

FAMILY SUPPORT FORUM

The Official Newsletter of the Illinois Family Support Enforcement Association

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IDPA to Implement National Medical Support Notice July 1

By Pamela Compton

A new federally mandated form will be added to the Illinois Department of Public Aid's (IDPA) Employer Withholding packets in the near future. Federal regulations now require all state IV-D agencies to use one standardized notice to enforce employer-related health care coverage provisions in a child support order. This notice is referred to as the National Medical Support Notice (NMSN).

NMSN Overview

Federal regulations pertaining to the NMSN can be found at Public Welfare 45 CFR 303.32 and Department of Labor 29 CFR 2590. The federal Office of Child Support Enforcement (OCSE) published information about the NMSN requirements in Action Transmittal OCSE-AT-01-02 "A Final Rule on the National Medical Support Notice" dated January 8, 2001. The Action Transmittal can be viewed on the OCSE website at:
<http://www.acf.dhhs.gov/programs/cse/pol/at-01-02.htm>

Upon signature by the Governor, Senate Bill 2224 will allow Illinois to begin using the NMSN on July 1, 2002. Illinois will issue the NMSN along with the Order/Notice to Withhold Income for Child Support, DPA 3683, when employer-related health care coverage is ordered. The NMSN may also be issued separately to enforce employer-related health care coverage.

The federal Departments of Health and Human Services and Labor developed the NMSN in consultation with their Medical Support Working Group. The Working Group was formed in 1999 to identify barriers to effective enforcement of medical support orders and recommend effective solutions. Among the Working Group members were employer representatives, including payroll professionals, as well as sponsors and administrators of group health plans. The NMSN was designed to assist employers who now receive many

different medical insurance forms from different states. Additionally, an appropriately completed NMSN is deemed to be a Qualified Medical Child Support Order when issued by IDPA, satisfying the requirement of § 609 (a) of ERISA.

Employer Responsibilities and NMSN

The employer is required to review and act on the NMSN within 20 business days of the date of the Notice. The review includes:

- Determining the type of medical coverage required under the order.
- Determining if the company can provide coverage. If yes, the employer forwards Part B to the insurance Plan Administrator. The employer completes the Part A response form and returns it to the Child Support Agency.
- If the employer cannot provide medical insurance, they provide the reason on the Part A

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***Depending on contributions, the FORUM attempts to publish
four times a year - in March, June, August/September, and December.***

Items for publication are needed by the 8th of the month.

Contact the Editor or Assignment Editor for details.

Please Contribute - its YOUR Newsletter!



From the Statehouse . . .

. . . LEGISLATIVE UPDATE

2002 Illinois Support-Related Legislation

As of press time only three of the bills of possible relevance to family support enforcement introduced this year had made it through both houses of the General Assembly and were awaiting the Governor's signature. The following is a summary of bills relevant to family support enforcement introduced in the Illinois General Assembly in 2002 and their respective sponsors. For specifics reference should be made to the bill itself.

Summaries of bills and their status, including direct links to the text of each bill and to Public Acts following their approval by the Governor, are now available on IFSEA's web site, www.illinoisfamilysupport.org.

by Richard A. Saavedra
& Thomas P. Sweeney

- Passed Bills -

H.B. 4409 Banks; Interstate Lien or Levy
House: Lindner; Lyons, Eileen; McCarthy; Black
Senate: Parker; Lightford

As passed by the House, this bill would amend Section 48.4 of the Illinois Banking Act (205 ILCS 5/48.4) to provide that banks shall encumber or surrender accounts or assets held by the bank on behalf of any responsible relative who is subject to a child support lien upon notice of an "interstate lien or levy" (instead of just "interstate lien", as stated in current law) from any other state's agency that is responsible for implementing the Title IV-D support enforcement program.

Senate Amendment No. 1 to H.B. 4409 maintains the House version's amendment to Section 48.4 of the Illinois Banking Act and makes the same change to Section 1-6d of the Illinois Savings and Loan Act of 1985 (205 ILCS 105/1-6d), and Section 7007 of the Savings Bank Act (205 ILCS 205/7007).

Senate Amendment No. 1 also makes non-child support-related changes to the Metropolitan Transit Authority Act, the Illinois Banking Act, the Savings Bank Act, the Consumer Deposit Account Act, the Electronic Fund Transfer Act, and the Corporate Fiduciary Act. The bill would take effect upon becoming law.

H.B. 4409 was passed by the Senate on May 7, 2002 and the House passed its concurrence on May 30, 2002.

H.B. 4465 Funding, Child Support Trust Fund
House: Mitchell, Jerry
Senate: Rauschenberger

Amends Sections 12-10.2 and 12-10.2a of the Illinois Public Aid Code. Adds provisions concerning moneys to be deposited in the Child Support Enforcement Trust Fund on and after July 1, 2002. The added provisions are substantially similar to the provisions concerning moneys to be deposited before July 1, 2002, except that support payments are to be deposited into the fund regardless of the fiscal year in which the payments were received, and other non-appropriated moneys are to be deposited into the fund if received on or before June 30, 2002. Provides for the transfer of moneys in the fund to the Child Support Administrative Fund. In provisions concerning the Child Support Administrative Fund, adds provisions concerning moneys to be deposited into the fund. The added provisions are substantially similar to the provisions concerning moneys to be deposited into the Child Support Enforcement Trust Fund, except that the moneys to be deposited do not include support payments assigned to or received by the Department of Public Aid. The bill also makes changes concerning appropriations from the funds.

H.B. 4465 passed both Houses as of April 25, 2002. H.B. 4465 will take effect upon becoming law.

S.B. 2224 IDPA Redirect Notice;
National Medical Support Notice
Senate: Syverson

House: Mitchell, Jerry; Garrett; May
To comply with federal State Plan requirements for the IV-D child support enforcement program, this bill: (1) amends the Income Withholding for Support Act to require use by the Illinois IV-D agency of the National Medical Support Notice developed by the Department

(Cont'd. on page 4)

of Health and Human Services for enforcement of orders for support requiring the obligor to provide employer-related health insurance coverage, and (2) amends the Illinois Public Aid Code, the IMDMA, the Non-Support Punishment Act, the Uniform Interstate Family Support Act, and the Illinois Parentage Act of 1984 to authorize IDPA to administratively change the payment path under an order for support to the Illinois State Disbursement Unit, or the State Disbursement Unit of another State, at the request of the other State's child support enforcement agency.

S.B. 2224 also amends the Income Withholding for Support Act to provide that income available for withholding shall be applied first to the current support obligation, then to any employer-related health insurance premium, and then to payments required on past-due support obligations. If there is insufficient available income remaining to pay the full amount of the required health insurance premium after withholding of income for the current support obligation, then the remaining available income shall be applied to payments required on past-due support obligations. The bill also standardizes use of the term "child support enforcement services" (rather than "child and spouse support services") in several sections of the statutes related to the IDPA child support enforcement program. S.B. 2224 has an effective date of July 1, 2002.

S.B. 2224 passed both Houses as of May 9, 2002.

- Other Bills -

**H.B. 4211 Disclosure; Public Aid,
Unemployment Insurance Information**
*House: McCarthy, Hoffman, Righter,
Delgado, Bradley; Senate: Dudycz*

As introduced would amend the Illinois Public Aid Code to provide that the contents of case files pertaining to certain recipients shall be made available upon request to a law enforcement agency for the purpose of determining the current address of a victim of a crime or a witness to a crime, and would amend the Unemployment Insurance Act to provide that the Dept. of Employment Security shall make available to a State's Attorney or a State's Attorney's investigator, upon request, information in the possession of the Department that may be necessary or useful in locating a crime victim or a witness.

As amended in the House, information to be provided from Public Aid records is limited to the address of a recipient who is a victim of or witness to a felony, and information available from the Dept. of Employment Security is limited to the address, if known, or employer of a victim of or witness to a felony or a person against whom a warrant is outstanding. To be effective January 1, 2003.

As amended, H.B. 4211 was passed by the House April 5, 2002, but assigned to Senate Rules, without action since April 12, 2002.

H.B. 4977 Limits on Educational Expense Award
House: Winters

As introduced this bill would have amended Section 513 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/513) to provide that when making an award for post-secondary educational expenses, the court may not order an amount greater than the total cost of tuition, fees, and room and board at the Champaign-Urbana campus of the University of Illinois for a comparable period of time and a comparable course of instruction, unless the parties agree to a greater amount.

House Amendment No. 1-- to provide instead that the total cost of tuition, fees, and room and board at the University of Illinois, Champaign-Urbana campus for a comparable period of time and comparable course of instruction *is a factor to be considered* by the court in making an award for post-secondary educational expenses -- was defeated in committee.

H.B. 4977 was held in committee on February 22, 2002.

H.B. 5076 Private Process Servers; Cook IV-D
*House: Daniels
Senate: Parker*

As passed by the House, this bill made a technical change to Section 1 of the Non-Support Punishment Act. Senate Amendment No. 1 deletes reference to the Non-Support Punishment Act and amends Section 2-202 of the Code of Civil Procedure (735 ILCS 5/2-202) to authorize private process servers, without the requirement of court appointment, in counties of 1,000,000 or more in cases in which a party is receiving child support enforcement services from the Department of Public Aid. Would take effect July 1, 2002.

H.B. 5076 was passed by the Senate on May 9, 2002. The House motion for concurrence was referred to committee on May 31, 2002, without further action.

H.B. 5140 "Unified Child Support Services Act"
*House: Lyons, Eileen; Hamos; Bellock; McCarthy;
Black; Cowlshaw; Johnson; Soto; Yarbrough;
Crotty; Lang; Wirsing; Mathias and Hultgren
Senate: Radogno*

As passed by the House on April 5, 2002, H.B. 5140 creates the Unified Child Support Services Act. The House version provides that effective July 1, 2004, the Department of Public Aid shall delegate to the State's Attorney in each county with a population over 900,000 the responsibility for managing a Unified Child Support Services Program to provide services with respect to parentage establishment, support establishment,

(Cont'd. on page 12)

From the IDPA . . .

. . . ILLINOIS IV-D UPDATE

(From the Office of the Administrator, Illinois Dept. of Public Aid, Division of Child Support Enforcement)

IDPA's Location Service Goes Beyond Child Support

The Illinois Department of Public Aid, Division of Child Support Enforcement's (DCSE's) Location Services Operations (LSO) works to locate missing parents for child support enforcement services such as collecting and distributing child support payments -- and does a lot more. When appropriate and free of charge, LSO staff assist charitable organizations in reuniting lost family members.

The Salvation Army, for instance, has requested LSO help in locating missing family members. Staff have provided this valuable assistance without violating confidentiality restrictions or the privacy of the missing person. LSO is also the contact point for assistance requests from local, state, and federal law enforcement agencies within Illinois. The unit is authorized to assist law enforcement agencies in their criminal investigations pertaining to Kidnaping or Parental Abduction of a Child cases. Illinois' State Disbursement Unit (SDU) received assistance from LSO with an undeliverable mail project. LSO staff searched for new information on over 1,300 cases that had child support checks returned because they were undeliverable.

Staff in LSO process residential and employment location and Social Security number verification requests on Non-Custodial Parents (NCPs). The unit operates automated and manual location processes. Cases in the LSO automated process are routinely run against data matches with most Illinois State agencies that might have NCP information included in databases. The manual locate process is performed on cases that require special handling to special circumstances or because the automated process has been repeatedly unsuccessful in locating a parent. The manual process is similar to and uses many of the same systems as the automated process, except the data systems are accessed and searched manually online by LSO staff. Staff also perform functions the computer systems cannot, such as direct contact with friends, relatives, former employers and neighbors; searching credit histories of missing parents for new leads; and requesting location assistance from other states and countries.

LSO has reciprocal agreements with 33 foreign countries. With assistance from counterparts in other states and countries, LSO has tracked down delinquent NCPs all over the United States (US), Europe, South America and even the former Soviet Union. LSO in-

vestigations generated visits from US Coast Guard officers to a Florida charter boat captain, from Soviet KGB officers to a US contractor operating in the Soviet Union, and from English Constables to transplanted US citizens in England. All of the visits resulted in the immediate resumption of child support payments when an NCP thought he/she was beyond the reach of the Illinois child support program.

DCSE's Deputy Administrator for Central Operations, Lonnie Nasatir, said, "LSO provides an essential function in the establishment and enforcement of child support. The staff in LSO are incredibly knowledgeable, dedicated and resourceful."

LSO staff will continue to work to insure that Illinois children get the love and support they deserve by helping locate missing family members.

Partnership With IDHS In Elgin Facilitates DCSE Client Appointments

For some, just getting to a Child Support office is a great challenge. Imagine traveling two hours or maybe more, using four buses to get to one child support appointment. Miss your connection and a cab ride costs \$80...when you can find one. For even more excitement, take along some children.

For hundreds of people living in the Elgin-Carpentersville-Bartlett area, that strenuous route to the closest child support regional office in Aurora is all too familiar. The towns surrounding Elgin have limited transportation that is only available during certain hours. Some towns, such as Bartlett, have none. To avoid being sanctioned, custodial parents who are receiving Temporary Assistance for Needy Families (TANF) in these areas are required to cooperate with the Division of Child Support Enforcement (DCSE), which means they must go to their Child Support office for interviews, updates, etc. Mary Morrow, Manager of Aurora Regional Child Support Office, said, "It's been a hardship. It took a long time with the kids. Some poor women didn't have enough money to get home."

The Illinois Department of Public Aid (IDPA) continues forging partnerships closely with other government and public agencies to help Illinois' families lead better lives. IDPA and the Illinois Department of

(Cont'd. on page 7)



From the Courthouse . . .

. . .CASES & COMMENTARY

As a regular feature the Family Support FORUM will endeavor to provide timely summaries of court decisions, both published and unpublished, and information about pending decisions of general interest to the support enforcement community. Any one who becomes aware of significant decisions or cases, whether pending or decided at any level, is encouraged to submit them for inclusion in future editions.

Direct links to slip opinions of the cases discussed below and other recent decisions are maintained on IFSEA's web site, www.illinoisfamilysupport.org, soon after they are released.

Guest Commentary

Reconciling Parentage Act Cases From the Past Year

By Adrienne W. Albrecht *

During the year 2001, an exceptional number of significant opinions considered the subtleties of the Parentage Act and its interplay with other statutes and precedent affecting children born out of wedlock. While these cases are not facially inconsistent, they do seem to lead to results that are less than congruous.

Perhaps the oddest results occurred in the construction of the provisions of section 7(b-5) of the Illinois Parentage Act dealing with Petitions to Declare the Nonexistence of a Parent and Child Relationship. In this area of the law, the Civil Practice Act provides a remedy more likely to succeed than the statute specifically enacted for this purpose. In order to file a Petition to Declare the Nonexistence of a Parent and Child Relationship, the petitioner must allege that there are DNA blood test results which exclude parentage. *In re Marriage of Kates*, [198 Ill.2d 156] (Ill.S.Ct. November 21, 2001). Also, there is a strict two year limit for filing petitions under section 7-(b-5), *Donath v. Buckley*, 319 Ill. App. 3d 83; 744 N.E.2d 385; 253 Ill. Dec. 103 (3d Dist. 2001). Therefore, original petitions filed pursuant to section 7-(b-5) rarely survive the pleading stage.

However, a greater probability of success exists when an order establishing parentage is attacked by

means of a 2-1401 Motion for relief after final judgment pursuant to the provisions of the Code of Civil Procedure, 735 ILCS 5/2-1401. Using that approach, fathers have not only been able to set aside a prior declaration of parentage; but escape some of the onerous time limitations of the Parentage Act. In *Lipscomb v. Wells*, [326 Ill. App. 3d 760] (1st Dist., GORDON 2001), the court simultaneously allowed a 2-1401 motion for relief from final judgment vacating a ten-year-old order declaring a father and child relationship and setting child support and dismissed a count seeking a declaration of the nonexistence of a parent and child relationship pursuant to section 7 (b-5). The affidavit alleging that the mother committed fraud in order to induce the defendant to acknowledge parentage when she told him that he was the only person who could be the father, only to have her retract the statement during an argument over visitation by telling him that she had had intercourse near the time of conception with a different man whom she believed to be the father, was sufficient to toll the limitations period of section 2-1401. However, the 7 (b-5) petition was dismissed because it failed to allege the requisite DNA test results.

Even more bizarre is the result obtained in *Jackson v. Newsome*, 315 Ill.App.3d 372, 758 N.E.2d 342; 259 Ill. Dec. 219 (1st Dist., 2d div., 2001), which was also authored by Justice Gordon. In that case, the appellate court reversed the trial court's dismissal of a section 7-(b-5) petition after a 2-1401 motion to vacate a prior order declaring parentage and setting support had been denied. During the process of the 2-1401 proceeding, however, the defendant was able to obtain DNA blood tests, thereby overcoming the hurdle that kept the other

*(*Reprinted, by permission, from the April, 2002, issue of the Family Law Section Newsletter, published by the Illinois State Bar Association, Springfield, IL.*

Adrienne Albrecht is an attorney in the Kankakee firm of Sacks, Albrecht & Gibbins,, is a regular case law analyst for the ISBA and a frequent contributor to ISBA publications.)

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fathers on appeal from successfully prosecuting their petitions to establish the nonexistence of a father and child relationship. Not only was the denial of a 2-1401 motion not deemed a bar to the 7 (b-5) petition, the court held that the limitations did not start to run until the mother admitted to the defendant that she did not believe him to be the child's father; and was tolled during the period of time that she refused to submit to blood tests.

Assuming that these First District Opinions receive general acceptance, the proper strategy for any attorney trying to set aside a previous Parentage Act support order is to file a 2-1401 Motion first, accompanied by a written demand for blood tests; and wait to file a 7 (b-5) petition to establish the nonexistence of a parent and child relationship. However, reading the dicta in *In re Marriage of Kates*, [198 Ill. 2d 156] (Ill.S.Ct. November 21, 2001), it is questionable whether the concept adopted by the First Appellate Court District of tolling the limitations period of section 7 (b-5) will survive.

Furthermore, juxtaposed with the Third District Appellate Court opinion in *Department of Public Aid ex rel Allen v. Dixon*, 323 Ill. App. 3d 600, 752 N.E.2d 1147; 256 Ill. Dec. 905 (3d Dist. 2001) and *Illinois Department of Public Aid v. Graham*, No. 3-01-0229 [328 Ill. App. 3d 433, 3rd Dist.] filed March 5, 2002, Illinois fathers now find themselves in a position whereby it is easier to set aside a court order than an administrative acknowledgement of parentage. In *Dixon*, the appellate court reversed the order of the trial court allowing the defendant in child support petition's request for

blood tests. The court concluded that the administrative acknowledgement of parentage that he filed at the hospital in order for the child's birth certificate to be issued with his last name precluded the defendant from challenging parentage in a subsequently filed support action. More recently, in *Graham*, the same Third District Appellate Court, over Justice Holdridge's dissent, declared that the acknowledgement of parentage signed by the defendant more than sixty days earlier, foreclosed him from attempting to rescind the acknowledgement as a defense to a child support collection proceeding. The defendant in that case even presented evidence that the mother fraudulently induced his signature on the acknowledgement by means of a certified copy of a transcript from a different court proceeding in which the mother testified that someone other than the defendant was the father of her child. He also presented affidavits from witnesses verifying that the mother admitted to them that she had lied to the defendant. Moreover, the defendant asserted that he suffered from a rare medical condition making it highly unlikely that he could have fathered the subject child. Writing for the majority, Justice Breslin stated that the defendant's only remedy is a 2-1401 petition. Unfortunately for the defendant in that case, Justice Holdridge's dissent points out several reasons why the administrative acknowledgement of parentage is not susceptible to a 2-1401 motion. Since the defendant can't get blood tests in order to file a 7-(b-5) petition, he is, essentially, without recourse. Mr. Graham's experience should be sufficient for every attorney to counsel any client who asks to refuse to sign any acknowledgment of parentage without first obtaining reliable DNA test results.

Human Services (IDHS) are working together to make it easier for local residents to secure child support services and gain financial independence. Beginning in March 2002, Child Support staff are stationed biweekly in the local IDHS office in Elgin. They see many TANF clients who are coming to Child Support interviews in order to fulfill their cooperation requirement.

The partnership between the two departments also helps families on other levels. Family Support Specialists from DCSE attend IDHS staff meetings to share information and find ways to help their mutual clients.

In the first week of the pilot, 13 of 20 scheduled clients appeared for their appointments. Six walk-in clients were also assisted. When Shirley Burks, IDHS Local Office Administrator, noticed that no Spanish speaking clients were coming in, she had some posters

made up in Spanish and English to advertise the availability of Elgin appointments. She also assigned Velma Torres, IDHS Caseworker, as an Elgin contact person for setting up appointments for Spanish interviews. Aurora customer service staff are routing requests for rescheduling of appointments for Elgin area customers through Geneva James, DCSE Family Support Specialist, who contacts the client to determine if an Elgin appointment is more convenient and schedules the new appointments accordingly.

Word is getting out and some customers are calling to request Elgin appointments, which are being accommodated. This new collaborative pilot is achieving the Division's goal to make it easier for custodial parents to secure child support services and gain financial independence. Division staff look forward to future progress.

Distribution from Retirement Plan Attachable for Payment of Support Arrearages

By Christine S. P. Kovach

(In the Madison County case of In Re Marriage of Kane, judgments had been entered for past due child support, past due maintenance and attorney's fees for the custodial parent. When the non-custodial parent's state pension paid out his retirement benefits the State Comptroller seized the funds to apply to the arrearages due. The NCP's attorney sought release of the funds, claiming such proceeds were not attachable. The trial Court ordered release of the funds to the NCP's attorney's trust fund pending resolution of the dispute.

The following is the trial brief filed on behalf of the State by Madison County Assistant State's Attorney Christine Kovach.)

The issue presented before the Court is whether NCP's proceeds from a distribution of his retirement plan funds are attachable for the payment of child support arrearages, maintenance and attorneys fees. On January 16, 2002, this Court entered a judgment in favor of CP in the amount of \$10,532.96, representing \$4,532.96 in child support arrearages, \$1,200.00 in maintenance and \$4,800.00 in attorneys fees. On the same date, this Court ordered that \$8,126.43 from NCP's retirement plan be paid into his attorney's trust account pending further order of this Court.

It is undisputed that the funds currently being held in NCP's attorneys trust account represent funds payable to NCP from his retirement plan from his employment with Illinois Department of Corrections. Pursuant to 735 ILCS 5/12-1006, retirement plans are generally exempt from "judgment, attachment, execution, distress for rent, and seizure for the satisfaction of debts." Paragraph c of the statute states that a "public employee pension plan created under the Illinois Pension Code, as now or hereafter amended, is conclusively presumed to be a spendthrift trust under the law of Illinois." Further, spendthrift trusts are generally exempt from judgment and execution except as provided in 735 ILCS 5/2-1403.

The State maintains that the retirement funds are attachable for the payment of child support and maintenance. In 750 ILCS 28/15, Illinois has defined income for the purposes of child support:

"'Income' means any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity, pension, and **retirement benefits**, lottery prize awards, insurance proceeds, vacation pay, bonuses, profit-sharing payments, interest, and

any other payments, made by any person, private entity, federal or state government, any unit of local government, school district or any entity created by Public Act; however, 'income' excludes:

- (1) any amounts required by law to be withheld, other than creditor claims, including, but not limited to, federal, State and local taxes, Social Security and other retirement and disability contributions;
- (2) union dues;
- (3) any amounts exempted by the Federal Consumer Credit Protection Act;
- (4) public assistance payments; and
- (5) unemployment insurance benefits except as provided by law.

Any other State or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply."
750 ILCS 28/15 [Emphasis added.]

Illinois has a strong and long-standing public policy in protecting its children and ensuring that they do not become wards of the state. In 750 ILCS 5.102(5) the legislature expressed its desire to "make reasonable provision for spouses and minor children during and after litigation." In *Good v. Fogg*, 61 Ill. 449, 451 (1871), Illinois adopts "the humane principle, that a creditor should not wholly deprive the husband and father of the means of supporting his family, usually helpless in themselves, and preventing them from becoming public charge." In *In re Marriage of Dodds*, 222 Ill.App.3d 99, 583 N.E.2d 608, 611, 164 Ill. Dec. 692 (Ill. App., 2nd Dist. 1991), the Court reiterated this policy by stating, "the [Marriage and Dissolution] Act shall be liberally construed and applied to promote its underlying purposes, one of which is to make reasonable provisions for minor children during and after litigation."

The case of *In re Matt*, 105 Ill.2d 330, 473 N.E.2d 1310, 85 Ill. Dec. 505 (1985) is analogous to this case. The petitioner sought to garnish her former husband's spendthrift trust for the payment of child support arrearages that had previously accrued. The Court held that the General Assembly intended Section 4.1 of the Non-Support of Spouse and Children Act to prevail over all laws to the contrary. *Matt*, 105 Ill.2d at 334. The General Assembly established that it is the public policy of Illinois to ensure that support judgments are enforced by all available means. *Matt*, 105 Ill.2d at

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FAMILY SUPPORT FORUM

The Official Newsletter of the Illinois Family Support Enforcement Association

SUPPLEMENT - JUNE, 2002

Cumulative Case Law Index - 2002 Supplement

The following is an index of case law reported in Issues 2, 3 and 4 of Vol. 13 (May through December, 2001 – including No. 1 of Vol. 14, 2002) of the *Family Support FORUM*. It supplements the January, 1994 Index of cases reported in Vols. 1 through 5 (1989-1993), the January, 1999 Index of cases reported in Vols. 6 through 10 (1994-1998), the January, 2000 Supplement of cases reported in Vol. 11 (1999), and the June, 2001 Supplement of cases reported in Vol. 12 (2000 – including No. 1 of Vol. 13, 2001) of the *FORUM*.

Cases cited are not necessarily the leading or controlling authority for the categories noted, but are indicative of recent decisions in the area. Issues of the *FORUM* in which the cases were summarized are indicated in brackets; "C&C" refers to "Cases & Commentary" sections.

by Thomas P. Sweeney

- § 2-1401 -

Paternity:

Dept. of Public Aid ex rel. Howard v. Graham, 328 Ill. App. 3d 433, ___ N.E. 2d ___ (3rd Dist., 3/5/02) [§ 2-1401 petition required to challenge paternity acknowledgment not rescinded within the prescribed time limits.] [C&C, 12/01-3/02]

- ARREARAGES -

Remarriage:

In Re Marriage of Mitchell, 319 Ill. App. 3d 17, 745 N.E. 2d 167 (2nd Dist., 3/2/01) [Support accrued from first divorce unenforceable after same parties remarriage.] [C&C, 6/01]

- ATTORNEY'S FEES -

Enforcement:

In Re Parentage of M.C.B., 324 Ill. App. 3d 1, 754 N.E. 2d 480 (2nd Dist., 8/17/01) [Party required to enforce paternity attorney fee award entitled to all costs and reasonable attorney's fees in enforcement.] [C&C, 12/01-3/02]

- BLOOD TESTS -

§ 7 (b-5) Challenge:

Dept. of Public Aid ex rel. Allen v. Dixon, 323 Ill. App. 3d 600, 752 N.E. 2d 1147 (3rd Dist., 7/9/01) [Genetic tests not properly ordered where voluntary paternity acknowledgment not challenged within time limits or on specific grounds allowed by statute.] [C&C, 8/01]

- CHILD SUPPORT RECOVERY ACT -

Constitutionality:

United States v. Fausse, 265 F. 3d 475 (6th Cir., 9/14/01) [Federal Child Support Recovery Act held constitutional under Commerce Clause authority.] [C&C, 12/01-3/02]

Defenses:

United States v. Kramer, 225 F. 3d 847 (7th Cir., 6/5/00) [State's lack of jurisdiction to enter support order is valid defense to prosecution under federal Child Support Recovery Act.] [C&C, 6/01]

- EDUCATION EXPENSES -

New Spouse's Income:

Street v. Street, 325 Ill. App. 3d 108, 756 N.E. 2d 887 (3rd Dist., 9/6/01) [New spouse's

income relevant in allocating college expenses (suggesting trend changing toward considering spouse's income in awarding child support also).] [C&C, 12/01-3/02]

- EMANCIPATION -

"High School Graduation:"

In Re Marriage of Hahn, 324 Ill. App. 3d 44, 754 N.E. 2d 425 (3rd Dist., 8/10/01) [Obtaining GED is equivalent to graduation from high school for purposes of terminating child support.] [C&C, 12/01-3/02]

- ENFORCEMENT -

Jurisdiction During Appeal:

In Re Parentage of Melton, 321 Ill. App. 3d 823, 758 N.E. 2d 291 (1st Dist., 4/15/01) [Trial court retains jurisdiction to enforce, modify orders not part of issues pending appeal.] [C&C, 6/01]

Remarriage:

In Re Marriage of Mitchell, 319 Ill. App. 3d 17, 745 N.E. 2d 167 (2nd Dist., 3/2/01) [Support accrued from first divorce unenforceable after same parties remarriage.] [C&C, 6/01]

- GUIDELINES -

Deviation:

In Re Marriage of Letsinger, 321 Ill. App. 3d 961, 748 N.E. 2d 812 (2nd Dist., 5/7/01) [Obligor's bankruptcy discharge of portion of marital debts, shifting debt to obligee, is changed circumstances justifying support modification, deviation to cover debts shifted.] [C&C, 6/01]

- INCOME -

Military Allowances:

In Re Marriage of Baylor, 324 Ill. App. 3d 213, 753 N.E. 2d 1264 (4th Dist., 8/3/01) [Military allowances are included in income for purposes of child support determination.] [C&C, 12/01-3/02]

New Spouse:

Street v. Street, 325 Ill. App. 3d 108, 756 N.E. 2d 887 (3rd Dist., 9/6/01) [New spouse's income relevant in allocating college expenses (suggesting trend changing toward considering spouse's income in awarding child support also).] [C&C, 12/01-3/02]

Social Security (SSI):

Dept. of Public Aid ex rel. Lozada v. Rivera, 324 Ill. App. 3d 476, 755 N.E. 2d 548 (2nd Dist., 8/31/01) [Social Security Supplemental Security Income (SSI) is exempt from child support obligations.] [C&C, 12/01-3/02]

- INCOME WITHHOLDING -

Penalty for Delayed Payment:

Grams v. Autozone, Inc., 319 Ill. App. 3d 567, 745 N.E. 2d 687 (3rd Dist., 3/12/01) [Delayed forwarding of withheld support requires \$100 per day penalty for each payment delayed.] [C&C, 6/01]

- INTEREST -

Burwell v. Burwell, 324 Ill. App. 3d 206, 753 N.E. 2d 1259 (4th Dist., 8/3/01) [Assessing interest on child support arrearage is mandatory, not discretionary.] [C&C, 12/01-3/02]

- MAINTENANCE -

Termination:

In Re Marriage of Snow, 322 Ill. App. 3d 953, 750 N.E. 2d 1268 (3rd Dist., 6/14/01) [Termination of maintenance based on continuing, conjugal relationship is effective when the relationship begins.] [C&C, 8/01]

- MODIFICATION -

Bankruptcy:

In Re Marriage of Letsinger, 321 Ill. App. 3d 961, 748 N.E. 2d 812 (2nd Dist., 5/7/01) [Obligor's bankruptcy discharge of portion of marital debts, shifting debt to obligee, is changed circumstances justifying support modification, deviation to cover debts shifted.] [C&C, 6/01]

Changed Circumstances:

In Re Marriage of Hughes, 322 Ill. App. 3d 815, 751 N.E. 2d 23 (2nd Dist., 4/25/01) [Financial changes contemplated by order not a substantial change justifying modification.] [C&C, 6/01]

Debt Shifting:

In Re Marriage of Letsinger, 321 Ill. App. 3d 961, 748 N.E. 2d 812 (2nd Dist., 5/7/01) [Obligor's bankruptcy discharge of portion of marital debts, shifting debt to obligee, is changed circumstances justifying support modification, deviation to cover debts shifted.] [C&C, 6/01]

Final, Appealable Order:

In Re Marriage of Carr, 323 Ill. App. 3d 481, 752 N.E. 2d 1181 (1st Dist., 6/20/01) [Ruling on modification is final, appealable despite pendency of petition for attorney's fees.] [C&C, 8/01]

Jurisdiction During Appeal:

In Re Parentage of Melton, 321 Ill. App. 3d 823, 758 N.E. 2d 291 (1st Dist., 4/15/01) [Trial court retains jurisdiction to enforce, modify orders not part of issues pending appeal.] [C&C, 6/01]

- NON-PARENTAGE -

Limitations:

Donath v. Buckley, 319 Ill. App. 3d 82, 744 N.E. 2d 385 (3rd Dist., 2/20/01) [Despite DNA results, mother's action to challenge paternity acknowledgment barred by limitation.] [C&C, 6/01]

- PATERNITY -

Artificial Insemination:

In Re Parentage of M.J., 325 Ill. App. 3d 826 759 N.E. 2d 121 (1st Dist., 10/29/01) [Non-spouse who encouraged artificial insemination not liable for support of children thus conceived.] [C&C, 12/01-3/02]

Attorney's Fees:

In Re Parentage of M.C.B., 324 Ill. App. 3d 1, 754 N.E. 2d 480 (2nd Dist., 8/17/01) [Party required to enforce paternity attorney fee award entitled to all costs and reasonable attorney's fees in enforcement.] [C&C, 12/01-3/02]

Blood Tests:

Dept. of Public Aid ex rel. Allen v. Dixon, 323 Ill. App. 3d 600, 752 N.E. 2d 1147 (3rd Dist., 7/9/01) [Genetic tests not properly ordered where voluntary paternity acknowledgment not challenged within time limits or on specific grounds allowed by statute.] [C&C, 8/01]

Child as Petitioner:

Klak v. Skellion, 317 Ill. App. 3d 1092, 741 N.E. 2d 288 (1st Dist., 11/29/00) [Minor may not pursue own parentage action without parent, guardian.] [C&C, 6/01]

Removal:

In Re Adams, 324 Ill. App. 3d 177, 754 N.E. 2d 425 (3rd Dist., 8/3/01) [Courts lack authority

to enjoin removal of child under Parentage Act, even in joint custody cases.] [C&C, 12/01-3/02]

§ 2-1401 Challenge:

Dept. of Public Aid ex rel. Howard v. Graham, 328 Ill. App. 3d 433, ___ N.E. 2d ___ (3rd Dist., 3/5/02) [§ 2-1401 petition required to challenge paternity acknowledgment not rescinded within the prescribed time limits.] [C&C, 12/01-3/02]

Lipscomb v. Wells, 326 Ill. App. 3d 760, ___ N.E. 2d ___ (1st Dist., 11/27/01) [Mother's positive assertion of child's paternity is fraudulent misrepresentation, to permit § 2-1401 challenge 10 years after agreed paternity adjudication.] [C&C, 12/01-3/02]

§ 7 (b-5) Challenge:

Dept. of Public Aid ex rel. Allen v. Dixon, 323 Ill. App. 3d 600, 752 N.E. 2d 1147 (3rd Dist., 7/9/01) [Genetic tests not properly ordered where voluntary paternity acknowledgment not challenged within time limits or on specific grounds allowed by statute.] [C&C, 8/01]

Dept. of Public Aid ex rel. Howard v. Graham, 328 Ill. App. 3d 433, ___ N.E. 2d ___ (3rd Dist., 3/5/02) [§ 2-1401 petition required to challenge paternity acknowledgment not rescinded within the prescribed time limits.] [C&C, 12/01-3/02]

Donath v. Buckley, 319 Ill. App. 3d 82, 744 N.E. 2d 385 (3rd Dist., 2/20/01) [§ 7 (b-5) challenge is available to father, but not to mother.] [C&C, 6/01]

In Re Marriage of Kates, 198 Ill. 2d 156, ___ N.E. 2d ___ (No. 90732, 11/21/01) [DNA test results are prerequisite to filing paternity challenge under § 7 (b-5).] [C&C, 12/01-3/02]

Jackson v. Newsome, 315 Ill. App. 3d 372, 758 N.E. 2d 342 (1st Dist., 9/25/01) [Paternity admitted in judicial proceedings may be challenged with DNA results under § 7 (b-5).] [C&C, 12/01-3/02]

- SOCIAL SECURITY -

Credit Against Support:

Dept. of Public Aid ex rel. Pinkston v. Pinkston, 325 Ill. App. 3d 212, 757 N.E. 2d 977 (2nd Dist., 10/15/01) [Excess Social Security Disability dependent benefits may not be credited toward arrearages accrued prior to disability.] [C&C, 12/01-3/02]

- SOCIAL SECURITY, cont'd. -

Income:

Dept. of Public Aid ex rel. Lozada v. Rivera, 324 Ill. App. 3d 476, 755 N.E. 2d 548 (2nd Dist., 8/31/01) [Social Security Supplemental Security Income (SSI) is exempt from child support obligations.] [C&C, 12/01-3/02]

Termination:

In Re Marriage of Hahn, 324 Ill. App. 3d 44, 754 N.E. 2d 425 (3rd Dist., 8/10/01) [Obtaining GED is equivalent to graduation from high school for purposes of terminating child support.] [C&C, 12/01-3/02]

Alphabetical Listing of Cases

- Burwell v. Burwell**, 324 Ill. App. 3d 206, 753 N.E. 2d 1259 (4th Dist., 8/3/01), Interest.
- Dept. of Public Aid ex rel. Allen v. Dixon**, 323 Ill. App. 3d 600, 752 N.E. 2d 1147 (3rd Dist., 7/9/01), Blood Tests, § 7 (b-5) Challenge; Paternity, Blood Tests, § 7 (b-5) Challenge.
- Dept. of Public Aid ex rel. Howard v. Graham**, 328 Ill. App. 3d 433, ___ N.E. 2d ___ (3rd Dist., 3/5/02), Paternity, § 2-1401 Challenge; § 7 (b-5) Challenge; § 2-1401, Paternity.
- Dept. of Public Aid ex rel. Lozada v. Rivera**, 324 Ill. App. 3d 476, 755 N.E. 2d 548 (2nd Dist., 8/31/01), Income, Social Security (SSI); Social Security, Income.
- Dept. of Public Aid ex rel. Pinkston v. Pinkston**, 325 Ill. App. 3d 212, 757 N.E. 2d 977 (2nd Dist., 10/15/01), Social Security, Credit Against Support.
- Donath v. Buckley**, 319 Ill. App. 3d 82, 744 N.E. 2d 385 (3rd Dist., 2/20/01), Non-Parentage, Limitations; Paternity, § 7 (b-5) Challenge.
- Grams v. Autozone, Inc.**, 319 Ill. App. 3d 567, 745 N.E. 2d 687 (3rd Dist., 3/12/01), Income Withholding, Penalty for Delayed Payment.
- In Re Adams**, 324 Ill. App. 3d 177, 754 N.E. 2d 425 (3rd Dist., 8/3/01), Paternity, Removal.
- In Re Marriage of Baylor**, 324 Ill. App. 3d 213, 753 N.E. 2d 1264 (4th Dist., 8/3/01), Income, Military Allowances.
- In Re Marriage of Carr**, 323 Ill. App. 3d 481, 752 N.E. 2d 1181 (1st Dist., 6/20/01), Modification, Final, Appealable Order.
- In Re Marriage of Hahn**, 324 Ill. App. 3d 44, 754 N.E. 2d 425 (3rd Dist., 8/10/01), Emancipation, "High School Graduation;" Support, Termination.
- In Re Marriage of Hughes**, 322 Ill. App. 3d 815, 751 N.E. 2d 23 (2nd Dist., 4/25/01), Modification, Changed Circumstances.
- In Re Marriage of Kates**, 198 Ill. 2d 156, ___ N.E. 2d ___ (No. 90732, 11/21/01), Paternity, § 7 (b-5) Challenge.
- In Re Marriage of Letsinger**, 321 Ill. App. 3d 961, 748 N.E. 2d 812 (2nd Dist., 5/7/01), Guidelines, Deviation; Modification, Bankruptcy; Modification, Debt Shifting.
- In Re Marriage of Mitchell**, 319 Ill. App. 3d 17, 745 N.E. 2d 167 (2nd Dist., 3/2/01), Arrearages, Remarriage; Enforcement, Remarriage.
- In Re Marriage of Snow**, 322 Ill. App. 3d 953, 750 N.E. 2d 1268 (3rd Dist., 6/14/01), Maintenance, Termination.
- In Re Parentage of M.C.B.**, 324 Ill. App. 3d 1, 754 N.E. 2d 480 (2nd Dist., 8/17/01), Attorney's Fees, Enforcement; Paternity, Attorney's Fees.
- In Re Parentage of M.J.**, 325 Ill. App. 3d 826 759 N.E. 2d 121 (1st Dist., 10/29/01), Paternity, Artificial Insemination.
- In Re Parentage of Melton**, 321 Ill. App. 3d 823, 758 N.E. 2d 291 (1st Dist., 4/15/01), Enforcement, Jurisdiction During Appeal; Modification, Jurisdiction During Appeal.
- Jackson v. Newsome**, 315 Ill. App. 3d 372, 758 N.E. 2d 342 (1st Dist., 9/25/01), Paternity, § 7 (b-5) Challenge.
- Klak v. Skellion**, 317 Ill. App. 3d 1092, 741 N.E. 2d 288 (1st Dist., 11/29/00), Paternity, Child as Petitioner.
- Lipscomb v. Wells**, 326 Ill. App. 3d 760, ___ N.E. 2d ___ (1st Dist., 11/27/01), Paternity, § 2-1401 Challenge.
- Street v. Street**, 325 Ill. App. 3d 108, 756 N.E. 2d 887 (3rd Dist., 9/6/01), Education Expenses, New Spouse's Income; Income, New Spouse.
- United States v. Fausse**, 265 F. 3d 475 (6th Cir., 9/14/01), Child Support Recovery Act, Constitutionality.
- United States v. Kramer**, 225 F. 3d 847 (7th Cir., 6/5/00), Child Support Recovery Act, Defenses.

Costs to Raise Children Increase

by Thomas P. Sweeney

The latest annual report by the U.S. Department of Agriculture on costs to raise children has again concluded that annual costs continue to increase. But the report, released in May, concludes that recent trends toward lower inflation rates result in a lower projection of costs over the next 17 years for a child born in 2001.

According to the report a middle-income, two-parent family with the younger of two children born in 2001 can expect to spend about \$170,460 (\$231,470 when factoring in inflation) for food, shelter, and other necessities to raise that child over the next 17 years.

The USDA's 2000 report estimated comparable expenses at \$165,630, but adjusted to \$233,530 when factoring in inflation. The reduction in adjusted projections is attributable to a reduction in the projected rate of inflation over the next 17 years from 3.8% in 2000 to 3.4% in 2001.

Now in its 41st year, the USDA report, "Expenditures on Children by Families," recommends itself as a valuable resource for state agencies and courts in determining child support guidelines and foster care payments.

Cost Estimated for Husband-Wife Families

The report, compiled by USDA's Center for Nutrition Policy and Promotion, notes that family income affects child rearing costs, with low-income families projected to spend \$124,800; middle-income families \$170,460; and upper-income families \$249,180 (all in 2001 dollars) over a 17-year period. With adjustment for inflation these figures increase to \$169,920, \$231,470 and \$337,690 respectively; see Table 12 below). Of primary focus are the child-rearing cost estimates for middle-income, two-parent families, which in 2001, ranged from \$9,030 to \$10,140, depending on the age of the child. See Table 1 on page 10 for overall estimates for husband-wife families.

(For purposes of this report, a family of four with a year 2001 income of less than \$39,100 is defined as low-income, with income between \$39,100 and \$65,800 is considered middle-income, and with income of more than \$65,800 is considered high-income. These cut-off points represent income tertiles (thirds) of all

husband-wife households with two children. In other words, approximately one-third of all four-person households in American fall within one of these categories.)

Single-Parent Family Estimates

Estimates of expenditures by husband-wife families do not apply to single-parent families, which account for an increasing percentage of families with children. The primary difference is that the majority of single-parent households – 90% of which are headed by women -- are in the lower income group. Accordingly the two higher income groups used for two-parent family estimates were combined for single-parent family estimates, since only 17% of single-parent families had income – including child support -- above the \$39,100 figure. See Table 7, reproduced on page 11).

A comparison of expenditures by single-parent and husband-wife families in the lower income group (see Table 10, page 11), shows that expenditures on a child

(Cont'd. on page 10)

Table 12. Estimated annual expenditures* on children born in 2001, by income group, overall United States

		Income Group		
Year	Age	Lowest	Middle	Highest
2001	< 1	\$6,490	\$9,030	\$13,430
2002	1	6,710	9,340	13,890
2003	2	6,940	9,650	14,360
2004	3	7,330	10,240	15,170
2005	4	7,580	10,590	15,680
2006	5	7,840	10,940	16,220
2007	6	8,200	11,320	16,580
2008	7	8,480	11,700	17,150
2009	8	8,770	12,100	17,730
2010	9	9,090	12,420	18,120
2011	10	9,400	12,840	18,730
2012	11	9,720	13,280	19,370
2013	12	11,290	14,850	21,300
2014	13	11,680	15,350	22,020
2015	14	12,070	15,870	22,770
2016	15	12,350	16,740	24,220
2017	16	12,770	17,310	25,050
2018	17	13,210	17,960	25,900
Total		\$169,920	\$231,470	\$337,690

(*Estimates are for the younger child in husband-wife families with two children.)

("Costs to Raise Children," cont'd. from page 9)

up to age 18 were, on average, 5 percent lower in single-parent households than in husband-wife households. But more single-parent than husband-wife families fell in the bottom range of this lower income group. Average income for single-parent families in the lower income group was \$16,400, compared with \$24,400 for husband-wife families. For the higher income group of single-parent families (2001 before-tax income of \$39,100 and over), estimates of child-rearing expenses were about the same (\$250,260) as those for two-parent

families (\$249,180) in the before-tax income group of more than \$65,800. However, the average income of single-parent households was much lower (\$59,400 as compared to \$98,600). Thus in both income groups single-parent families spend a larger proportion of their income on their children.

The report also concluded that in single-parent households with two children, about 7 percent less is spent on the older child than on the younger child at a

(Cont'd. on page 11)

Table 1. Estimated annual expenditures* on a child by husband-wife families, overall United States, 2001

Age of Child	Total	Housing	Food	Transportation	Clothing	Health care	Child Care and Education	Miscellaneous †
Before-tax income: Less than \$39,100 (Average = \$24,400)								
0 - 2	\$6,490	\$2,500	\$910	\$780	\$370	\$460	\$840	\$630
3 - 5	6,630	2,470	1,010	750	360	440	950	650
6 - 8	6,710	2,380	1,300	880	400	510	560	680
9 - 11	6,730	2,150	1,560	950	450	560	340	720
12 - 14	7,560	2,400	1,640	1,070	750	560	240	900
15 - 17	7,480	1,940	1,780	1,440	660	600	400	660
Total	\$124,800	\$41,520	\$24,600	\$17,610	\$8,970	\$9,390	\$9,990	\$12,720
Before-tax income: \$39,100 to \$65,800 (Average = \$52,100)								
0 - 2	\$9,030	\$3,380	\$1,090	\$1,160	\$430	\$610	\$1,380	\$980
3 - 5	9,260	3,350	1,260	1,130	420	580	1,530	990
6 - 8	9,260	3,260	1,600	1,260	470	660	980	1,030
9 - 11	9,190	3,030	1,890	1,330	520	720	640	1,060
12 - 14	9,940	3,280	1,900	1,450	870	720	470	1,250
15 - 17	10,140	2,820	2,110	1,840	780	770	810	1,010
Total	\$170,460	\$57,360	\$29,550	\$24,510	\$10,470	\$12,180	\$17,430	\$18,960
Before-tax income: More than \$65,800 (Average = \$98,600)								
0 - 2	\$13,430	\$5,370	\$1,440	\$1,630	\$570	\$700	\$2,090	\$1,630
3 - 5	13,720	5,340	1,630	1,600	560	670	2,270	1,650
6 - 8	13,570	5,250	1,970	1,720	610	770	1,560	1,690
9 - 11	13,410	5,020	2,290	1,800	670	820	1,090	1,720
12 - 14	14,260	5,270	2,400	1,920	1,100	830	840	1,900
15 - 17	14,670	4,810	2,530	2,330	1,000	870	1,470	1,660
Total	\$249,180	\$93,180	\$36,780	\$33,000	\$13,530	\$13,980	\$27,960	\$30,750

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 2001 dollars using the Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year old). The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.24. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.77. For expenses on all children in a family, these totals should be summed.

† Miscellaneous expenses include personal care items, entertainment, and reading materials.

specific age category. In addition more is spent if a single-parent household has only one child, and less is spent per child if a single-parent household has three or more children.

The report notes geographic variations in the cost of raising a child, with expenses the highest for families living in the urban west, followed by the urban north-east and urban south. Families living in the urban midwest and all rural areas have the lowest expenses.

A limited number of copies of the report are available and may be requested by writing to USDA's Center for Nutrition Policy and Promotion, 3101 Park Center Dr., Rm. 1034, Alexandria, VA 22302. The report is also available on the CNPP web site at www.usda.gov/cnpp (and through a direct link on the "Useful Links" page of IFSEA's web site, www.illinoisfamilysupport.org).

Table 10. Comparison of estimated expenditures* on children by single-parent and husband-wife families, overall United States, 2001

Age of child	Single-parent households	Husband-wife households
0 - 2	\$5,440	\$6,490
3 - 5	6,150	6,420
6 - 8	6,910	6,710
9 - 11	6,440	6,730
12 - 14	6,920	7,560
15 - 17	7,670	7,480
Total	\$118,590	\$124,800

(* Estimates are for the younger child in two-child families with 2001 before-tax income less than \$39,100.)

Table 7. Estimated annual expenditures* on a child by single-parent families, overall United States, 2001

Age of Child	Total	Housing	Food	Trans- portation	Clothing	Health care	Child Care and Education	Miscel- laneous †
Before-tax income: Less than \$39,100 (Average = \$16,400)								
0 - 2	\$5,440	\$2,240	\$1,010	\$730	\$330	\$220	\$530	\$380
3 - 5	6,150	2,550	1,060	640	350	330	720	500
6 - 8	6,910	2,710	1,340	740	410	390	650	670
9 - 11	6,440	2,600	1,550	530	420	490	310	540
12 - 14	6,920	2,600	1,550	620	710	520	400	520
15 - 17	7,670	2,760	1,690	970	830	520	300	600
Total	\$118,590	\$46,380	\$24,600	\$12,690	\$9,150	\$7,410	\$8,730	\$9,630
Before-tax income: \$39,100 or more (Average = \$59,400)								
0 - 2	\$12,450	\$4,820	\$1,560	\$2,220	\$470	\$510	\$1,290	\$1,580
3 - 5	13,410	5,130	1,650	2,130	500	690	1,620	1,690
6 - 8	14,250	5,290	1,980	2,240	570	790	1,510	1,870
9 - 11	13,740	5,180	2,380	2,030	580	950	880	1,740
12 - 14	14,560	5,190	2,330	2,110	950	1,000	1,260	1,720
15 - 17	15,010	5,340	2,470	2,290	1,090	990	1,030	1,800
Total	\$250,260	\$92,850	\$37,110	\$39,060	\$12,480	\$14,790	\$22,720	\$31,200

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 2001 dollars using the Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year old). The figures represent estimated expenses on the younger child in a single-parent, two-child family. For estimated expenses on the older child, multiply the total expenses for the appropriate age category by 0.93. To estimate expenses for two children, the expenses on the younger child and older child after adjusting the expenses on the older child downward should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.35. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.72 after adjusting the expenses on the older children downward. For expenses on all children in a family, these totals should be summed.

† Miscellaneous expenses include personal care items, entertainment, and reading materials.

S.B. 1935

Service of Process

Senate: Roskam

Would amend the Code of Civil Procedure; permits process to be served in all counties (rather than just counties with population under 1,000,000), without special appointment, by a person licensed or registered as a private detective or by a registered employee of a certified private detective agency. No action has occurred since it was introduced.

S.B. 1959

Farm Equipment Depreciation

Senate: Sieben

Amends Section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505) to add “amounts properly deducted for federal income tax purposes for depreciation of farm machinery and equipment” as a new deduction for purposes of determining the obligor’s net income, and calculation of the amount required to be paid for child support under the statutory guidelines. S.B. 1959 was referred to the Senate Rules Committee on February 6, 2002.

S.B. 1966

Support Extension to Age 19

Senate: Roskam

House: Hamos; Mathias; Lyons, Eileen; Bellock; Yarbrough; Soto

Amends the Illinois Public Aid Code, the Illinois Marriage and Dissolution of Marriage Act, the Non-Support Punishment Act, and the Illinois Parentage Act of 1984 concerning the obligation of a parent to pay child support. Provides that, unless the child becomes otherwise emancipated, this obligation is extended to include a child under age 19 who is still attending high school.

S.B. 1966 was passed by the Senate as introduced on April 3, 2002.

Amendment in the House added provisions to establish the Child Support Services Act, essentially identical to provisions of H.B. 5140 (see above). As so amended, S.B. 1966 was passed by the House on May

31, 2002. No action has been taken toward concurrence in the Senate.

S.B. 1991

Administrative Hearing Office

Senate: Dillard

Amends the Illinois Administrative Procedure Act to create the Office of Administrative Hearings to conduct administrative hearings for agencies under the jurisdiction of the Governor, with certain exceptions. Provides for the appointment of a Chief Administrative Law Judge by the Governor; sets the powers and duties of the Chief Administrative Law Judge, and qualifications for administrative law judges employed by the Office. Sets out procedures for the conduct of administrative hearings by the Office. Provides for the transfer of personnel and property to the Office from State agencies. No action has occurred since the bill was introduced.

S.B. 2128

Paternity; Removal

Senate: Ronen

Amends the Illinois Parentage Act of 1984. Provides that in any action brought under the Act for the initial determination of custody or visitation of a child or for modification of a prior custody or visitation order, the court may enjoin a party having physical possession or custody of a child from removing the child from Illinois pending the adjudication of the issues of custody and visitation. Provides that injunctive relief shall be governed by the relevant provisions of the Code of Civil Procedure. Provides that, in entering a judgment concerning custody, joint custody, removal, or visitation (now, custody, joint custody, or visitation) and in modifying a judgment concerning custody, visitation, or removal (now, custody or visitation), the court shall apply the relevant standard of the Illinois Marriage and Dissolution of Marriage Act. The bill would take effect upon becoming law.

S.B. 2128 was referred to the Senate Rules Committee on February 7, 2002. No action has occurred since then.

Check out IFSEA on the Web!

www.illinoisfamilysupport.org

- *Direct links to the most recent court decisions,*
 - *Summaries of proposed legislation, with direct links to bills and legislative activity as it develops,*
 - *Extensive list of links to agencies, organizations, research sources and other useful information,*
 - *News on upcoming Conferences, & more.*

334. The *Matt* Court held “that income from a spendthrift trust, which is generally exempt from invasion . . . is subject to garnishment to collect past-due child support under Section 4.1 of the Non-Support Act.” *Matt*, 105 Ill.2d at 335.

In a similar case, *In re Marriage of Logston*, 103 Ill.2d 266, 469 N.E.2d 167, 82 Ill. Dec. 633 (1984), the ex-husband claimed that he could not be held in contempt of court for failing to pay court-ordered maintenance because his only income was exempt from judgment under the personal property exemption statute. His only income was social security, a private pension and a disability insurance check. The Court held that the obligor’s otherwise exempt property could be subject to an order for withholding for maintenance payments.

In a case involving attorney’s fees, *Jakubik v. Jakubik*, 208 Ill.App.3d 119 (Ill.App., 2nd Dist 1991), the trial court granted a judgment in favor of wife’s attorney and against the former husband for attorney’s fees in a post-dissolution proceeding for a child support increase and college education costs. Wife’s attorney sought to garnish the former husband’s IRA account for the payment of attorney’s fees. In deciding the case, the *Jakubik* court examined the purpose of Section 750 ILCS 5/706.1 (now known as 750 ILCS 28/15), finding that:

“The withholding provisions for child support and maintenance of both section 706.1 of the Illinois Marriage and Dissolution of Marriage Act (the Dissolution Act) and section 1107.1 of the Non-Support of Spouse and Children Act (the Non-Support Act) expressly take precedence over contrary laws. “Any other State or local laws which limit or exempt income [available to pay child support or maintenance] shall not apply.” So, too, both allow withholding of income “regardless of source” for the purpose of securing support obligations. Thus, the express language of the Dissolution Act and the Non-Support Act unequivocally creates an exception to the personal property exemption statutes for child support and maintenance obligations without mention of attorney fees.” *Jakubik*, 208 Ill.App.3d at 124. [Citations omitted.]

The *Jakubik* court held that the former husband’s IRA account was exempt from garnishment for attor-

ney’s fees. “Illinois’ public policy favors the payment of child support and maintenance obligations from exempt property to promote the support of the family, not the support of attorneys.” *Jakubik*, 208 Ill.App.3d at 126.

In a line of more recent cases, the Illinois courts have further limited the ability to attach spendthrift trusts to unpaid or child support arrearages. *In Re Marriage of Chapman*, 297 Ill.App.3d 611, 697 N.E.2d 365, 231 Ill.Dec. 811 (Ill.App. 1 Dist. 1998), *Miller v. Miller*, 268 Ill.App.3d 132, 643 N.E.2d 288, 205 Ill.Dec. 337 (Ill.App. 4 Dist. 1994) and *In Re Marriage of Stevens*, 292 Ill.App.3d 994, 687 N.E.2d 165, 227 Ill.Dec. 242 (Ill.App. 4 Dist. 1997), all address the issue of whether a spendthrift trust is attachable for the payment of child support. All three cases conclude that a spendthrift trust is attachable for the payment of child support arrearages. The *Chapman* Court holds, “Spendthrift trusts may be reached only to satisfy child support arrearages, and not future child support payments.” *Chapman*, 697 N.E.2d at 369.

In this case the total amount of unpaid child support pursuant to the order entered in January is \$4,532.98. Without a doubt, the long-standing policy of Illinois is to allow the collection of child support from all available sources. The proceeds from NCP’s retirement plan provide the Respondent with the financial means to pay all of the child support arrearages he owes to the Petitioner. The Illinois courts have consistently applied and approved of the methods of collecting child support for minor children. Illinois has acknowledged the prevalent failure of non-custodial parents to support their children and has enacted laws to achieve the maximum compliance by obligors with court-ordered child support payments.

This court should award Petitioner the total sum of \$4,532.96 from NCP’s retirement proceeds. Further, this Court should order NCP’s attorney to pay the amount of \$4,532.96 from the trust account directly to Madison County Circuit Clerk, Child Support Division to be applied to NCP’s child support arrearages.

(Both the NCP and CP also submitted their briefs. On May 20, 2002, the trial Court held the funds were attachable for application to the judgments for past due support and maintenance, but not for CP’s attorney’s fees.)

(“National Medical Support Notice,” cont’d. from page 1)

response form and return it to the Child Support Agency.

Health Plan Administrator Responsibilities

Once the employer determines that medical insurance coverage can be provided, the employer sends Part B of the NMSN to the Plan Administrator. The Plan Administrator must:

- Complete and forward the Part B response form to the Child Support Agency, providing a description of the health care coverage and when the coverage will begin.
- Comply with the provisions of Part B within 40 business days of the date of the Notice.

Outreach and Notification

IDPA plans to notify employers of the NMSN requirements prior to July 1 through informational notices included in the current income withholding materials and letters to employer and payroll associations. Clerks of the Circuit Court, IV-D legal representatives, and other members of the legal

community will also receive informational letters. States are required to use the Notice as drafted by the federal workgroup. The Notice and the information used by the Department to plan for implementation in Illinois are available on the OCSE website.

In addition to the Action Transmittal discussed above, the OCSE has written a brief informational article titled “A National Medical Support Notice Makes its Debut.” The article is published on the OCSE website at : http://www.acf.dhhs.gov/programs/cse/newhire/employ/medsupport/medsup_notice.html. The OCSE article and Action Transmittal OCSE-AT-01-02 are the source for much of the information contained in this article and for the information in the letters to be sent to employers, payroll associations, Clerks of the Circuit Court, and the legal community. Readers who are interested in learning more about the NMSN are encouraged to visit the website.

Questions about the new notice that are not answered by the information published by the OCSE may be directed to IDPA in care of Joan Kiaschko, IDPA, DCSE, 509 South Sixth Street, Springfield IL 62701 or by e-mail at aid52GZ@mail.idpa.state.il.us.

**ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION
Application for Membership / Address Correction**

(Membership year begins and ends at the Annual Conference, usually held in October)

Please: accept my application for membership in IFSEA. correct my address as noted below.

- Regular membership - please enclose \$20.00 annual dues.
- Subscription membership (for those not eligible for membership) - please enclose \$20.00 annual fee.
- Affiliate membership - (dues to be determined by Directors upon acceptance).

Applicant's Name: _____
 Position/Title: _____
 Employer/Agency: _____
 Office _____
 City/State/Zip: _____ Office Phone: _____
 Preferred Mailing Address: _____

Is this a New Application Renewal Address Correction ONLY?

Please return with dues to: IFSEA, P. O. Box 370, Tolono, IL 61880-0370

(FEIN: 37-1274237)

(6/02)

We're Ba-ack!

. . . at least as long as the revived interest and willingness to contribute to this newsletter continues. Thanks to the efforts of a "committee to save the *FORUM*," some "new life" has been pumped into this publication. Christa Fuller, Project Manager for MAXIMUS, Inc. in Chicago, has agreed to act as Assistant / Assignments Editor, with the unenviable task of pursuing (recruiting, begging, reminding, *harassing*) contributors for material to publish. With her assistance this issue contains contributions from some new sources. With her continued efforts and the continuing support and dedication of you, our readership, the *FORUM* will continue to provide what we hope will be timely and useful information on issues related to Illinois' child support enforcement efforts. ***But your help is needed!***

Tom Sweeney

Editor

Plan Now to Attend

IFSEA's 14th Annual Conference
And Members' Meeting

October 20-22, 2002

Marriott Hickory Ridge Conference Hotel *
Lisle, Illinois

*(*A change from the site previously announced)*

The tentative agenda and registration information will be sent out in the next *FORUM*, due out in mid-August, and will be on our web site as soon as available (www.illinoisfamilysupport.org). Registration for the 2-1/2 day conference will be \$110 (*Cheap!*) this year. Put this on your calendar – ***and in your budget!*** – ***NOW!***

**Illinois Family Support
Enforcement Association**
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