre-DOCOEPOT activity contributing to the increase of a Category 2, 4, and/or 5 NMV is a marital partnership activity that cannot be used to justify the award of more than 50% to the contributing party and less than 50% to the non-contributing party. Therefore, we conclude that consideration (A) is not a valid consideration authorizing a deviation from the Partnership Model Division.").

12. Myers v. Myers, 70 Haw. 143, 764 P.2d 1237, reconsideration denied, 70 Haw. 661, 796 P.2d 1004 (1988).

PART V. CONCLUSIONS

In many instances, Hawaii appears to be at the forefront, or at least in the mainstream, of most areas examined in this study. Accordingly, the Bureau concludes that the premise, stated in S.R. No. 51, S.D. 1, that Hawaii's family law is generally considered progressive and highly supportive of children of divorce would seem to be accurate.

Spokespersons for the Judiciary and the Family Law Section of the Hawaii State Bar Association who contacted the Bureau for input in this study, indicated that, at this time, they had no specific issue or concern that required a legislative solution, with the exception of one suggestion mentioned in Part IV of this report. The Judiciary spokesperson for Family Court of the First Circuit noted that the federally mandated four-year review is underway for the Hawaii child support guidelines. She indicated that the Judiciary would have no comment on the guidelines until the final report of the review committee has been made public, which is due to be completed in 2002. Consequently, the Bureau recommends no action at this time with respect to child support guidelines, pending the outcome of the report by the child support guidelines review committee.

With respect to the Child Support Enforcement Agency (CSEA) and the child support collection process, the Bureau notes that section 41 of Act 259, Session Laws of Hawaii 2001, appropriated funds to the Auditor for a comprehensive study of the CSEA's automatic child support enforcement (KEIKI) system. A final report of the Auditor's study is due to the Legislature, prior to the commencement of the 2002 Regular Session, and is to include the following information:

(1) The status and measures of effectiveness of the implementation of the automated child support enforcement (KEIKI) system;

(2) The effectiveness of the agency in addressing problems of erroneous determinations, clients' inability to reach Child Support Enforcement Agency staff by telephone, and other client problems;

(3) A review of child support enforcement systems in other states where child support enforcement has been successful; and

(4) Recommendations on a plan of action with set goals, measures of effectiveness, and time lines, to dramatically improve the Child Support Enforcement Agency and to "include possible changes to the organization or position to improve [its] structure."[1]

Given the intended comprehensiveness of the Auditor's study, the Bureau believes any recommendations concerning changes to the CSEA or its operations should await the outcome of the study.

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1. *See* Act 259, §41(4), SLH 2001.

As discussed in Part II of this report, a number of jurisdictions appear to be having considerable success with programs focusing on training, employment, and other assistance to low-income fathers who are unable to pay their child support obligations. Fatherhood initiative legislation also is pending in Congress, where support may be building. As noted previously, at present, Hawaii apparently does not publicly fund any programs or services targeted solely to fathers; rather, any public assistance services provided are parent-focused, not gender-biased, pursuant to Act 301, Session Laws of Hawaii 2001. In view of Act 301's emphasis on eliminating preferences that favor one parent over the other, it may preclude adoption in Hawaii of similar fatherhood initiatives by state or county agencies. If the Legislature wishes to adopt initiatives to assist fathers only, then it should revisit the language of Act 301. Furthermore, if the Legislature is interested in pursuing such initiatives, the Bureau notes that the National Conference of State Legislature's Nurturing Responsible Families Project provides informed assistance to policymakers in this and other relevant areas, including free onsite technical assistance.

As pointed out in Part III of this report, bills to enact the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which were introduced in the Hawaii Legislature, during the Regular Session of 2001, remain alive for consideration during the Regular Session of 2002. The UCCJEA is a revision of the Uniform Child Custody Jurisdiction Act (UCCJA) of 1968, to achieve conformity with more recent federal statutes and greater uniformity among the varying jurisdictions' custody proceedings and enforcement procedures. The Bureau recommends that the Legislature closely consider enactment of the major provisions of the UCCJEA.

Given the complex and esoteric nature of the issues that arise with respect to the division of marital property, the Bureau is not in a position to make any further comment or conclusion on this issue without having conducted a far more in-depth examination than it has done herein. Therefore, the Bureau does not recommend any legislative solutions on this issue at this time.

Report Title:

Divorce Law Review, Attorney General

THE SENATE

TWENTY-FIRST LEGISLATURE, 2001

STATE OF HAWAII

S.R. NO. 51

S.D. 1

SENATE RESOLUTION

REQUESTING THE legislative reference bureau TO REVIEW AND COMPARE SELECTED PROVISIONS OF HAWAII FAMILY LAW.

WHEREAS, Hawaii's family law has been reviewed and modified throughout the years to become a body of law that is fair and equitable, and encompasses property settlement, child support, and child custody; and

WHEREAS, Hawaii's family law is generally considered progressive and highly supportive of children of divorce; and

WHEREAS, however, lifestyles, economic conditions, and other factors continue to change, especially in relation to family law; and

WHEREAS, for that reason, no state can rest on its laurels and cease reviewing its laws, as the changing face of human nature and circumstances compels continued cycles of review; and

WHEREAS, it is time for such a review of Hawaii's family laws; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-first Legislature of the State of Hawaii, Regular Session of 2001, that the Legislative Reference Bureau is requested to review the laws of other states regarding property settlements with respect to the dissolution of marriage, child custody, and child support, and compare them with existing law in Hawaii; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to report to the Legislature on any findings and with respect to whether Hawaii's family law statutes need to be amended at this time and, if so, with proposed draft legislation to do so; and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be transmitted to the Director of the Legislative Reference Bureau.

Child Support Project

States with Privatized Child Support Collections

Compiled by NCSL 11/99

Updated 7/01

STATE	Privatization of Child Support Collections	Citation
Alabama	X	
Alaska		
Arizona	X	1996 Chap. 188, Sec. 11
Arkansas	X	The State Disbursement Unit currently is privatized, but state officials report that it is likely to become a state function in 2000.
California	X	
Colorado	X	1996 Chap. 130
Connecticut	X	
Delaware		
District of Columbia		
Florida	X	
Georgia	X	
Hawaii		
Idaho	X	
Illinois	X	Administrative Policy
Indiana	X	IC 12-17-2-18.5
Iowa	X	1995 Acts, Chap. 205, Sec. 8

Kansas	X	
Kentucky	X	KRS 205.712(5)(2)(C); 921 KAR 1:020
Louisiana		
Maine		
Maryland	X	1995 Chap. 491, Sec. 3, 13
Massachusetts	X	
Michigan	X	
Minnesota	X	MN Statute 256.9792
Mississippi		
Missouri	X	
Montana		
Nebraska		
Nevada	X	
New Hampshire		
New Jersey	X	N.J.A.C. 10:110-2.1
New Mexico	X	
New York	X	
North Carolina	X	
North Dakota		
Ohio	X	
Oklahoma		
Oregon	X	409.021
Pennsylvania	X	
Rhode Island		
South Carolina	X	SC Code 20-7-941 (3)
South Dakota	X	ARSD 67:18:01:05. The state allows privatization, although currently it has no child support functions privataized

Child Support Project

Guideline Models by State

There are roughly three child support guideline models used by the states:

The **Income Shares Model** is based on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together. In an intact household, the income of both parents is generally pooled and spent for the benefit of all household members, including any children.

The **Percentage of Income Model** sets support as a percentage of only the noncustodial parent's income; the custodial parent's income is not considered. This model has two variations: the Flat Percentage Model and the Varying Percentage Model.

The **Melson Formula** is a more complicated version of the Income Shares Model, which incorporates several public policy judgments designed to insure that each parent's basic needs are met in addition to the children's. The Melson Formula was developed by a Delaware Family Court judge and fully explained in Dalton v. Clanton, 559 A.2d 1197 (Del. 1989).

All of the guideline models have certain aspects in common. First, most of the guidelines incorporate a "self-support" reserve for the obligor. Second, all the guidelines have a provision relating to imputed income. Third, by federal regulation, all the guidelines take into consideration the health care expenses for the children, by insurance or other means. Lastly, most of the guidelines have incorporated into the presumptive child support formula special additions for child care expenses, special formulas for shared custody, split custody, and extraordinary visitation, and special deductions for the support of previous and subsequent children.

Guideline Models by State			
Percentage of Obligor's Income	Income Shares		Melson Formula
Alaska	Alabama	New Jersey	Delaware
Arkansas	Arizona	New Mexico	Hawaii
District of Columbia	California	New York	Montana
Georgia	Colorado	North Carolina	
Illinois	Connecticut	Ohio	
Massachusetts	Florida	Oklahoma	
Minnesota	Guam	Oregon	
Mississippi	Idaho	Pennsylvania	
Nevada	Indiana	Rhode Island	
North Dakota	Iowa	South Carolina	
Tennessee	Kansas	South Dakota	
Texas	Kentucky	Utah	

Wisconsin	Louisiana	Vermont	
	Maine	Virgin Islands	
	Maryland	Virginia	
	Michigan	Washington	
	Missouri	West Virginia	
	Nebraska	Wyoming	
	New Hampshire		

NOTE: Puerto Rico did not specify which guidelines it follows.

Source: Morgan, Laura. *Child Support Guidelines*, 1998.

For additional information on state child support enforcement contact the Child Support Project at 303/830-2200.

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Appendix D

Chart 3: *Child Support Guidelines*

STATE	Income Share	Percent of Income	Extraordinary Medical Deduction	Child-Care Deduction	College Support	Shared Parenting Time Offset
Alabama	X	~~X~~	X p	X m	X	
Alaska		X	X m	X	X	X
Arizona	X		X m	X p		
Arkansas		X	X d	X d		
California	X		X m	X m		X
Colorado	X		X m	X m		X
Connecticut	X		X d			
Delaware			X m	X m		X*
District of Columbia		X	X d	X	X	X
Florida	X		X p	X m		
Georgia		X	X p	X m		
Hawaii			X m	X	X	X
Idaho	X		X m	X p		X
Illinois		X			X	
Indiana	X		X p	X m	X	
Iowa	X				X	
Kansas	X			X m		X
Kentucky	X		X m	X p		
Louisiana	X		X m	X m		
Maine	X		X m	X m		
Maryland	X		X m	X m		X
Massachusetts		X	X m	X	X	
Michigan	X		X m	X m	X	X
Minnesota		X		X m		X
Mississippi		X	X d	X d		
Missouri	X		X m	X m	X	X
Montana			X m	X m		
Nebraska	X		X d	X m		X
Nevada		X	X m	X d		X
New Hampshire		X	X d		X	
New Jersey	X		X m	X m	X	X
New Mexico	X		X p	X m		X
New York	X		X m	X m	X	
North Carolina	X	X	X p	X m		X
North Dakota		X		X d		
Ohio	X		X m	X m		
Oklahoma	X		X d	X m		X
Oregon	X		X p	X m	X	X
Pennsylvania	X		X m/d	X m		
Puerto Rico	X				X	
Rhode Island	X		X d	X m		
South Carolina	X		X d	X m	X	
South Dakota	X		X d	X d		
Tennessee		X	X m		X	
Texas		X	X m	X d		
Utah	X		X m	X m/p		X
Vermont	X		X m	X m		X
Virginia	X		X a	X a		X
Washington	X		X m	X m	X	
West Virginia	X		X m	X m		X
Wisconsin		X	X m	X d		
Wyoming	X		X d	X d		X

* = by case law
a = mandatory add-ons
m = mandatory deduction
p = permissive deduction
d = deviation deduction

Source: 34 Fam. L.Q. 655 (No. 4 Winter 2001) (chart 3).

Tennessee		
Texas	X	1999 HB 3271
Utah	X	
Vermont		
Virginia	X	
Washington	X	
West Virginia		
Wisconsin	X	49.22 (7m)
Wyoming		

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Child Support Project

Mandatory Health Care Coverage for Dependant Children

Compiled by NCSL 11/99

Updated 8/01

STATE	All IV-D orders must include a provision for health care coverage for dependant children	Transfer of notice to new employer must result in enrollment of child
Alabama	•	•
Alaska	•	•
Arizona	•	•
Arkansas	•	•
California	•	•
Colorado	•	•
Connecticut	•	•
Delaware	•	•
District of Columbia	•	•
Florida	•	•
Georgia	•	Admin. Policy
Hawaii	•	•
Idaho	•	Admin. Policy
Illinois	•	•

Indiana	•	
Iowa	•	•
Kansas		
Kentucky	•	•
Louisiana	•	•
Maine	•	•
Maryland		
Massachusetts	•	•
Michigan	•	•
Minnesota	•	•
Mississippi	•	•
Missouri	•	
Montana	•	
Nebraska		
Nevada	•	•
New Hampshire	•	•
New Jersey	Admin. Policy	•
New Mexico	•	•
New York	•	•
North Carolina	•	•
North Dakota	•	•
Ohio	•	•
Oklahoma	•	•

Oregon	•	•
Pennsylvania	•	•
Rhode Island	•	•
South Carolina	•	Admin. Policy
South Dakota	•	•
Tennessee	•	•
Texas	•	•
Utah	•	•
Vermont	•	•
Virginia	•	•
Washington	•	•
West Virginia	•	•
Wisconsin	•	•
Wyoming	•	•
TOTAL STATES:	**47**	**45**

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Child Support Project

State Treatment of Shared Parenting Time

Compiled by NCSL 04/00

State	Treatment	Formula	Shared Parenting Time Threshold	Other Adjustments
Alabama	Deviation			
Alaska	Formula	Cross-credit	30%	Up to 50% reduction for extended visitation over 27 consecutive days
Arizona	Formula	Modified Betson	None	
Arkansas	Deviation			
California	Formula	Quadratic Equation	20%	
Colorado	Formula	Cross-credit	25%	
Connecticut	Deviation			
Delaware	Formula	Cross-credit	50%	
District of Columbia	Deviation	Cross-credit	40%	
Florida	Deviation			

Georgia	Deviation			
Hawaii	Formula	Per Diem	27%	
Idaho	Formula	Cross-credit	35%	
Illinois				
Indiana	Deviation			
Iowa	Deviation			
Kansas	Formula	Cross-credit	Near 50%	
Kentucky	Deviation			
Louisiana	Deviation			
Maine	Deviation		30%	
Maryland	Formula	Cross-credit	35%	
Massachusetts	Deviation			
Michigan	Formula	Quadratic Equation	35%	Orders should address abatement where child spends eight consecutive overnight periods with a noncustodial parent
Minnesota				
Mississippi	Deviation			
Missouri	Deviation		30%	
Montana	Formula	Per Diem	30%	

Nebraska	Formula	Cross-credit	Custody Order	Up to 50% reduction for visitation exceeding 4 weeks
Nevada	Deviation			
New Hampshire	Deviation			
New Jersey	Deviation	Modified Betson	28%	
New Mexico	Formula	Cross-credit	30%	
New York				
North Carolina	Formula	Cross-credit	34%	
North Dakota	Formula	Modified Per Diem	45%	Formula also applies for any 60 out of 90 consecutive days of visitation
Ohio	Deviation			
Oklahoma	Formula	Cross-credit	30%	
Oregon	Formula	Cross-credit	35%	
Pennsylvania	Formula	Modified Per Diem	40%	
Rhode Island	Deviation			
South Carolina	Deviation	Cross-credit	30%	
South Dakota	Deviation			
Tennessee	Deviation			
Texas	Deviation			

Utah	Formula	Cross-credit	25%	Up to 50% reduction for visitation at least 25 of any consecutive 30 days
Vermont	Formula	Cross-credit	30%	
Virginia	Formula	Cross-credit	25%	
Washington	Deviation			
West Virginia	Formula	Cross-credit	30%	
Wisconson	Formula	Per Diem	30%	
Wyoming	Formula	Cross-credit	40%	
American Samoa*				
Guam*				
Puerto Rico*				
Virgin Islands*				
Source: Policy Studies Inc., September 1999				

* Information not Available

For more information on state child support enforcement contact the Child Support Project at 303/830-2200.

Back to Child Support Project

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Child Support Project

States' Treatment of Low Income

Compiled by NCSL 11/99

State	Low Income Guideline
Alabama	The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels of the schedule.
Alaska	In cases where the obligor parent's income is below poverty level as set forth in the Federal Register, $9,870 in 1997, the court may deviate, but may not order support less than $50 per month.
Arizona	Child support awards based upon income of less than $650 per month shall be based on the facts of the individual case and shall be consistent with the theory of the guidelines and the factors set forth in A.R.S. § 25-320.
Arkansas	No provision for low income.
California	In cases where the net disposable income of the obligor is less than $1,000 per month, the court shall rule on whether a low-income adjustment shall be made.
Colorado	The judge may use his judicial discretion in determining child support in circumstances where a parent is living below subsistence level, except that a minimum child support payment of $20 to $50 per month shall be required.
Connecticut	Income below the basic guideline schedule is a deviation factor.
Delaware	Legal presumption that no child support order be less than $65 per month.
District of Columbia	Where the noncustodial parent earns less than $7,500 per year, the amount of support ordered is in the court's discretion, but shall in no event be less than $50 per month.
Florida	For combined monthly available income less than the amount in the basic guideline schedule, the court shall determine support on a case-by-case basis.
Georgia	Low income is listed as a deviation factor.

Hawaii	A total monthly child support obligation greater than 70% of the support obligor's available income for primary support is an exceptional circumstance warranting deviation.
Idaho	There is a rebuttable presumption that in cases of low income, a minimum amount of support should be at least $50 per month.
Illinois	Low income is listed as a deviation factor.
Indiana	For obligors with combined weekly adjusted income of less than $100, the court shall determine support on a case-by-case basis, with support in a range of $25 to $50 per week. A specific amount of child support should always be ordered.
Iowa	Where the noncustodial parent's income is less than $500 per month, appropriate support shall be $50 per month for one or two children, $75 per month for three or more children.
Kansas	For combined gross monthly income below the poverty level, a chart is provided, with a $7 minimum for one child.
Kentucky	Low income is listed as a deviation factor.
Louisiana	If the combined adjusted gross income of the parties is less than the lowest sum shown on the schedule, the court shall determine an amount of support based on the facts of the case.
Maine	If the annual gross income of a nonprimary care provider is less than poverty level, support shall not be more than 10% of that parent's weekly gross income.
Maryland	Where combined adjusted income is less than $500 per month, support shall be $20 to $50, based on resources of the parent.
Massachusetts	Where the noncustodial parent's income is less than $125 per week, support shall be $50.
Michigan	Where the noncustodial parent earns $149 or less per week, he or she will pay 10% of income for support.
Minnesota	Where the net income of the obligor is less than $550 per month, the order shall be based on the ability of the obligor to provide support.
Mississippi	In cases where the adjusted gross income is less than $5,000, the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.
Missouri	No direct statutory provision. Case law, however, provides that the court may deviate upon good cause.
Montana	A minimum support obligation is calculated by a special formula.

Nebraska	It is recommended that even in very low income cases, a minimum support of $50 be set.
Nevada	Notwithstanding the formulas provided, the minimum support order shall be $100 per month per child, unless the court makes written findings for a deviation.
New Hampshire	The court shall order a minimum support order of $50 per month in cases of low income. Significantly high or low income of the parents is a deviation factor.
New Jersey	The guidelines do not apply to persons whose net income is $160 per week, but the court must order at least $5 per week.
New Mexico	For gross monthly income less than $600, the court shall determine support on a case-by-case basis, with a minimum support order of $100. Where, however, the support order is more than 40% of gross income, there is a presumption in favor of deviation.
New York	Where the amount of support awarded would reduce the noncustodial parent's income below the poverty level, support shall be $25 or $50, depending on the self-support reserve and poverty level.
North Carolina	For obligors with an adjusted gross income of less than $700, the guidelines require the establishment, absent a reason for deviation, of a minimum order of $50.
North Dakota	Where the obligor's net monthly income is $100 or less, the court shall establish a minimum support obligation on a case-by-case basis.
Ohio	Where combined gross income is less than $6,600 per year, support is determined on a case-by-case basis.
Oklahoma	For combined gross monthly income under $650, the presumptive minimum support award is $50 per month.
Oregon	There shall be a rebuttable presumption that the noncustodial parent has the ability to pay at least $50 per month as child support.
Pennsylvania	When the obligor's net income is below $750 per month, a minimal support order shall be entered on consideration of the obligor's reasonable living expenses.
Rhode Island	For obligors with a combined adjusted gross income of less than $500 per month, support is determined on a case-by-case basis, with support ranging from $20 to $50 per month.
South Carolina	In cases where the parents' combined monthly gross income is less than $500 per month, the support shall be determined on a case-by-case basis, with a minimum order of $50 per month.
South Dakota	A minimum obligation of $43 is established on the chart, but the court may deviate due to the financial condition of the parties.
Tennessee	No provision for low income.

Texas	The ability of parents to contribute to support of the child, and financial resources available for the support of the child, are listed as deviation factors.
Utah	If the monthly adjusted gross income of the obligor is $649 or less, support shall be calculated on a case-by-case basis, but the support award shall not be less than $20.
Vermont	If the noncustodial parent's income is less than the lowest income figure or less than the self-support reserve, the court shall use its discretion in determining support, and shall require support in a nominal amount.
Virginia	Financial resources and needs of the parents is listed as a deviation factor.
Washington	For income less than $600 per month, the obligation is based on the resources and living expenses of each household. Minimum support shall not be less than $25 per child per month, except when permitted by statute.
West Virginia	The guidelines do not apply to combined adjusted gross monthly income under $550. In the case of combined income under $550, the support obligation shall be $50 per month or an amount determined by the court. Low income is listed as a deviation factor.
Wisconsin	Low income is listed as a deviation factor.
Wyoming	Where the combined income of the parents is less than $732 per month, the support obligation of the noncustodial parent is 25% of net income, but in no event shall the support obligation be less than $50 per month.
Source: Morgan, Laura W., *Child Support Guidelines, 1999 Supplement*, Aspen Law & Business, New York, 1999.	

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Child Support Project

States' Treatment of High Income

Compiled by NCSL 11/99

State	High Income Guideline
Alabama	The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule.
Alaska	In cases where the obligor parent's income is greater than $72,000 per year, the court should use the $72,000 as the parent's income, and increase the support above the amount calculated using the $72,000 per year figure only if it is just and proper.
Arizona	Child support awards based upon income of less than $650 per month or greater than $15,000 per month shall be based on the facts of the individual case and shall be consistent with the theory of the guidelines and the factors set forth in A.R.S. § 25-320. In no event, however, where combined income exceeds $15,000 shall support be less than the amount indicated on the schedule for $15,000.
Arkansas	When the payor's income exceeds that shown on the chart, the trial court shall disregard the chart and apply different percentages.
California	Where the parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children, the court may deviate from the formula provided. The high value of residence of children is also listed as a deviation factor.
Colorado	The judge may use his judicial discretion in cases where combined adjusted gross income exceeds the uppermost levels of the guideline. Ownership by parent of substantial non-income producing asset is also listed as a deviation factor.
Connecticut	Above $1,750 weekly income, the court is free to fashion an appropriate amount of support, provided the amount of support prescribed at the $1,750 level is presumed to be the minimum order. Financial resources available to parent, including non-income-producing assets, are also listed as a deviation factor.
Delaware	In cases of high income, a basic amount plus a particular percentage shall be applied.

District of Columbia	The guideline percentage shall not apply to a noncustodial parent with income that exceeds $75,000. The amount available to a child in such a case shall not be less than the amount that would have been ordered if the guideline had been applied to a noncustodial parent with income of $75,000.
Florida	For combined monthly available income greater than the amount in the chart, the obligation shall be the minimum amount of support provided by the guidelines, plus a percentage based on the number of children whose support is being determined.
Georgia	High income is listed as a deviation factor.
Hawaii	A monthly income that would result in a computation higher than the reasonable needs of the children is an exceptional circumstance warranting deviation.
Idaho	The guideline income schedules are not a limitation on the award of support for combined incomes over $70,000. In cases where combined income exceeds $70,000 per year, the court shall award support on a case-by-case basis.
Illinois	High income is listed as a deviation factor.
Indiana	For combined weekly adjusted income of $4,000, a special formula is applied as a presumptive amount.
Iowa	Where the noncustodial parent's income is $6,001 per month or higher, support is determined on a case-by-case basis, but not less than the dollar amount as provided for in the guidelines for a noncustodial parent with a monthly net income of $6,000.
Kansas	If the combined income exceeds the highest amount shown on the schedules, the court should exercise its discretion by considering what amount of child support should be set in addition to the highest amount on the schedule. A suggested formula is provided.
Kentucky	High income is listed as a deviation factor.
Louisiana	If the combined adjusted monthly gross income of the parties exceeds the highest level specified in the schedule, the court shall use its discretion in setting the amount of the basic obligation in accordance with the best interest of the child and the circumstances of each parent.
Maine	When the combined annual gross income exceeds $126,600, the child support table is inapplicable except that the basic weekly support entitlement shall not be less than that set forth in the table for a combined annual gross income of $126,600. Available income and financial contributions of the domestic associate or spouse of each party is listed as a deviation factor.
Maryland	If the combined income exceeds the highest level in the chart, the court may use its discretion in setting the amount of support.
Massachusetts	Where the combined gross income of the parties exceeds $100,000, or where the gross income of the noncustodial parent exceeds $75,000, the court should award support at the $75,000/$100,000 level as a minimum presumptive amount.

Michigan	In high-income cases, where total family income exceeds the income categories provided, support is calculated by the application of certain percentages.
Minnesota	Guidelines stipulate that an obligor with a monthly income in excess of the income limit provided in the chart shall pay the same dollar amount as provided in the guidelines for an obligor with a monthly income equal to the limit in effect. All earnings, income, and resources of parents is listed as a deviation factor.
Mississippi	In cases where the adjusted gross income is more than $50,000 or less than $5,000, the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.
Missouri	No direct statutory provision. Case law, however, provides that the trial court is to presume that the highest figure provided in the chart at the highest income level is the correct amount of support, and the court may deviate upon good cause.
Montana	The guidelines do not apply to incomes greater than $39,500. Where income exceeds this amount, the award shall be at least the amount for income at $39,500, and shall be supplemented on a case-by-case basis.
Nebraska	If total net income exceeds $10,000 monthly, child support for amounts in excess of $10,000 monthly may be more but shall not be less than the amount that would be computed using the $10,000 monthly income unless other permissible deviations exist.
Nevada	High income is listed as a deviation factor.
New Hampshire	Significantly high or low income of the parents is a deviation factor.
New Jersey	For parents with a combined income of $150,800, the court shall apply the guidelines up to that amount, and supplement the award with a discretionary amount based on the remaining family income. Extrapolation is expressly forbidden.
New Mexico	For gross monthly income greater than $8,300, certain percentages shall be applied depending on the number of children.
New York	Where combined parental income exceeds the dollar amount set forth in the guidelines, the court shall determine the amount of support for the amount of the combined income in excess of such dollar amount by consideration of the factors set forth in the deviation paragraph and/or the support percentage.
North Carolina	Where combined parental income is above $150,000, child support is determined on a case-by-case basis, provided that the amount of support awarded may not be lower than the maximum basic child support obligation shown in the schedule.
North Dakota	The chart provides support in cases of net monthly income over $10,000. High income is a deviation factor.

Ohio	If the combined gross income of both parents is greater than $150,000 per year, the court shall determine support on a case-by-case basis, provided that the court shall compute a basic combined obligation that is no less than the same percentage of the parents' combined income that would have been computed under the schedule for a combined income of $150,000.
Oklahoma	In the event monthly income exceeds $15,000, the child support shall be that amount computed for a monthly income of $15,000 plus such additional amount as the court may determine.
Oregon	For combined adjusted gross income exceeding $10,000 per month, the presumed basic support obligations shall be as for parents with combined adjusted gross income of $10,000. A basic child support obligation in excess of this level may be demonstrated for those reasons set forth in the deviation criteria section.
Pennsylvania	When the parties' joint monthly net income exceeds $10,000, the amount of support awarded is determined on a case-by-case basis. Other income in the household is listed as a deviation factor.
Rhode Island	For cases with a higher combined monthly adjusted gross income level than $15,000 per month, child support shall be considered on a case-by-case basis.
South Carolina	Where the combined gross income is greater than $150,000 per year, courts should determine child support on a case-by-case basis.
South Dakota	For a combined net income above the schedule, the child support obligation shall be established at an appropriate level, taking into account the actual needs and standard of living of the child.
Tennessee	In cases where the obligor's income exceeds $10,000 per month, the application of the guidelines may be unjust. In such a case, the court may deviate. The court may establish a trust in such a case for the post-majority benefit of the child.
Texas	In situations where the obligor's net resources exceed $6,000 per month, the court shall presumptively apply the percentage guidelines to the first $6,000, and may order additional support. In no event may the obligor be required to pay more than an amount equal to 100% of the proven needs of the child.
Utah	If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just support amount shall be ordered on a case-by-case basis, but the amount ordered may not be less than the highest level specified in the table for the number of children due support. The standard of living and situation of the parties is listed as a deviation factor.
Vermont	The court may use its discretion in determining child support in circumstances where combined available income exceeds the uppermost levels of support adopted in the guideline.
Virginia	Where combined gross monthly exceeds $10,000 per month, a special formula shall apply to the amount over $10,000 per month. Extraordinary capital gains is listed as a deviation factor.
Washington	When combined net income exceeds $7,000, the court may set support at an advisory amount of support set for combined monthly net incomes between $5,000 and $7,000 or the court may exceed the advisory amount of support set for combined monthly net incomes of $7,000 upon written findings of fact.

West Virginia	In the case of combined income over $15,000, the support award shall not be less than that provided at the $15,000 per month level, plus an amount determined by a formula applied to the excess over $15,000.
Wisconsin	High income is listed as a deviation factor from Percentage of Income calculation.
Wyoming	Where the combined income of the parents is greater than $5,885, a special formula applies.
Source: Morgan, Laura W., *Child Support Guidelines, 1998 Supplement*, Aspen Law & Business, New York, 1998.	

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Child Support Project

Simplified Review and Modification of Child Support Order

Compiled by NCSL 11/99

Updated 10/01

STATE	Three year review cycle	Within cycle, no change of circumstances necessary	Must use best interest of the child standard for review	Review using guidelines calculations	Review using cost of living adjustments	Review using automated means	
Alabama	●	●					●
Alaska	●	●	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy
Arizona	●	●	●	●		●	●
Arkansas	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy		Admin. Policy
California	●	Admin. Policy	●	●			Admin. Policy
Colorado	●	●	●	●			●
Connecticut	●	●	Admin. Policy	●			●
Delaware	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy			Admin. Policy
District of Columbia	●	●	Admin. Policy	●			●
Florida	●	●		●			●

Georgia	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy			Admin. Policy
Hawaii	●	●	●	●			●
Idaho	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy			Admin. Policy
Illinois	●	●	●	●		●	●
Indiana							
Iowa	●	●	●	●	●	●	●
Kansas		●		●			
Kentucky	●	Admin. Policy	Admin. Policy	●		●	●
Louisiana	●	●	Admin. Policy	●			●
Maine		●	Admin. Policy	●			●
Maryland	Admin. Policy		Admin. Policy				Admin. Policy
Massachusetts	●	●	●	●	●	●	●
Michigan	●	●	●	●			Exemption granted
Minnesota	Admin. Policy	Admin. Policy	●	●	●	●	●
Mississippi							
Missouri	●	●	●	●		●	
Montana			●	●			●
Nebraska	●		●	●			
Nevada	●	●	●	●			●

New Hampshire		●					
New Jersey	●	●	●	●	●		Automated Tracking
New Mexico	●	●		●			●
New York	●	●	●		●		●
North Carolina	●	●		●			●
North Dakota	●	●		●			●
Ohio		●	●	●	●	●	●
Oklahoma	●	●	●	●			●
Oregon	●	●	●	●		●	●
Pennsylvania	●	●	●	●	●	●	●
Rhode Island	●	●		●			●
South Carolina	●	●	Admin. Policy	●			
South Dakota	●	●	Admin. Policy	●			●
Tennessee	●	●	●	●	●	●	●
Texas	●	●	●	●			●
Utah	●	●	●	●			●
Vermont	●	●	●	●			●
Virginia	●	●	●	●			●
Washington	●	●	●	●			●
West Virginia	●	●	●	●			●

Wisconsin	●	●	●	●			●
Wyoming	●	●	●				●
TOTAL STATES:	**45**	**46**	**41**	**44**	**10**	**11**	**44**

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Child Support Project

New Hire Reporting Requirements

Compiled by NCSL 11/99

Updated 8/01

STATE	Employers must forward new hire information to directory within 20 days	Information must be in the directory within 5 days of receipt	Data matching with National Directory of New Hires	Data matching with State Case Registry	IV-D agency must send employer income withholding order within 2 days	Quarterly reports to the federal directory	May establish fines for failure of employer to report
Alabama	●	●	●	●		●	●
Alaska	●				●		●
Arizona	●	●	●	●	●	Admin. Policy	
Arkansas	●	●	●	●	●	●	
California	●	●	●	●	●	●	●
Colorado	●	●	●	●	●	●	
Connecticut	●	●	●	●	●	●	
Delaware	●	●	●	●	●	●	●
District of Columbia	●	●	●	Admin. Policy	●	Admin. Policy	●
Florida	●	●	●	●	●	●	
Georgia	●	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	

Hawaii	●	●	●	Admin. Policy	Admin. Policy	●	●
Idaho	●	●	●	●	Admin. Policy	●	●
Illinois	●	●	●	●	●	●	●
Indiana	●	●	●				●
Iowa	●	●	●	●	●	●	
Kansas							
Kentucky	●	●	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	●
Louisiana	●	●	●	●		●	●
Maine	●		●	●	Admin. Policy	●	●
Maryland	●	●					●
Massachusetts	●	Admin. Policy	Admin. Policy	●	●	Admin. Policy	●
Michigan	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy
Minnesota	●	●	●	●	●	●	●
Mississippi	●						●
Missouri	●		●			●	●
Montana	●		●	●			
Nebraska	●						●
Nevada	Admin. Policy	●	●	●	Admin. Policy	●	●
New Hampshire	●	●	●	●		●	Admin. Policy

New Jersey	●	●	●	●	●	Admin. Policy	●
New Mexico	●	Admin. Policy	Admin. Policy	Admin. Policy		Admin. Policy	●
New York	●	●	●	●	●	●	●
North Carolina	●	●	●	●	●	●	●
North Dakota	●	Admin. Policy	●	●	Admin. Policy	Admin. Policy	●
Ohio	●	●	●	●	●	●	●
Oklahoma	●			●			
Oregon	●	Admin. Policy	●	●	Admin. Policy	●	
Pennsylvania	●	Admin. Policy	●	●	Admin. Policy	●	●
Rhode Island	●	●	●	●	●	●	●
South Carolina	●	●	●	●	●	●	●
South Dakota	●	●	●	●	●	●	●
Tennessee	●	●	●	●	Admin. Policy	●	●
Texas	●	●	●	●	●	●	●
Utah	●	●	●	●	●	●	●
Vermont	●	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	●
Virginia	●	●	●	●	●	●	
Washington	●	●	●	●	Admin. Policy	●	●
West Virginia	●	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	Admin. Policy	●

Wisconsin	●	●	●	●	●	●	●
Wyoming	●						
TOTAL STATES:	**50**	**42**	**44**	**43**	**38**	**41**	**38**

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Child Support Program

Income Withholding for Enforcement Purposes

Compiled by NCSL 11/99

Updated 9/01

STATE	Procedures for mandatory income withholding	Requires notice to obligor that withholding has commenced	Employers must forward income withholding within 7 days after payday	Employers must withhold according to order	Employers granted immunity for complying	Employers prohibited from punishing employee subject to withholding	State can execute withholding order without prior notice to obligor
Alabama	●	●	●	●	●	●	●
Alaska	●	●	●	●	●	●	●
Arizona	●	●	●	●	●	●	●
Arkansas	●	●	●	●	●	●	Admin. Policy
California	●	●	●	●	●	●	●
Colorado	●	●	●	●	●	●	●
Connecticut	●	●	●	●	●	●	●
Delaware	●	●	●	●	●	●	●
District of Columbia	●	●	●	●	●	●	●
Florida	●	●	●	●	●	●	●
Georgia	●	●	●	●	●	●	●
Hawaii	●	●	●	●	●	●	●
Idaho	●	●	●	●	●	●	●
Illinois	●	●	●	●	●	●	●

Indiana		●		●		●	●
Iowa	●	●	●	●	●	●	●
Kansas	●		●	●	●	●	
Kentucky	●	●	Admin. Policy	●	●	●	●
Louisiana	●	●	●	●	●	●	●
Maine	●	●	●	●	●	●	Exemption granted
Maryland		●	●	●	●	●	●
Massachusetts	●	●	●	●	●	●	●
Michigan	●	●	●	●		●	
Minnesota	●	●	●	●	●	●	●
Mississippi	●	●	●	●	●	●	●
Missouri		●	●	●	●	●	●
Montana	●	●	●	●	●	●	●
Nebraska	●	●	●	●	●	●	●
Nevada	●	●	●	●	●	●	●
New Hampshire	●	●	●	●	●	●	
New Jersey		●	●	●	●	●	●
New Mexico	●	●	●	●		●	●
New York			●	●	●	●	
North Carolina	●	●	●	●	●	●	
North Dakota	●	●	●	●	●	●	●
Ohio	●	●	●	●	●	●	●
Oklahoma	●	●	●	●	●	●	●
Oregon	●	●	●	●	●	●	●
Pennsylvania	●	●	●	●	●	●	●

Rhode Island	●	●	●	●	●	●	●
South Carolina	●	●	●	●	●	●	●
South Dakota	●	●	●	●	●	●	●
Tennessee	●	●	●	●	●	●	●
Texas	●	●	●	●	●	●	●
Utah	●	●	●	●	●	●	●
Vermont	●	●	●	●	●	●	●
Virginia	●	●	●	●	●	●	●
Washington	●	●	●	●	●	●	●
West Virginia	●	●	●	●	●	●	●
Wisconsin	●	●	●	●	●	●	●
Wyoming	●	●				●	●
TOTAL STATES:	**46**	**49**	**49**	**50**	**47**	**50**	**46**

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Child Support Program

Use of Administrative Liens

Compiled by NCSL 11/99

Updated 9/01

STATE	Administrative liens against real and personal property for child support arrearages	Full faith and credit for liens from other states
Alabama	•	•
Alaska	•	•
Arizona	•	•
Arkansas	•	•
California	•	•
Colorado	•	•
Connecticut	•	•
Delaware	•	•
District of Columbia	•	•
Florida	•	•
Georgia	•	•
Hawaii	•	•
Idaho	•	•

Illinois	•	•
Indiana	•	•
Iowa	•	•
Kansas	•	•
Kentucky	•	•
Louisiana	•	•
Maine	•	•
Maryland	•	•
Massachusetts	•	•
Michigan	•	•
Minnesota	•	•
Mississippi	•	•
Missouri	•	
Montana	•	•
Nebraska		
Nevada	•	•
New Hampshire	•	•
New Jersey	•	•
New Mexico	•	•
New York	•	•
North Carolina	•	•

North Dakota	●	●
Ohio	●	●
Oklahoma	●	●
Oregon	●	●
Pennsylvania	●	●
Rhode Island	●	●
South Carolina	●	●
South Dakota	●	●
Tennessee	●	●
Texas	●	●
Utah	●	●
Vermont	●	●
Virginia	●	●
Washington	●	●
West Virginia	●	●
Wisconsin	●	●
Wyoming	●	●
TOTAL STATES:	**50**	**49**

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Child Support Program

License Restrictions for Noncompliant Obligors

Compiled by NCSL 11/99

Updated 9/01

STATE	Restriction of driver's licenses	Restriction of professional licenses	Restriction of occupational licenses	Restriction of recreational and sporting licenses
Alabama	•	•	•	•
Alaska	•	•	•	•
Arizona	•	•	•	•
Arkansas	•	•	•	•
California	•	•	•	•
Colorado	•	•	•	•
Connecticut	•	•	•	•
Delaware	•	•	•	•
District of Columbia	•	•	•	•
Florida	•	•	•	•
Georgia	•	•	•	•
Hawaii	•	•	•	•
Idaho	•	•	•	•

Illinois	•	•	•	•
Indiana	•	•	•	•
Iowa	•	•	•	•
Kansas	•	•	•	•
Kentucky	•	•	•	•
Louisiana	•	•	•	•
Maine	•	•	•	•
Maryland	•	•	•	•
Massachusetts	•	•	•	•
Michigan	•	•	•	Sporting only
Minnesota	•	•	•	•
Mississippi	•	•	•	•
Missouri	•	•	•	•
Montana	•	•	•	•
Nebraska	•	•	•	•
Nevada	•	•	•	•
New Hampshire	•	•	•	•
New Jersey	•	•	•	•
New Mexico	•	•	•	•
New York	•	•	•	•
North Carolina	•	•	•	•

North Dakota	●	●	●	●
Ohio	●	●	●	●
Oklahoma	●	●	●	●
Oregon	●	●	●	●
Pennsylvania	●	●	●	●
Rhode Island	●	●	●	●
South Carolina	●	●	●	●
South Dakota	●	●	●	●
Tennessee	●	●	●	●
Texas	●	●	●	●
Utah	●	●	●	●
Vermont	●	●	●	●
Virginia	●	●	●	●
Washington	●	●	●	●
West Virginia	●	●	●	●
Wisconsin	●	●	●	●
Wyoming	●	●	●	●
TOTAL STATES:	**51**	**51**	**51**	**51**

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Child Support Program

Agency Authority for Expedited Procedures: General Authority

Compiled by NCSL 11/99

Updated 7/01

State	Authority to order genetic testing for paternity establishment	Use of administrative subpoenas to obtain financial or other information	Authority to order a change in the child support payee	Authority to order income withholding	Authority to increase monthly payments for arrearages	Requires parties to paternity or support proceedings to file with the state registry and update location and identity	Statewide jurisdiction authority
Alabama	•	•	•	•	•	•	•
Alaska	•	•	•	•	•	•	•
Arizona	•	•	•	•	•	•	•
Arkansas	•	•	•	•	•	•	•
California	•	•	•	•	•	•	•
Colorado	•	•		•	•	•	
Connecticut	•	•	•	•	•	•	•
Delaware	•	•	•	•	•	•	•
District of Columbia	•	•	•	•	•	•	•
Florida	•	•	•	•	•	•	•

Georgia	●	●	●	●	●	●	●
Hawaii	●	●	●	●	●	●	●
Idaho	●	●	●	●	●	●	Admin. Policy
Illinois	●	●	●	●	●	●	●
Indiana	●		●	●		●	●
Iowa	●	●	●	●	●	●	●
Kansas	●	●	●	●	●	●	
Kentucky	●	●	●	●		●	●
Louisiana	●	●	●	●	●	●	●
Maine		●	●	●	●	●	●
Maryland		●	●			●	●
Massachusetts	●	●	●	●	●	●	●
Michigan		●				●	●
Minnesota	●	●	●	●	●	●	●
Mississippi	●	●	●	●		●	
Missouri	●	●	●	●	●	●	
Montana	●		●	●		●	●
Nebraska	●	●					
Nevada	●	●	●	●	●	●	●
New Hampshire	●	●		●	●	●	

New Jersey	●	●	●	●	●	●	●
New Mexico	●	●	●	●	●	●	●
New York	●	●	●				
North Carolina	●	●	●	●	●		●
North Dakota	●	●	●	●	●	●	●
Ohio	●	●		●	●	●	
Oklahoma	●	●	●	●	●	●	●
Oregon	●	●	●	●	●	●	●
Pennsylvania	●	●	●	●	●	●	●
Rhode Island	●	●	●	●	●	●	●
South Carolina	●	●	●	●	●	●	●
South Dakota	●	●	●	●	●	●	
Tennessee	●	●	●	●	●	●	●
Texas	●	●	●	●	●	●	
Utah	●	●	●	●	●	●	●
Vermont	●	●	●	●	Admin. Policy	●	●
Virginia	●	●	●	●	●	●	●
Washington	●	●	●	●	●	●	●
West Virginia	●	●	●	●	●	●	●
Wisconsin	●	●	●	●	●	●	●

Wyoming	•	•	•	•	•		
TOTAL STATES:	**48**	**49**	**45**	**45**	**43**	**47**	**40**

For additional information on state child support enforcement, please contact the Child Support Project at 303/830-2200.

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Child Support Program

Agency Authority for Expedited Procedures: Access to Information from Private Entities

Compiled by NCSL 11/99

Updated 7/01

STATE	Obligor information contained in public utilities and cable television records	Obligor information held by financial institutions
Alabama	•	•
Alaska	•	•
Arizona	•	•
Arkansas	•	•
California	•	•
Colorado	•	•
Connecticut	•	•
Delaware	•	•
District of Columbia	•	•
Florida	•	•
Georgia	•	•
Hawaii	•	•
Idaho	•	•

Illinois	•	•
Indiana	•	•
Iowa	•	•
Kansas	•	•
Kentucky	•	•
Louisiana	•	•
Maine	•	•
Maryland	•	•
Massachusetts	•	•
Michigan	•	•
Minnesota	•	•
Mississippi	•	•
Missouri	•	•
Montana	•	•
Nebraska		
Nevada	•	•
New Hampshire	•	•
New Jersey	•	•
New Mexico	•	•
New York	•	•
North Carolina	•	•

North Dakota	●	●
Ohio	●	●
Oklahoma	●	●
Oregon	●	●
Pennsylvania	●	●
Rhode Island	●	●
South Carolina	●	●
South Dakota	●	●
Tennessee	●	●
Texas	●	●
Utah	●	●
Vermont	●	●
Virginia	●	●
Washington	●	●
West Virginia	●	●
Wisconsin	●	●
Wyoming	●	●
TOTAL STATES:	**50**	**50**

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Child Support Program

Agency Authority for Expedited Procedures: Access to Information from Other State and Local Government Agencies

Compiled by NCSL 11/99

Updated 10/01

State	Vital statistics records	Records concerning real and titled personal property	Records of occupational and professional licenses and ownership of businesses	Employment security records	Records of agencies administering public assistance	Records of the motor vehicles department	Records of the corrections department
Alabama	●	●	●	●	●	●	●
Alaska	●	●	●	●	●	●	●
Arizona	●	●	●	●	●	●	●
Arkansas	●	●	●	●	●	●	●
California	●	●	●	●	●	●	●
Colorado	●	●	●	●	●	●	●
Connecticut	●	●	●	●	●	●	●
Delaware	●	●	●	●	●	●	●
District of Columbia	●	●	●	●	●	●	●
Florida	●	●	●	●	●	●	●
Georgia	●	●	●	●	●	●	●
Hawaii	●	●	●	●	●	●	●
Idaho	●	●	●	●	●	●	●

Illinois	●	●	●	●	●	●	●
Indiana	●	●	●		●	●	●
Iowa	●	●	●	●	●	●	●
Kansas						●	●
Kentucky	●	●	●	●	●	●	●
Louisiana	●	●	●	●	Admin. Policy	Admin. Policy	●
Maine	●	●	●	●	●	●	●
Maryland	●	●	●	●	●	●	●
Massachusetts	●	●	●	●	●	●	●
Michigan	●	●	●	●	●	●	●
Minnesota	●	●	●	●	●	●	●
Mississippi	●	●	●	●	●	●	●
Missouri	●	●	●	●	●	●	●
Montana	●	●					●
Nebraska	●	●		●		●	●
Nevada	●	●	●	●	●	●	●
New Hampshire	●	●	●	●	●	●	●
New Jersey	●	●	●	●	●	●	●
New Mexico	●	●	●	●	●	●	●
New York	●	●	●	●	●	●	●

North Carolina	●		●			●	●
North Dakota	●	●	●	●	●	●	●
Ohio	●	●	●	●	●	●	●
Oklahoma	●	●	●	●	●	●	●
Oregon	●	●	●	●	●	●	
Pennsylvania	●	●	●	●	●	●	●
Rhode Island	●	●	●	●	●	●	●
South Carolina	●	●	●	●	●	●	●
South Dakota	●	●	●	●	●	●	●
Tennessee	●	●	●	●	●	●	●
Texas	●	●	●	●	●	●	●
Utah	●	●	●	●	●	●	●
Vermont	●	●	●	●	●	●	●
Virginia	●	●	●	●	●	●	●
Washington	●	●	●	●	●	●	●
West Virginia	●	●	●	●	●	●	●
Wisconsin	●	●	●	●	●	●	●
Wyoming	●	●	●	●	●	●	●
TOTAL STATES:	**50**	**49**	**48**	**47**	**47**	**49**	**50**

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Child Support Project

State Collection of Arrearages

State	Age of Majority	Statute of Limitations on Arrearages	Arrearage Collection for Non-minor Child(ren)
Alabama	19	20 years from date of judgment for purpose of obtaining an order of support	Yes.
Alaska	18, or 19 if child is enrolled in secondary school and residing with custodial parent.	When youngest child reaches age 21, if arrears have been reduced to judgment and judgment is executed on; may be renewed at 10 year intervals	No.
Arizona	18, or when child graduates from secondary school. Additional exceptions exists for handicapped children over 18 under certain circumstances.	Action must be taken within 3 years of date of emancipation of youngest child.	Must be reduced to money judgment within 3 years of emancipation. Collection through realty liens, ex parte wage and non-wage garnishments, orders to appear/show cause; limited use of attachment and execution.
Arkansas	18, or until child graduates from secondary school. Support may be ordered past age of 18 in case of special circumstances such as physical or mental disability.	Under State case law, the previous limitation of five and ten years may be raised as an affirmative defense to collection of past due support when the time period of collections precedes the date when the law was changed.	Yes.
California	18, or, if child enrolled in secondary school, 19 or graduation, whichever comes first. Or if child is declared legally dependent beyond that age due to mental or physical disability.	Enforceable until paid in full.	Yes, if accrual occurred while child was a minor; through tax intercepts, wage assignments, and levies.
Colorado	19, or upon judicial determination.	No limitations. If arrears are reduced to judgment there is a 20 years statute of limitations on the judgment. Judgments are renewable prior to the 20 year expiration.	Yes.
Connecticut	18	None.	Liens, income withholding, civil and criminal actions.
Delaware	18, or 19 if child attending secondary school.	None.	Any enforcement method except tax intercept.

District of Columbia	21 or at emancipation.	12 years unless attempts at payment were made within 12 years.	Only if ordered by superior court; through wage withholding, tax intercept, contempt.
Florida	18, or 19 if child enrolled in secondary school. Or if child is declared legally dependent beyond that age due to mental or physical disability.	None.	Yes, if custodial parent applied for IV-D services.
Georgia	18, or 20 for orders established after 7/92	None.	Yes, through contempt, IRS full collection.
Hawaii	18; can be extended to 23 if child attending higher education or vocational ed.	10 years for orders established in Hawaii, 6 years for out of state orders; no limitation for collection by state of Hawaii.	Any enforcement tool except federal tax refund intercept.
Idaho	18 unless specified by court to extend until 19.	Child's age 23.	Yes, to child's age 23.
Illinois	18, or court discretion.	After 7 years, can be renewed for 20 years.	Yes, most administrative enforcement tools.
Indiana	N/A	N/A	N/A
Iowa	18, or court discretion.	20 years from date of each child support installment.	Yes.
Kansas	18, or 19 if attending secondary school.	Generally, installments due after 7-1-81 are enforceable until 2 years after child is emancipated; with appropriate actions, enforcability may be extended indefinitely; installments due before 7-1-81 may be enforceable but require case-by-case determination. In a preceeding for arrerages, the stature of limitation uner the laws of Kansas or of the state issuing the order, whichever is longer, applies.	Yes.
Kentucky	18, or 19 of attending secondary school.	15 years after the youngest child is emancipated.	Yes, if custodial parent applied for IV-D services.
Louisiana	18, or until secondary school graduation, whichever is first.	5 years	Yes, if existing order prior to emancipation.
Maine	18; orders established after 1/90 which continue until age 19 if attending secondary school	None; However, payment is presumed after 20 years.	Mainly through income withholding, liens, state income tax refund offset, unemployment benefits; no federal tax refund intercept.
Maryland	18	12 years	Any enforcement tool except for federal tax intercept.
Massachusetts	18; court has discretion to order support beyond under certain conditions.	None.	Automated enforcement tools only. Must have existing order.

Michigan	18, or until 19 1/2 for completion of secondary school, or beyond if parties agree.	N/A	Yes, if original order exists. Any enforcement tool except for federal tax refund offset.
Minnesota	18, or until no longer attending secondary school--not to extend past 20 years unless the order specifies.	For judicial actions-10 years from date af accrual. Can be reduced to judgment which extends SOL 10 years and judgment can be renewed. No SOL on administrative actions (tax intercept, billing, credit bureau reporting, etc)	Yes. See Statute of Limitations on Arrearages.
Mississippi	21	7 years beyond age of majority.	None.
Missouri	18, graduation from secondary school, or 21, whichever comes first; unless child enrolls in post-secondary education, then 22.	10 years from the last payment on record.	Yes, through income withholding, state tax refund offset, garnishments, etc. Some county prosecuting attorneys may file civil contempt actions.
Montana	18, or 19 if attending secondary school.	10 years for support due prior to 10/1/93; 10 years from termination of obligation thereafter.	Each monthly support obligation constitutes a judgment and the 10 year limitation begins to run the month the payment becomes due.
Nebraska	19	None.	Income withholding, garnishment, contempt, IRS collections services, state revenue offset, unemployment benefits, and lottery winnings.
Nevada	18, or 19 if attending secondary school.	None if order exists; if no order, retroactive support may be sought back 4 years.	Real property liens and income withholding.
New Hampshire	18, or graduation from secondary school, whichever is later, with certain exceptions for emancipation and disability.	20 years for arrearages adjudicated after 1988.	Yes, if custodial parent applied for IV-D services while child was still a minor.
New Jersey	Court discretion.	None.	Any enforcement tool except for federal tax intercept.
New Mexico	18, unless emancipated at 16 or older.	14 years.	Yes.
New York	21	20 years from date of payment default for orders after 8/7/87; 6 years for orders prior to 8/7/87; 20 years for arrearages reduced to judgment.	Any enforcement tool except for federal tax intercept.
North Carolina	10 years	10 years.	Yes, if custodial parent applied for IV-D services.
North Dakota	18, or 19 if attending secondary school.	10 years after the obligation for current support ceases.	Income withholding, execution of judgments, state tax refund intercept, and limited judicial processes.

Ohio	18, or high school graduation, whichever is later.	N/A	Yes, through wage withholding, contempt, and all other Division D enforcement orders.
Oklahoma	18, or 19 if attending secondary school.	Various case law establishing different limitations.	Yes.
Oregon	18, 21 if attending school half-time or more.	25 years from date of initial order if unexpired child support judgment is still valid as of 1/1/94.	All administrative remedies available.
Pennsylvania	18 and no longer attending secondary school.	None.	Wage attachment, contempt, liens.
Rhode Island	18	None.	No.
South Carolina	18, unless attending secondary school, then court discretion.	Not permitted after an unreasonable and substantial delay and if enforcement would be inequitable (doctrine of laches).	Yes, if custodial parent applied for IV-D services.
South Dakota	18, or 19 if attending secondary school.	6 years if not reduced to judgment and 20 years if reduced to judgment.	Execution of judgments and income withholding.
Tennessee	18, or high school graduation, whichever is later.	10 years after child support was last owed.	Any enforcement tool except for federal tax intercept.
Texas	18, or high school graduation, whichever is later. Court may extend suppport in the case of mental or physical disability.	Motion must be filed within 4 years of termination of support order for reducing arrears to judgment; notice of withholding must be re-filed every 4 years; judgment must be renewed every 10 years.	Action cannot be initiated by child; limited collection mechanisms.
Utah	18, or high school graduation.	8 years	Yes, if custodial parent applied for IV-D, non-TANF services.
Vermont	18, unless secondary education included in order.	6 years from youngest child's reaching age of majority or after post-secondary education if included in order.	Yes.
Virginia	19, or high school graduation; if not attending high school, age 18	None.	All administrative remedies available.
Washington	18, but court discretion for special circumstances such as post-secondary education.	10 years after the payment is due for orders entered through 7/23/89 and 10 years after the 18th birthday of the youngest child named in the order for orders entered after the date.	Yes, if custodial parent applied for IV-D services.
West Virginia	18, unless attending secondary school, then court discretion.	10 year from date of judgment; becomes judgment by operation of law.	Any enforcement tool except for federal tax intercept.
Wisconsin	18, and graduation from secondary school, or 19, whichever is sooner	20 years after child reaches majority.	Any enforcement tool except for federal tax intercept.

Wyoming	18, or up to 20 for secondary education; disabled children for life.	None currently; issue in courts.	Yes, if custodial parent applied for IV-D services.

National Conference of State Legislatures, 11/8/1999

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Nurturing Responsible Families Project

Project Description

Welfare reform has provided states with the opportunity to focus on revitalizing families by helping fathers to become and sustain the emotional and financial providers that their children deserve. Children who grow-up in poverty are at increased risk for early pregnancy, school dropout, substance abuse and juvenile delinquency. The absence of a responsible father increases this risk. Many low-income fathers lacked the involvement of their own their fathers-leaving them without an example of what a father is supposed to provide. These low-income fathers often lack the necessary skills or education that allow them to be a financial provider. Gradually, states are beginning to recognize these fathers as "deadbroke dads", different from the deadbeat dads who choose to ignore their families.

The Nurturing Responsible Families Project at NCSL can help policymakers develop informed policy solutions to help ensure children grow up with the support of both mothers and fathers. Project activities are designed to educate states about ways to facilitate father involvement and remove systemic barriers to their involvement. Our strategy works at two levels: widespread distribution of information about programs and services, and providing on-site assistance to states to help them design strategies that best fit with their individual needs.

More specifically, the goals of the project are to:

- Educate state legislators and other state policymakers about the importance of fathers in the lives of their children;
- Provide states with new informational resources and ideas to increase child well-being through the involvement of fathers;
- Increase awareness of non-legislative entities about the role of legislators in policymaking;
- Provide connection points between research findings and policy alternatives;
- Prepare state policymakers for issues related to family formation and marriage within the context of TANF reauthorization.

Through a National Advisory Committee consisting of policymakers, state agency officials, program practitioners and research experts, the project has produced the first of its kind tool-kit designed with the particular needs of policymakers in mind-*Connecting Low-Income Fathers and Families: A Guide to Practical Policies.* Other project resources and services include:

- Information clearinghouse
- Website-www.ncsl.org/statefed/welfare/fatherhood.htm
- Tracking legislative developments
- Educational workshops for legislators and staff
- Publications targeted to policymakers, including the forthcoming Program Assessment Guide
- On-Site technical assistance
- Policy/Legislative Analysis

For more information or to arrange a technical assistance, please contact Dana Reichert at 303-894-3191.

Return to Nurturing Responsible Families Homepage

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Side-By-Side Comparison of Major Provisions of Fatherhood Legislation Pending Before Congress

As of July 28, 2000

H.R. 3073, S. 1364 and H.R. 4678 are bills before the 106th Congress which would provide grants for fatherhood programs. H.R. 3073 passed the U.S. House of Representatives on November 10, 1999. The President's FY 2001 budget also includes funds for fatherhood programs.

LATEST ACTIONS: The Senate held hearings on fatherhood on July 25th. NCSL testified at this hearing. Go to www.ncsl.org/programs/press/lynntest.htm for the testimony. H.R. 4678 passed the full Ways and Means Committee on July 19th. It was scheduled for floor action before the August recess, but the House adjourned without taking action.

For further information, contact: Sheri Steisel or Lee Posey, or by phone at (202) 624-5400

COMPARISON OF MAJOR PROVISIONS IN FATHERHOOD LEGISLATION

Two pieces of legislation were introduced in the 1999 Session of the 106th Congress to encourage state programs to promote responsible fatherhood. The House bill (H.R. 3073) and the Senate bill (S. 1364) also contain provisions to encourage states to pass through child support collections and provisions to ease the eligibility requirements for the Welfare-to-Work program. During the 2000 Session, a third bill, H.R. 4678 was introduced with fatherhood provisions very similar to the provisions of H.R. 3073. The President's budget proposal for FY 2001 included a "Fathers Work" initiative.

	H.R. 3073	S. 1364	H.R. 4678	President's Proposal	*Issues for policymakers*

Title	The Fathers Count Act of 1999	The Responsible Fatherhood Act of 1999	The Child Support Distribution Act of 2000	F.Y. 2001 Budget Proposal	H.R. 4678 is a more streamlined version of H.R. 3073 (which passed the U.S. House).
Sponsors	Representative Johnson (R-Connecticut) & Representative Cardin (D-Maryland)	Senator Bayh (D-Indiana) & Senator Domenici (R-New Mexico)	Representative Johnson (R-CT)	President Clinton	
Status	Adopted U.S. House November 10, 1999 (Vote: 328-93)	The Senate held a hearing on fatherhood on July 25th.	Passed House Ways and Means Committee by voice vote on July 19th. It was scheduled for floor action before the House adjourned for August recess, but no action was taken before the House adjourned.	The initiative was announced 1/25/2000; no legislation introduced.	
Fatherhood Grant Programs: ***Structure***	Competitive grant program for governmental and nongovernmental entities. Two federal panels will make recommendations to the HHS Secretary. Members of the panel must have experience with social services programs.	Block grant program, distributed to states on a formula basis	*Revised version of H.R. 3073* Competitive grant program for governmental and nongovernmental entities. A federal panel will make recommendations to the HHS Secretary. Members of the panel must have experience with social services programs	"Fathers Work" is an initiative to provide grants to fatherhood programs and is based on responsible fatherhood proposals funded through the Welfare-to-Work program.	*While every state can access funds from the Senate bill, it does not have a funding source. H.R. 3073 has a more modest approach, but had a funding source that did not put current funding for state programs at risk. Some of its funding was taken to fund were taken to fund FY 2000 Appropriations.*

Funding	$70 million in grants will be awarded 10/1/2000; $70 million in grants will be awarded 10/1/2001.	$50 million in funds awarded based on the number of children under five and the number of children at risk in the state	$140 million in grants will be awarded 10/1/2001.	The President is requesting $125 million for the first year.	
Match	20% match generally required, from non-federal sources; may be in-kind contributions. States can receive TANF Maintenance of Effort (MOE) credit for matching federal funds.	25% state match required from non-federal sources; may be in-kind contributions.	20% match generally required, from non-federal sources; may be in-kind contributions.	Not known	*NCSL has sought MOE credit for fatherhood expenditures.*
Eligibility of Recipients	Participants must be: 1.) father of child receiving assistance or services or child who has received assistance within the past 24 months; or 2.) father with income less than 150% of the poverty level.	Eligibility requirements left up to the states.	Participants must be: 1.) father of child receiving assistance or services or child who has received assistance within the past 24 months; or 2.) father with income less than 150% of the poverty level.	Low-income fathers living with their children	*Senate bill is more flexible in this regard.*
Eligibility of Entities Receiving Grants	Not less than 75% of the grants must go to nongovernmental agencies or governmental agencies that will pass along at least 50% of the grant to nongovernmental agencies. An applicant must commit to making drug and HIV education available to participants.	Not applicable	Not less than 75% of the grants must go to nongovernmental agencies or governmental agencies that will pass along at least 50% of the grant to nongovernmental agencies. An applicant must commit to making drug and HIV education available to participants.	Not known	

Entities receiving grants	Grant recipients may be governmental, nongovernmental, or faith based organizations. Charitable choice language applies. This means that funds can go directly to sectarian organizations.		Grant recipients may be governmental, nongovernmental, or faith based organizations. Charitable choice language applies. This means that funds can go directly to sectarian organizations. Grant funds may not be used for court proceedings on matters of child visitation or custody or for legislative advocacy.	Not known	*Charitable choice language was also included in the 1996 welfare reform act.*
Preferences	Preference given to applicants • who have a written commitment from state IV D agency to cancel arrearages if father continues to pay child support; • who are committed to helping fathers who cooperate with IV D agency in improving their credit; • help fathers arrange and maintain a consistent schedule of visits with their children; • have written statements of cooperation with TANF and IV D agencies, and Workforce Investment Boards; • enroll a high percentage of	Not applicable	Preference given to applicants • who have a written commitment from state IV D agency to cancel arrearages if father continues to pay child support or lives with his families (unless convicted of child abuse or domestic abuse); • who are committed to	Not known	*During the full committee hearing, language was added to H.R. 4678 that increased the focus on domestic violence and child abuse.*

	fathers within 6 months before or after child's birth; and • identify methods of recruiting dads.			helping fathers who cooperate with IV D agency in improving their credit; • help fathers arrange and maintain a consistent schedule of visits with their children; • have written statements of cooperation with TANF and IV D agencies, and Workforce Investment Boards; • enroll a high percentage of fathers within 6 months before or after child's birth; and • identify methods of recruiting dads.	

Program Goals	• promote marriage, • promote successful parenting, and • help fathers and families avoid or leave the welfare program and improve their economic condition.	• promote formation and maintenance of two-parent families, • strengthen fragile families, and • promote responsible fatherhood.	• promote marriage and decrease domestic violence, • promote successful parenting, and • help fathers and families avoid or leave the welfare program and improve their economic condition.	Ensure that low-income fathers not living with their children work, pay child support, and reconnect with their children.	*Some organizations and Members of Congress have found the marriage goal controversial.*
Other Fatherhood Programs	Media/Clearinghouse $5 million to a nationally recognized nonprofit organization to establish: • a national public education campaign promoting responsible fatherhood, and • a national clearinghouse to assist fatherhood efforts. Multi-City Fatherhood Programs $5 million grant to each of two nationally recognized nonprofit fatherhood promotion organizations with experience in conducting projects in more than one metropolitan area. An organization applying for funds must show that projects will be conducted in three major metropolitan areas.	Media $25 million challenge grant to encourage states/communities to get donated air time from broadcasters, with 100% federal match. National Clearinghouse $2 million to assist states and communities in their efforts to promote and support responsible fatherhood.	Media/Clearinghouse $5 million to a nationally recognized nonprofit organization to establish: • a national public education campaign promoting responsible fatherhood, and • a national clearinghouse to assist fatherhood efforts. Multi-City Fatherhood Programs $5 million grant to each of two nationally recognized nonprofit fatherhood promotion organizations with experience in conducting projects in more than	Not known	

			one metropolitan area. An organization applying for funds must show that projects will be conducted in three major metropolitan areas.		
Child Support Provisions: ***Pass Through Options*** ***(Also see new NCSL paper "Major Child Support Pass-Through Proposals and Legislation.")***	States are given the authority to pass through child support arrearages collected through tax intercept to certain families who are not on assistance. The family must include a child of a participant in a program funded under this fatherhood legislation. The state would not have to pay the federal share of collections for arrearages passed through to families of program participants.	The bill gives states the option to pass through up to $75 per month of child support directly to the family. If a state passes through that amount, and disregards the total amount annually collected and distributed for the purpose of determining a family's TANF eligibility, the state does not have to pay the federal government its share of support collected. If a state uses child support funds to provide fatherhood programs, they will be released from their obligation to pay the federal share of collections. States will be allowed to do this provided they implement the $75 pass through and disregard child support for the purpose of determining assistance. States are allowed to claim the amount passed through toward their TANF MOE requirement.	States are required to pass through all child support collected, including arrearages, to families formerly receiving assistance by 2005. This includes amounts collected through the federal tax intercept program and past-due support that was owed but not paid while the family was on assistance. The state would not have to pay the federal share. States could also get federal cost-sharing for passing through collections to families who have received TANF for less than five years IF the states passed through and disregarded the amount. There is a cap on the amount passed through for which federal cost sharing is available. That amount is $400 a month, or $600 for a family with two or more children. A state could use TANF	The President's Budget Proposal separately included federal funds for a new state option to pass through child support collections for families and disregard those funds in determining assistance levels for TANF families. The federal government would share in the cost of amounts above a state's current pass through and disregard policy, up to the greater of $100 a month or $50 over the current state effort. Child support collected for families no longer on assistance would be paid to the family and the federal government would forgo its share of the collections.	*States have asked the federal government to allow them to pass through child support without reimbursing the federal government (paying the federal share). H.R. 3073 only covers program participants. The Senate bill provides a state option to cover all child support participants. H.R. 4678 mandates that states pass through child support to all former welfare recipients by 2005. This would be especially problematic for those states that fund their child support systems with their child support collections. While all states would get federal*

			funds to recover the increased state share when the state passes through more of the child support, or it can count such funds as MOE expenditures but not both.		*reimbursement for the federal share of the pass through, they would give up their state share. The President's proposal is complex to administer.*
State Disbursement Units Penalty Relief	If a state is not in compliance with the child support SDU requirement, but has submitted a corrective compliance plan before 4/1/2000, an alternative penalty procedure applies. The state plan will not be disapproved. The state's federal child support payments will be reduced as follows: • first year, 4% • second year, 8% • third year, 16% • fourth year, 25% • fifth and subsequent years, 30% If a state is in compliance on or before 4/1/2000, no penalties will apply. If a state complies before after 4/1/2000, but before 9/30/2000, then the penalty will be 1%. State TANF funds will not be threatened by the state's ability to comply with SDU requirements.	Not included	Not included	Not known	*The SDU penalty relief measures of H.R. 3073 were passed as part of the Omnibus Appropriations Bill, H.R. 3194. Nine states are expected not be in compliance with the SDU requirements. The mandate still exists, but the penalties that can be assessed are much less dramatic than disapproval of a state plan, or loss of TANF funds. No further action on SDU is expected.*

Welfare-to-Work (WtW)-- a Department of Labor Program--Provisions: ***Eligibility***	Current eligibility criteria are simplified: 1. Custodial parent • Has received TANF/AFDC assistance for 30 months, or • Is within 12 months of the TANF time limits for assistance. 2. Noncustodial parent who is unemployed/underemployed or has difficulty paying child support and has a minor child to whom one of the of the following applies: • Minor child or child or custodial parent has received AFDC/TANF for a total of 30 months or is within 12 months of the time limit; • Minor child is eligible for or receiving TANF benefits; • Minor child has left TANF within the past 12 months; • Minor child is receiving food stamps, SSI, Medicaid, or CHIP. The noncustodial parent must be in compliance with a personal responsibility contract. Custodial parents who are poor but not receiving assistance are eligible for Welfare-to-Work benefits. States are also able to serve young people aging out of foster care under the	Revised eligibility criteria (one of the following applies in each case): 1. Noncustodial parent or recipient: • unemployed; • underemployed; • having difficulty paying child support; or • income 200% of poverty. 1. The minor child of a noncustodial parent: • long-term recipient or in danger of becoming ineligible for TANF because of time limits; • eligible for TANF; eligible for or receiving Food Stamps, Medicaid, TANF, or CHIP.	Not included	No known	*Revised Welfare-to-Work (WtW) eligibility provisions were passed into law as part of the Omnibus Appropriations Law (H.R. 3194) in November 1999. A separate NCSL paper outlines the final changes.* *NCSL successfully sought simplification and expansion of the eligibility requirements for WtW. States have found the current requirements too narrow and have had difficulty recruiting WtW participants. Final law specifically allows poor families not on assistance to be served by the WtW program, and covers children aging out of foster care.*

	"characteristics of long-term dependency" category. ***(was H.R. 3172)***				
TANF Provisions	Clarifies that states may use TANF block grant funds for fatherhood activities. States can receive TANF Maintenance of Effort (MOE) credit for fatherhood spending.	States are allowed to claim the amount passed through toward their TANF MOE requirement. The bill adds state efforts to encourage the formation and maintenance of two-parent families to the list of TANF high performance bonus criteria.	A state could use TANF funds to recover the increased state share when the state passes through more of the child support, or it can count such funds as MOE expenditures but not both.	Not included	*NCSL has sought more MOE credit for state contributions. The clarification in the H.R. 3973 that TANF funds can be used for fatherhood programs is helpful. However, states currently can use TANF and MOE dollars for fatherhood programs without further clarification.*
Other	The Title IV E training provision is expanded to includes judges and other court personnel who work on child abuse and neglect cases. Funding is provided for welfare reform evaluation (19.3 million for FY 2000-FY 2003), and a longer period is provided for evaluation of the Abstinence Education program. Two Congressional committees (House Ways and Means, Senate Finance) will receive a report on undistributed child support. Nonimmigrant aliens are ineligible to receive visas and excluded from admission for nonpayment of child support.	Not applicable	Expanded child support enforcement measures in the bill: • decrease the past-due amount that triggers passport denial form $5,000 to $2.5000 • expand the tax refund intercept program so it can be used to collect past due support	The President also separately proposed a number of child support measures, including passport denial. The bill also mandates review of child support orders every three years.	*Allowing public non-IVD agencies and private agencies access to child support information has been controversial.*

		on behalf of a child who is no longer a minor A demonstration project is set up for that permits participation of public non-IV D agencies in collecting child support. A GAO report to Congress on private companies now involved in child support collections would examine the activities of these agencies. The bill also mandates review of child support orders every three years, and upon leaving TANF. States would be prohibited from using their child support programs to recoup costs for the birth of a child that were paid by Medicaid. States would be allowed to claim more federal money for efforts they undertake to train staff of private state-approved child welfare agencies.	

Funding Provisions	The bill allows a state agency administering an unemployment compensation program access to the National Directory of New Hires for the purpose of recovering overpayments. The bill allows the use of the National Directory of New Hires to obtain information about individuals in default on student loans. The bill eliminates the performance bonus funds in the WtW program.	None	The bill allows a state agency administering an unemployment compensation program access to the National Directory of New Hires for the purpose of recovering overpayments. The bill eliminates the performance bonus funds in the WtW program.		*The FY 2000 Omnibus Appropriations Law (H.R. 3194), which has been signed into law, contained the H.R. 3073 fatherhood funding provisions as a funding source. Proponents of fatherhood legislation must now find an alternative funding source as the fatherhood legislation moves from the House to the Senate.* *S. 1364 and H.R. 4678 are still not fully funded, which could impact passage.*

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Appendix T

Chart 2: *Custody Criteria*

STATE	Statutory Guidelines	Children's Wishes	Joint Custody*	Cooperative Parent	Domestic Violence	Health	Attorney or GAL
Alabama	X	X	X		X		
Alaska	X	X	X		X		X
Arizona	X	X	X	X	X	X	X
Arkansas					X		
California	X	X		X	X	X	X
Colorado	X	X	X[1]	X	X	X	X
Connecticut		X	X				X
Delaware	X	X	X		X	X	X
District of Columbia	X	X	X	X	X	X	X
Florida	X	X	X	X	X	X	X
Georgia	X	X	X		X		X
Hawaii	X	X	X		X		X
Idaho	X	X	X		X	X	
Illinois	X	X	X	X	X	X	X
Indiana	X	X	X	X	X	X	X
Iowa	X	X	X	X	X	X	X
Kansas	X	X	X	X	X	X	
Kentucky	X	X	X	X	X	X	X
Louisiana	X	X	X		X		
Maine	X	X	X		X		X
Maryland		X	X	X	X	X	X
Massachusetts			X		X		X
Michigan	X	X	X	X	X	X	X
Minnesota	X	X	X		X	X	X
Mississippi	X		X			X	X[2]
Missouri	X	X	X	X	X	X	X
Montana	X	X	X		X		X
Nebraska	X	X	X		X	X	X
Nevada	X	X	X	X	X		X
New Hampshire	X	X	X		X		X
New Jersey	X	X	X	X	X	X	X
New Mexico	X	X	X	X	X	X	X
New York		X			X[2]		X
North Carolina		X[2]	X		X	X	
North Dakota	X	X	X	X[3]	X	X	
Ohio	X	X	X		X	X	X
Oklahoma	X	X	X	X	X		
Oregon	X	X	X	X	X		X[3]
Pennsylvania	X	X	X	X	X	X	X
Puerto Rico	X*	X**	X		X**	X**	
Rhode Island		X	X	X	X	X	X
South Carolina		X	X	X	X	X	X
South Dakota		X	X	X	X		
Tennessee	X	X	X	X	X		X
Texas	X	X	X	X	X	X	X
Utah	X	X	X	X			X
Vermont	X		X		X		X
Virginia	X	X[2]	X	X	X	X	X[4]
Washington	X	X			X	X	X
West Virginia	X	X	X		X		
Wisconsin	X	X	X	X	X	X	X
Wyoming		X	X		X		

*Court in the exercise of its sound discretion shall consider the best interests and welfare of the minor child.
**At least joint legal custody.

Source: 34 Fam. L.Q. 654 (No. 4 Winter 2001) (chart 2).

Child Support Program

Collection of Social Security Numbers (SSNs)

Compiled by NCSL 11/99

STATE	Requires collection of SSNs on applications for professional, occupational, driver's, marriage, and recreational licenses	Requires SSNs on records relating to support orders, paternity establishments and divorce decrees	Requires SSNs on death certificates
Alabama	X	X	X
Alaska	X	X	X
Arizona	X	X	X
Arkansas	X	X	X
California	X	X	Admin. Policy
Colorado	X	X	X
Connecticut	X	X	X
Delaware	X	X	X
District of Columbia	X	X	X
Florida	X	X	X
Georgia			
Hawaii	Marriage licenses only	X	X

Idaho	X	X	X
Illinois	X	X	X
Indiana	Marriage licenses only	Paternity orders only	
Iowa	X	X	X
Kansas	All except driver's and recreational licenses		
Kentucky	X	X	
Louisiana		Paternity orders only	
Maine	X	X	Admin. Policy
Maryland	X		
Massachusetts	X	X	X
Michigan	X	X	X
Minnesota	All except recreational licenses	X	X
Mississippi	X	X	X
Missouri	X	X	X
Montana	X	X	Exemption granted
Nebraska	X	X	X
Nevada	X	X	X
New Hampshire	X	X	
New Jersey	X	X	X

New Mexico	All except recreational licenses	X	X
New York	Marriage licenses only	X	X
North Carolina	All except recreational licenses	X	
North Dakota	X	X	X
Ohio	X	X	X
Oklahoma	X	X	X
Oregon	X	X	X
Pennsylvania	X	X	X
Rhode Island	X		X
South Carolina	X	X	X
South Dakota	X	X	X
Tennessee	X	X	X
Texas	X	X	X
Utah	X	X	X
Vermont	Driver's licenses only	X	X
Virginia	X	Divorce decrees in statute, support orders and paternity establishments by admin. policy	X
Washington	X	X	X
West Virginia	X	X	X
Wisconsin	X	X	X

Wyoming	**X**	**X**	**X**
TOTAL STATES:	**49**	**47**	**43**

For additional information on state child support enforcement, please contact the Child Support Project at 303/830-2200.

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Appendix X

Chart 5: *Property Division*

STATE	Community Property	Only Marital Divided	Statutory List of Factors	Nonmonetary Contributions	Economic Misconduct	Contribution to Education
Alabama		X		X		X
Alaska	X[1]		X	X	X	
Arizona	X				X	X
Arkansas		X	X	X		
California	X		X	X	X	X
Colorado		X	X	X	X	
Connecticut			X	X	X	X
Delaware		X	X	X	X	X
District of Columbia		X	X	X	X	
Florida		X	X	X	X	X
Georgia		X				
Hawaii			X	X	X	
Idaho	X		X			
Illinois		X	X	X	X	
Indiana		X	X	X	X	X
Iowa			X	X	X	X
Kansas			X		X	
Kentucky		X	X	X	X	X
Louisiana	X					
Maine		X	X	X	X	
Maryland		X	X	X	X	
Massachusetts			X	X	X	X
Michigan		X		X	X	X
Minnesota		X	X	X	X	
Mississippi		X		X	X	X
Missouri		X	X	X	X	X
Montana			X	X	X	
Nebraska		X		X		
Nevada	X	X		X	X	X
New Hampshire			X	X	X	X
New Jersey		X	X	X	X	X
New Mexico	X					
New York		X	X	X	X	X
North Carolina		X	X	X	X	X
North Dakota				X	X	X
Ohio		X	X	X	X	X
Oklahoma		X		X	X	
Oregon				X	X	X
Pennsylvania		X	X	X	X	X
Puerto Rico	X					
Rhode Island		X	X	X	X	X
South Carolina		X	X	X	X	X
South Dakota				X	X	
Tennessee		X	X	X	X	X
Texas	X				X	
Utah						
Vermont			X	X	X	X
Virginia		X	X	X	X	X
Washington	X		X			
West Virginia		X	X	X	X	X
Wisconsin		X	X	X	X	X
Wyoming		X	X	X		

Source: 34 Fam. L.Q. 657 (No. 4 Winter 2001) (chart 5).