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# Legislating Responsibility: North Carolina's New Child Support Enforcement Acts

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## Legislating Responsibility: North Carolina's New Child Support Enforcement Acts

Despite the enactment of new laws and the creation of new government programs over the last thirty-five years,<sup>1</sup> compelling parents to meet their obligation to support their minor children remains a major problem in the United States. In North Carolina, as in many other states, solutions to this problem have eluded legal scholars, lawyers, and government officials alike. However, recent changes, originally designed to reduce the number of children and single parents dependent on public support, may help improve overall child support enforcement. During its 1986 session the North Carolina General Assembly enacted legislation introducing major changes in the State's child support enforcement laws. Most of these changes were in response to the 1984 amendments to Title IV, Part D of the Social Security Act,<sup>2</sup> which require states to implement stringent procedures to enhance enforcement of the child support obligations of noncustodial parents. This Note examines the changes passed by the General Assembly in 1986 as well as the federal statutes and regulations that brought them about and attempts to give a broad overview of the new laws that will affect thousands of North Carolinians. The Note concludes that although the new laws will not be without problems, the benefits derived from improved child support enforcement outweigh the difficulties that may result.

The underlying problem in child support enforcement relates directly to the growing number of single parent families and the increasing reluctance of non-custodial parents to meet court-ordered child support obligations.<sup>3</sup> Both of these factors have led to an increase in federal expenditures for welfare programs,<sup>4</sup> which in turn has led to increased federal involvement in child support enforcement. Although other laws enacted in recent years, both federal and state, have helped force noncustodial parents to meet court-ordered child support obligations,<sup>5</sup> solutions have been frustrated by the complicated process for

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1. See *infra* note 5 and accompanying text.

2. Child Support Enforcement Amendments, Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified as amended at 42 U.S.C. §§ 651-667 (Supp. III 1985)).

3. See *infra* notes 25-30 and accompanying text.

4. See *infra* note 25.

5. The enactment of the Title IV-D program in 1975 established a nationwide system for locating absent parents, establishing paternity, filing actions against absent parents to secure support for minor children and reimbursing federal and state monies spent in support of these children. See Child Support Enforcement Act, Pub. L. No. 93-647, § 101(a), 88 Stat. 2337, 2351 (1975) (codified at 42 U.S.C. §§ 651-65 (1982)). The program operates mainly through state "IV-D" agencies, which have primary responsibility for enforcing support obligations on behalf of their clients. Although the program originally emphasized recoupment of funds paid to recipients of Aid to Families with Dependent Children (AFDC), see *infra* note 15, the program is available to all who wish to use the program's enforcement mechanisms. N.C. GEN. STAT. § 110-130.1(a) (Supp. 1985) ("All child support collection and paternity determination services provided under this Article . . . shall be made available to any individual not receiving public assistance . . ."); see REPORT OF THE DEP'T OF HUMAN RESOURCES TASK FORCE ON CHILD SUPPORT ENFORCEMENT 4 (N.C. 1985). The results of the program in North Carolina have been dramatic. Cases in which paternity has been established jumped from 1,692 in 1976 to 7,037 in 1984; the number of cases filed against absent parents involving minors receiving AFDC payments rose from 25,243 in 1976 to 86,850 in 1984, and

establishing and enforcing child support awards,<sup>6</sup> crowded court dockets,<sup>7</sup> and a lack of established guidelines for judges to use in setting child support awards.<sup>8</sup> The new North Carolina child support laws are designed to address each of these problem areas. The new laws establish procedures for mandatory income withholding to enforce support orders<sup>9</sup> as well as procedures for expediting child support cases,<sup>10</sup> and the laws call on the Conference of Chief District Judges to set advisory guidelines for setting child support amounts.<sup>11</sup> Although the North Carolina General Assembly has acted on its own initiative in recent years to deal with the problems associated with child support enforcement,<sup>12</sup> many of the more recent state laws, including the 1986 changes, were enacted in direct response to mandates from the federal government.<sup>13</sup>

The first federal act dealing with child support enforcement was enacted in 1950 when Congress amended the Social Security Act<sup>14</sup> to require "State welfare agencies to notify appropriate law enforcement officials upon providing Aid to Families with Dependent Children (AFDC) with respect to a child who was abandoned or deserted by a parent."<sup>15</sup> In 1975 Congress created Part D of Title IV of the Social Security Act, which included numerous provisions for states to follow in enforcing child support orders and in collecting monies from absent parents to reimburse the state and federal governments for AFDC payments made on behalf of the parent's children.<sup>16</sup> The 1975 amendments also required a custodial parent receiving AFDC payments to "cooperate with the state in

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the number of cases involving minors not receiving AFDC payments rose from 2,030 in 1976 to 26,086 in 1984. In dollar amounts, child support collected in AFDC cases rose from \$176,733 in 1976 to \$21,596,696 in 1984, and in non-AFDC cases the figure rose from \$93,059 in 1976 to \$15,015,657 in 1984. *Id.* For a discussion of national child support enforcement with a breakdown and state-by-state comparison, see OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, A GUIDE FOR JUDGES IN CHILD SUPPORT ENFORCEMENT 6-11 (2d ed. 1986) [hereinafter GUIDE FOR JUDGES].

6. See *infra* notes 30-31 and accompanying text.

7. See *infra* notes 46-48 and accompanying text.

8. See *infra* note 59 and accompanying text.

9. Act of July 9, 1986, ch. 949, § 2, 1986 N.C. Sess. Laws 246, 246 (codified at N.C. GEN. STAT. §§ 110-129 to -136.10 (Supp. 1986)).

10. Act of July 12, 1986, ch. 993, 1986 N.C. Sess. Laws 351 (codified at N.C. GEN. STAT. §§ 50-30 to -39 (Supp. 1986)).

11. Act of July 15, 1986, ch. 1016, 1986 N.C. Sess. Laws 586 (codified at N.C. GEN. STAT. § 50-13.4 (Supp. 1986)).

12. See, e.g., *infra* note 72 (discussing changes in child support enforcement enacted by the general assembly in 1983).

13. See, e.g., Child Support Enforcement Amendments, Pub. L. No. 98-378, 98 Stat. 1305 (1984) (codified as amended at 42 U.S.C. §§ 651-667 (Supp. III 1985)); N.C. GEN. STAT. §§ 110-137 to -141 (1978, Supp. 1985 & Interim Supp. 1986) (statutes conforming with federal law); see also *supra* note 5 (discussing the history of Title IV, part D).

14. Act of Aug. 28, 1950, ch. 809, § 321(b)(10), 64 Stat. 477, 550 (codified as amended at 42 U.S.C. § 602(a)(11) (1982)).

15. GUIDE FOR JUDGES, *supra* note 5, at 223. Aid to Families With Dependent Children (AFDC), codified at 42 U.S.C. §§ 601-615 (1982 & Supp. III 1985), provides grants to states that submit an approved program to enable the states to distribute funds to needy families. The program is then administered by the appropriate state agency, which in North Carolina is the Department of Human Resources or, in some cases, representatives appointed by a board of county commissioners. See N.C. GEN. STAT. § 110-129(5) (Supp. 1985).

16. Child Support Enforcement Act, Pub. L. No. 93-647, § 101(a), 88 Stat. 2337, 2351-60 (1975) (codified as amended at 42 U.S.C. § 651 (1982)).

establishing the paternity of a child born out of wedlock"<sup>17</sup> and to assign to the state any rights to support from any other person.<sup>18</sup> The custodial parent's assigned rights then become "an obligation owed to such state by the individual responsible for providing such support."<sup>19</sup> Part D also requires each state to establish a single and separate agency to administer the enforcement program, generally called a "IV-D agency."<sup>20</sup> As a result of the 1984 amendments, federal law now requires states to implement procedures for income withholding to enforce child support obligations,<sup>21</sup> a system for expediting child support cases,<sup>22</sup> and laws or procedures that establish guidelines for consistent setting of child support awards.<sup>23</sup>

The 1984 amendments to the Social Security Act were spawned by the increasing costs to the federal government of supporting children living in single parent homes.<sup>24</sup> The growing number of single parent families originates from the increase in divorce, desertion by parents, and the increase in out-of-wedlock births experienced in the United States in recent years.<sup>25</sup> The most significant of these increases has been the dramatic jump in out-of-wedlock births caused in part by the destigmatization of unmarried motherhood and the explosion in the number of teenage mothers in the last decade.<sup>26</sup> The absence of a parent work-

17. *Id.* § 101(c)(5), 88 Stat. at 2359 (codified as amended at 42 U.S.C. § 602(a)(26)(B)(c) (1982)).

18. *Id.* § 101(c)(5)(C), 88 Stat. at 2359 (codified as amended at 42 U.S.C. § 602(a)(26)(A) (1982)); see Roberts, *Attorney-Client Relationship and the IV-D System: Protection Against Inadvertent Disclosures of Damaging Information*, 19 CLEARINGHOUSE REV. 158 (1985).

19. *Id.* § 101(a), 88 Stat. at 2356 (codified as amended at 42 U.S.C. § 656(a) (1982)).

20. See 42 U.S.C. § 654(3) (1982); 45 C.F.R. § 302.31 (1986).

21. 42 U.S.C. § 666(a), (b) (Supp. III 1985).

22. *Id.* § 666(a)(2).

23. *Id.* § 667.

24. GUIDE FOR JUDGES, *supra* note 5, at 3-6.

25. GUIDE FOR JUDGES, *supra* note 5, at 2-3. Among the effects of this increase has been what is generally termed "the feminization of poverty." See K. AULETTA, *THE UNDERCLASS* 68-79 (1983) (stating that between 1970 and 1977 the "number of poor families headed by men declined by 25 percent . . . [but] the number of women who headed households below the poverty line jumped by 710,000 or 38.7 percent"). "In 1984, there were 33 million families with children under 18 in the home and 7.7 million were one-parent households headed by women." GUIDE FOR JUDGES, *supra* note 5, at 2. Because this situation often prevents the mother from finding adequate employment outside the home, these families frequently become dependent on government welfare programs, primarily Title IV's Aid to Families With Dependent Children (AFDC). See *id.* at 2-3; *supra* note 15 (discussing Title IV's AFDC). As a result of their increasing numbers and the lack of real economic opportunities, single women and their children make up an ever-increasing percentage of the country's population living below the poverty level.

This increased dependency on federal and state welfare programs has been very expensive, economically as well as socially. Spending on all welfare programs increased "from 77 billion dollars in 1965 to 285 billion in 1975 . . ." GUIDE FOR JUDGES, *supra* note 5, at 3. A major portion of this increase was in AFDC payments, which rose from one billion dollars in 1969 to 13.8 billion in 1983. *Id.* at 4. In addition, the percentage of children under 18 receiving AFDC payments increased from 2.5 percent in 1948 to 11.3 percent in 1973. *Id.* Recent studies show the primary reason for the increase has been "the absence of the father from the home." *Id.*

26. GUIDE FOR JUDGES, *supra* note 5, at 2.

Between 1970 and 1983, the number of never-married mothers increased by 377 percent. By 1983, one-fourth of all single parents were in this category. Of the 7.6 million women heading single parent families in 1984, 2.1 million had never been married. . . . In 1981, 537,024 children were born to teenage mothers, and about one-half of these babies were born out of wedlock.

ing outside the home to provide support has resulted in larger numbers of single parents, mostly women, living below the poverty level<sup>27</sup> and accompanying increases in public assistance, especially Title IV's Aid to Families with Dependent Children.<sup>28</sup>

One obvious problem in enforcing child support obligations involves the difficulty in locating unmarried fathers and establishing paternity.<sup>29</sup> However, in cases involving divorced parents and others in which the paternity has been established, obtaining adequate financial support from the noncustodial parent also is often difficult. Willful noncompliance with child support orders has become a major problem,<sup>30</sup> and in many cases child support becomes a bargaining chip in the fight over child custody and visitation rights.<sup>31</sup> When noncustodial parents intentionally withhold court-ordered support payments, the custodial parent is forced back into court to enforce the order, leaving the children with little or no support in the interim.

Under the new federal laws states are required to implement procedures for income withholding as a method of enforcing child support orders.<sup>32</sup> The new statutes and accompanying federal regulations, issued by the Department of Health and Human Services, require that all child support orders issued or modified after October 1, 1985<sup>33</sup> contain a provision for withholding from noncustodial parents' wages or other income an amount sufficient to cover their support obligations.<sup>34</sup> In cases in which the custodial parent seeks support enforcement through the state's IV-D agency, commonly termed IV-D cases,<sup>35</sup> the procedure

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*Id.*

Although this problem spans racial and cultural lines, the growing number of single parent families living in poverty is far more apparent among minority groups. "In 1979 almost 55 percent of all black children in the United States were born out of wedlock, whereas in 1940 only about 15 percent were." Compared to 12 percent of white families, "41 percent of black and 40 percent of Mainland Puerto Rican families . . . were supported by lone women" in 1979. K. AULETTA, *supra* note 25, at 68-69.

27. See *supra* note 25.

28. For a description of Title IV's AFDC, see *supra* note 15.

29. See GUIDE FOR JUDGES, *supra* note 5, at 79-120. The North Carolina General Assembly made no changes during the 1986 session in the procedures for establishing paternity, and this Note does not discuss these procedures.

30. A 1983 study by the United States Census Bureau indicated that of the 5,000,000 child support orders issued, "only half [of those who were to receive payments] received full payments, 25% partial payments, and 25% no payment at all." Dodson & Horowitz, *What to do About the Growing Problem of Child Support*, A.B.A. J., September 1985, 133, 133. As much as three-billion dollars in court-ordered payments may not have been effectively enforced in 1983. *Unpaid Child Support: A \$3 Billion Debt*, TRIAL, March 1986, at 89.

31. See Roberts, *Income Withholding* (pt. 1), 19 CLEARINGHOUSE REV. 1310 (1986). *But cf.* Appert v. Appert, 80 N.C. App. 27, 341 S.E.2d 342 (1986) (trial judges may not condition the payment of child support on compliance with court-ordered visitation).

32. 42 U.S.C. § 666(a), (b) (Supp. III 1985).

33. All states were required to implement the new laws mandated by the 1984 amendments no later than October 1, 1985. However, for states where new legislation was deemed necessary to implement the changes, the Secretary of Health and Human Services granted extensions until "four months after the end of the first session of the state's legislature which ends on or after October 1, 1985." 50 Fed. Reg. 19,608 (1985) (codified at 45 C.F.R. § 302.70 (1985)).

34. 45 C.F.R. § 302.70(a)(8) (1986).

35. Cases that are enforced through a state IV-D agency generally are called IV-D cases; those that are not enforced through a IV-D agency are called non-IV-D. These are also the terms used in the new North Carolina law. See N.C. GEN. STAT. § 110-129(7), (8) (Supp. 1986). The terms IV-D

for income withholding must be triggered whenever the absent parent fails to make payments amounting to one month's support<sup>36</sup> or when the noncustodial parent requests that amounts be withheld to cover his or her support obligations.<sup>37</sup> Furthermore, withholding in these cases "must occur without the need for any amendment to the support order or any further action by the court or entity that issued it."<sup>38</sup> In cases in which support orders are not enforced through a IV-D agency, a procedure for withholding sums from the noncustodial parent's income must still be available, but the same procedures need not be used.<sup>39</sup>

The state procedures must allow for withholding of current support payments and "an amount to be applied toward liquidation of overdue support."<sup>40</sup> However, the amount withheld may not exceed the maximum withholding permitted under the Consumer Protection Act and income withheld for child support must take priority over any other obligations that exist under state law.<sup>41</sup>

Although the federal regulations make specific procedural requirements for IV-D cases,<sup>42</sup> the actual mechanics of income withholding in both IV-D and non-IV-D cases is left to the individual states.<sup>43</sup> As a practical matter, the pay-

and non-IV-D refer only to whether the enforcement of the support obligation is sought by the IV-D agency and do not refer to whether the parent or child receives AFDC payments. See *supra* notes 5, 15.

36. See 45 C.F.R. § 303.100(a)(4), (b)(1) (1986).

37. *Id.* § 303.100(a)(4)(iii). Because the absent parent must also be subject to interception of income tax refunds, *id.* §§ 303.72 to .102, to liens on his or her property, *id.* § 303.103, and to being reported to consumer reporting agencies, *id.* § 303.105, if he or she falls a month behind on payments, the absent parent may wish to request withholding to make certain no arrearages accrue. For a brief discussion of the benefits to an absent parent of voluntary income withholding, see Roberts, *supra* note 31, at 1310-11.

38. 45 C.F.R. § 303.100(a)(4) (1986).

39. Income withholding as a method of enforcing child support orders must be made available in non-IV-D, as well as IV-D cases. Federal law requires that all support orders, "issued or modified," have a provision for income withholding "without the necessity of filing application for services [under the IV-D program]." 42 U.S.C. § 666(a)(8) (Supp. III 1985); 45 C.F.R. § 303.100(h) (1986). However, the federal regulations do not specify the procedures for enforcement in non-IV-D cases, and as a result "states are free to establish the conditions and procedures to be applied for wage withholding for cases not being enforced through the IV-D agency." Summary of Regulations, 50 Fed. Reg. 19,608-09 (1985).

40. 45 C.F.R. § 303.100(a)(2) (1986).

41. *Id.* § 303.100(a)(3), (d)(1)(viii). The Consumer Protection Act sets the maximum amount for garnishment of income for support at 50% when the garnishee supports a spouse and at 60% when he or she does not. 15 U.S.C. § 1673(b) (1982 & Supp. III 1985).

42. Under the required state plan, once the absent parent in a IV-D case falls one month behind in support payments, notice is automatically sent that amounts will be withheld from his or her income. 45 C.F.R. § 303.100(b) (1986). Shortly thereafter, notice is sent to his or her employer to begin withholding a specified amount from wages. *Id.* § 303.100(d). This automatic procedure eliminates the necessity of going to court to enforce the previous support order. *Id.* § 303.100(a)(4). The noncustodial parent, however, having received notice of the income withholding at least a few days before the employer, may then initiate an action to contest the withholding. The absent parent may stay the withholding while it is being contested, but in cases enforced through a IV-D agency, the withholding can be contested only for "mistake of fact." "Mistake of fact" is defined in the regulations as "an error in the amount of current or overdue support or the identity of the alleged absent parent." *Id.* § 303.100(a)(5). Congress apparently "intended opportunities to contest [income withholding] to be available in a very narrow range of cases." Roberts, *supra* note 31, at 1313. Congress specifically excluded deprivation of visitation rights, change in financial circumstances, or alleged error in amount set in the original support order as defenses. *Id.*

43. See *supra* note 39.

ments from the employers should be made into some type of a central clearinghouse and then disbursed to the custodial parent or to the state IV-D agency.<sup>44</sup> Each state is left the option of having the same procedure for cases not enforced through a IV-D agency, but some type of income withholding is mandated to enforce all child support orders.<sup>45</sup>

Crowded court dockets also help explain the lack of enforcement of support orders. In many states the courts with jurisdiction over support enforcement must also hear a variety of cases ranging from traffic offenses to probable cause hearings and almost every type of civil action involving small sums.<sup>46</sup> All too frequently, child support cases get shuffled to the bottom of a cramped court docket,<sup>47</sup> and the delays may force custodial parents to settle for less than an adequate amount of support.<sup>48</sup> When the noncustodial parent falls behind in the payments, the slow, agonizing process starts all over again as the custodial parent goes back to court seeking enforcement of the order.

In response to this problem, federal law compels each state to have procedures for expediting child support cases, termed "expedited process."<sup>49</sup> Under

44. The assigned state agency must know when the absent parent has fallen a month in arrears in support payments, and the best way to keep track of payments is to have the payments go to a central clearinghouse for disbursement. See Dodson, *Income Withholding: An Effective Way to Ensure Regular Support Payment*, JUV. & FAM. CT. J., Fall 1985, at 73 (Special Issue).

45. 45 C.F.R. § 303.100(h) (1986); see *supra* note 42.

46. This is especially true in states like North Carolina, in which district courts, which hear civil cases involving \$10,000 or less (except for probate of wills and administration of decedents' estates), have jurisdiction over all misdemeanor cases and conduct preliminary hearings in felony cases. The district courts hear all these types of cases, in addition to juvenile, divorce, custody, and support cases. See N.C. GEN. STAT. §§ 7A-240 to -253 (Supp. 1985).

47. See S. REP. NO. 387, 98th Cong., 2d Sess. 5, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 2397, 2401 ("Thousands of unserved child support warrants pile up in many jurisdictions and often traffic cases have a higher priority.") (quoting the 1974 Senate Committee on Finance).

48. Roberts, *supra* note 31, at 1310.

49. 42 U.S.C. § 666(a)(2) (Supp. III 1986). Expedited process, as it is called in the federal regulations, "means administrative or expedited judicial processes or both which increases the effectiveness and meet processing times specified." 45 C.F.R. § 303.101(a) (1986). A state may apply to the Department of Health and Human Services for an exemption from the expedited process requirements if it can meet the "effectiveness and timeliness of support order issuance and enforcement within the particular political subdivision . . ." *Id.* § 303.101(e). The state's success in this regard is measured in terms of its ability to meet the federally determined time requirements. See *infra* text accompanying note 50.

The actual method of expedited process is left to the state, with one notable exception: whether the state selects a system of administrative or quasi-judicial expedited process, the process must be one under which "the presiding officer is not a judge of the court." 45 C.F.R. § 303.101(a) (1986). However, a recent proposal by the Family Law Section of the American Bar Association calls on the ABA to "urge the Secretary of the Department of Health and Human Services to rescind that portion of the regulation implementing expedited processes pursuant to Public Law 98-378 which precludes the states from using a 'judge of the court.'" *Resolution Adopted by the ABA House of Delegates at the 1986 Annual Meeting*, reprinted in 12 Fam. L. Rep. (BNA) § 1518 (1986). The proposal further contends that this portion of the regulation "does not conform to the language of the statute and is directly contrary to the intent of Congress." *Id.*

The federal regulations describe both systems of administrative and quasi-judicial expedited process. Under a system of administrative expedited process, states could establish agencies within the executive branch of government that would have statutory authority to set support amounts and the power to enforce them. The agency would act as a neutral arbitrator, conducting an administrative hearing and issuing an order, which then would be subject to direct judicial review. See OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, A GUIDE

the regulations "actions to establish or enforce support obligations in IV-D cases must be completed . . . within the following time frames: (i) 90 percent in 3 months; (ii) 98 percent in 6 months; (iii) 100 percent in 12 months."<sup>50</sup> Thus, under the new federal regulations, all child support orders enforced through the state's IV-D agency<sup>51</sup> must be processed within the time limits set out in the regulations. To accomplish this, states must have a system, outside the regular judicial system,<sup>52</sup> whereby child support amounts can be established and the absent parent ordered to commence payment immediately. In addition, if the case is complicated, or if the noncustodial parent chooses to appeal to the courts, the child support order must remain in effect until the case is settled and a permanent order entered by the court.<sup>53</sup> The challenge for the states is to establish procedures that will move child support cases through the system quickly enough to meet federal requirements and, at the same time, preserve the due process rights of the parties involved.<sup>54</sup>

As with income withholding, the states also have the option of enforcing child support obligations by expedited process in non-IV-D cases, and states may also choose to establish paternity by the same proceeding.<sup>55</sup> Although the federal regulations outline the minimum functions for the presiding officer at the hearings,<sup>56</sup> the states may choose to give the officer much broader powers to use in establishing and enforcing support obligations.<sup>57</sup>

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FOR DESIGNING AND IMPLEMENTING ADMINISTRATIVE PROCESS FOR CHILD SUPPORT ENFORCEMENT 11-15 (1985) [hereinafter GUIDE FOR DESIGNING]; see also Henry & Schwartz, *Expedited Processes for Child Support Enforcement*, JUV. & FAM. CT. J., Fall 1985, at 77 (Special Issue) (discussing both quasi-judicial and administrative expedited process and examining each as established in various states). At least three states—Virginia, Missouri, and Oregon—have such a system. GUIDE FOR DESIGNING, *supra*, at 9-11. For a brief discussion of the constitutionality of administrative expedited process, see GUIDE FOR JUDGES, *supra* note 5, at 41-42. The quasi-judicial system (in some states called a judicial system) provides for a "judge surrogate" who has "authority to: evaluate and make initial decisions, enter default orders, . . . and accept voluntary acknowledgment of support liability." *Id.* at 36. The "judge surrogates often are referred to as court masters, referees, hearing officers, commissioners, or presiding officers," and hear child support cases, enter support orders, and in some cases establish paternity. Their findings are then subject to review by the courts. Numerous states currently have such a system in one form or another. *Id.*

50. 45 C.F.R. § 303.101(b)(2) (1986).

51. The regulations require only that those cases enforced through a IV-D agency meet the time requirements. *Id.* Thus, expedited process is not required for non-IV-D cases.

52. Because the presiding officer at an expedited process hearing cannot be a judge of the court, *id.* § 303.101(a), the procedures must operate outside the regular judicial system.

53. *Id.* § 303.101(b)(4).

54. *Id.* § 303.101(c)(2); see U.S. CONST. amend. XIV, § 1; N.C. CONST. art. I, § 19.

55. 45 C.F.R. § 303.101(b)(3) (1986).

56. The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record; (2) Evaluating evidence and making recommendations or decisions to establish and enforce orders; (3) Accepting voluntary acknowledgement of support liability and stipulated agreements setting the amount of support to be paid and, if the State establishes paternity using expedited processes, accepting voluntary acknowledgement of paternity; and (4) Entering default orders if the absent parents [sic] does not respond to notice or other State process within a reasonable period of time specified by the State.

*Id.* § 303.101(d).

57. Summary of Federal Rules & Regulations, 50 Fed. Reg. 19,612 (1985). For example, the state may give the presiding officer the power to issue bench warrants for parties who fail to appear or the authority to enforce support obligations. *Id.*



A lack of consistency in setting child support obligations has been a third problem closely related to that of enforcing support obligations. This lack of consistency has caused confusion and frustration among both custodial and non-custodial parents. Judges in most courts apply a number of different factors in determining support obligations,<sup>58</sup> and the need for more specific guidelines to assist judges in determining the level of child support to be awarded has been apparent for some time.<sup>59</sup> As a result, federal law now requires each state to "establish guidelines for child support award amounts within the State."<sup>60</sup> Although the guidelines need not be binding on judges or other officials, they must be based on "specific descriptive and numeric criteria" and be made available to all persons responsible for setting child support awards.<sup>61</sup>

In addition to the requirements for income withholding, expedited process, and child support guidelines, the new federal laws and regulations also require states to implement certain other procedures to assist in the collection of child support payments.<sup>62</sup> First, each state must have procedures for intercepting state income tax refunds for use in meeting overdue support obligations.<sup>63</sup> Second, a system for imposing liens against real and personal property of noncustodial parents in arrears in child support must be in effect.<sup>64</sup> Last, states must have procedures to establish paternity "at least until the child's [eighteenth]

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58. See Douglas, *Factors in Determining Child Support*, JUV. & FAM. CT. J., Fall 1985, at 27 (Special Issue) (discussing the different factors considered by courts in setting child support awards, including the sex, health, and age of the parents, and the child's needs).

59. A number of published studies have revealed the inequities resulting from the way child support amounts are set. For example, one study in Orange County, Florida, found that among nine circuit judges there "was little continuity between the judges in defining the level of child support orders in relation to the nine objective factors examined in the study," although each judge showed "a relatively high degree of consistency in his own decisions." U.S. DEP'T OF HEALTH AND HUMAN SERVICES, DEVELOPMENT OF GUIDELINES FOR ESTABLISHING AND UPDATING CHILD SUPPORT ORDERS: INTERIM REPORT 2 (1985) (citing White & Stone, *A Study of Alimony and Child Support Rulings with Some Recommendations*, 10 FAM. L.Q. 75, 83 (1976)). Another study in Denver, Colorado showed little consistency in awards made by the same judges, even after a number of variables, such as "the number of children and the obligor's ability to pay," were taken into consideration. *Id.* at 3 (citing Yee, *What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court*, 57 DEN. L.J. 21, 38-42 (1979)). In the Denver study support awards varied from 6% to 33.3% of the obligors' incomes to support one child and "5.6 percent to 40 percent of their incomes to support two children." *Id.* These and other studies seem to indicate a need for greater consistency in setting support awards because such variations can lead to great inequities that can be reduced through the use of guidelines. See *id.* at 3-4.

60. 42 U.S.C. § 667(a) (Supp. III 1985); see 45 C.F.R. § 302.56 (1986).

61. 45 C.F.R. § 302.56 (1986); see 42 U.S.C. § 667 (Supp. III 1985). Although federal regulations enacted in 1975 required states to have guidelines for establishing child support at least in IV-D cases, see 45 C.F.R. § 302.53 (1986), some 29 states lacked any statutorily defined method for determining support awards in 1983. GUIDE FOR JUDGES, *supra* note 5, at 51. In these jurisdictions it has been suggested that child support awards often are "inconsistent and generally insufficient to meet the needs of the children." *Id.*

62. Because North Carolina previously enacted most of these additional provisions or had adequate laws in effect to meet the federal requirements, they are discussed here only briefly. See OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP'T OF HEALTH & HUMAN SERVICES, STATE STATUTES AND THE 1984 FEDERAL CHILD SUPPORT ENFORCEMENT AMENDMENTS: A 54 JURISDICTIONAL ANALYSIS 65-66 (1984).

63. 45 C.F.R. § 302.70(a)(3) (1986); see N.C. GEN. STAT. § 105A-1 to -16 (1985).

64. 45 C.F.R. § 302.70(a)(4) (1986); see N.C. GEN. STAT. § 50-13.4(f)(8) (Supp. 1985).

birthday,"<sup>65</sup> and courts of each state must be authorized to require a parent to post bond or security to assure payment of child support.<sup>66</sup>

To entice states to comply with the 1984 amendments, the federal government makes incentive payments to states and political subdivisions.<sup>67</sup> These incentive payments are based on the amount of child support each state collects on a progressive scale, as compared with the administrative costs of collection in both AFDC and non-AFDC cases.<sup>68</sup> To participate in the incentive payments, each state must have passed the required laws and implemented the mandated procedures by October 1, 1985, or within "four months after the end of the first session of the state's legislature which ends on or after October 1, 1985."<sup>69</sup>

North Carolina has been far from immune to the problems that prompted the federal legislation.<sup>70</sup> A number of laws and methods for forcing a parent to support his or her minor child appeared in the North Carolina General Statutes before the 1986 changes,<sup>71</sup> but most of these laws shared a common problem—complicated legal proceedings in an overburdened judicial system and no means of enforcement without resorting to the same system.<sup>72</sup>

65. 45 C.F.R. § 302.70(a)(5) (1986); see *Bertie-Hertford Child Support Enforcement Agency v. Barnes*, 80 N.C. App. 552, 554, 342 S.E.2d 579, 580 (1986) ("There is no statute of limitations as such affecting a father's duty to support his illegitimate children. . . . That duty continues throughout the child's minority.")

66. 45 C.F.R. § 302.70(a)(6) (1986); see N.C. GEN. STAT. § 50.13.4(f)(1) (Supp. 1985).

67. For a more detailed explanation of the incentive payments made to states, see 45 C.F.R. § 303.52 (1986).

68. Because the collections referred to here all result from enforcement through the state IV-D agency, the distinction is made between those cases in which the custodial parent received AFDC payments and those in which the parent did not receive AFDC payments but did use the IV-D enforcement procedure.

69. 50 Fed. Reg. 19,608 (1985) (codified at 45 C.F.R. § 302.70 (1985)); see *supra* note 33.

70. According to a study by the Commission on the Future of North Carolina:

[F]amilies headed by women . . . are disproportionately represented in North Carolina's poor population. In 1979, 36 per cent of the state's poor were children. From 1970 to 1980, the percentage of North Carolina families in poverty that were headed by women increased from 30 to 41 per cent. . . . [I]f present trends continue, the state will have 150,000 more families headed by women in the year 2000 than it had in 1980, and almost a third of these will have incomes below the poverty level.

Mason, *Child Support Enforcement in North Carolina*, POPULAR GOV'T, Summer 1984, at 26-27 (citing COMMISSION ON THE FUTURE OF NORTH CAROLINA, NORTH CAROLINA DEP'T OF ADMINISTRATION, THE FUTURE OF NORTH CAROLINA: GOALS AND RECOMMENDATIONS FOR THE YEAR 2000 (1983)). This problem is compounded by the fact "[w]ithin a year, the parent ordered to pay support in half [of child support cases] is in arrears for some period of time." T. ENNIS & J. MASON, THE USE OF CONTEMPT TO ENFORCE CHILD SUPPORT ORDERS IN NORTH CAROLINA I (N.C. Inst. of Gov't, April 1986) (citing Franklin Freeman, Director of North Carolina Administrative Office of The Courts, addressing the Child Support Study Committee of the North Carolina General Assembly, February 6, 1986).

71. See, e.g., N.C. GEN. STAT. § 14-322 (1986) (making abandonment or failure to support a spouse or dependent child a misdemeanor punishable by up to a \$500 fine, six months imprisonment, or both for first offense); *id.* § 15-155.2 (1983) (requiring local district attorney to prosecute mothers who have abandoned or refused to support their children); *id.* §§ 50-13.4 to -13.7 (Supp. 1985) (civil action may be brought for support of minor children); *id.* §§ 110-128 to -141 (civil actions may be brought to secure support of minor children and to recover from parents monies spent by the state for support).

72. The general assembly lessened this problem somewhat in 1983 by requiring the clerk of court, on failure of an absent parent to make a support payment, to mail a "notice of delinquency which shall set out the amount of child support currently due and shall demand immediate payment of said amount." *Id.* § 50-13.9(d) (1984). If the absent parent then fails to make the payment, he

The general assembly responded to the 1984 Title IV-D amendments with three major bills that change the methods of establishing and enforcing child support obligations in North Carolina.<sup>73</sup> First, as of October 1, 1986, the North Carolina provision for income withholding complies with the federal law and in some cases goes a little beyond it.<sup>74</sup> Second, also effective October 1, 1986, all district court child support cases other than those in which paternity is contested must be disposed of within sixty days of their filing with a maximum thirty day extension granted by the court under certain circumstances.<sup>75</sup> In those judicial districts that do not dispose of child support cases within the minimum time schedule established by federal law,<sup>76</sup> a system of quasi-judicial expedited process will be implemented.<sup>77</sup> Last, effective October 1, 1987, the Conference of Chief District Judges will prescribe "uniform statewide advisory guidelines for computation of child support obligations."<sup>78</sup>

Chapter 949 of the 1986 Session Laws established procedures for withholding amounts of child support from "wages and other sources of income."<sup>79</sup> Under the new law, which amended Chapter 110 of the North Carolina General Statutes, "[a]ll child support orders, civil or criminal, entered or modified in the State beginning October 1, 1986," will contain a provision for withholding the amount necessary to meet his or her child support obligations from an absent parent's wages or other income.<sup>80</sup> The noncustodial parent becomes subject to income withholding when he or she requests it or when he or she falls one month in arrears on child support payments.<sup>81</sup>

The income withholding provisions distinguish cases that are enforced through the State's IV-D agency from cases that are not, and the provisions establish somewhat different rules for each. The new law uses the term "IV-D case" to refer to "a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title

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must appear in district court to "show cause why he should not be adjudged in contempt of the order of the court." *Id.* Although this method of enforcement is more automatic than the former law under which the district attorney (in a criminal action) or the custodial parent had to initiate the proceeding, the method of enforcement is still contempt, and that creates a number of problems of its own. See Mason, *supra* note 70, at 33. See generally T. ENNIS & J. MASON, *supra* note 70, at 1 ("use of contempt to enforce the payment of child support can involve complex and frustrating issues").

73. A fourth bill amended § 110-130.1 and changed the application fee and cost recovery provisions of the State's IV-D program. Act of July 8, 1986, ch. 931, 1986 N.C. Sess. Laws 214 (codified at N.C. GEN. STAT. § 110-130.1 (Supp. 1986)).

74. See Act of July 9, 1986, ch. 949, 1986 N.C. Sess. Laws 246 (codified at N.C. GEN. STAT. §§ 110-129 to -136.9, 50-13.9 (Supp. 1986)).

75. Act of July 12, 1986, ch. 993, § 1, 1986 N.C. Sess. Laws 351, 351-53 (codified at N.C. GEN. STAT. § 50-32 (Supp. 1986)).

76. See *supra* note 50 and accompanying text.

77. Act of July 12, 1986, ch. 993, § 1, 1986 N.C. Sess. Laws 351, 351-53 (codified at N.C. GEN. STAT. § 50-33(b) (Supp. 1986)).

78. Act of July 15, 1986, ch. 1016, 1986 N.C. Sess. Laws 586 (codified at N.C. GEN. STAT. § 50-13.4 (Supp. 1986)).

79. Act of July 9, 1986, ch. 949, 1986 N.C. Sess. Laws 246 (codified at N.C. GEN. STAT. §§ 110-129 to -136.9, 50-13.9 (Supp. 1986)).

80. N.C. GEN. STAT. § 110-136.3 (Supp. 1986).

81. *Id.*

IV-D of the Social Security Act as amended.”<sup>82</sup> The term “ ‘[n]on-IV-D’ case means any case, other than a IV-D case, in which child support is legally obligated.”<sup>83</sup>

In all IV-D cases, once the noncustodial parent, called the obligor,<sup>84</sup> becomes subject to income withholding,<sup>85</sup> the obligee—in a IV-D case the state IV-D agency<sup>86</sup>—gives the obligor notice of the withholding.<sup>87</sup> The obligor then has ten days after the receipt of notice to request a hearing in district court in the county where the support order was issued.<sup>88</sup> If the obligor requests a hearing, no withholding will occur while it is pending, but the hearing must be held within thirty days of the obligor’s receipt of the notice.<sup>89</sup> The obligor in IV-D cases may contest a withholding only for what is termed “mistake of fact.”<sup>90</sup> A mistake of fact will be found only if the obligor: (1) is not in arrears in an amount equal to one month’s support; (2) did not request the withholding, although the notice states withholding was begun at the obligor’s request; or (3) “is not the person subject to the court order of support for the child named in the advance notice of withholding.”<sup>91</sup> If a mistake of fact exists, no withholding takes place. If, however, no hearing is requested or if one is requested and no mistake of fact is found, within forty-five days of the obligor’s having received the advance notice of withholding, the IV-D agency will serve the obligor’s employer, called the “payor,”<sup>92</sup> a notice of its obligation to withhold the proper amount from the obligor’s pay.<sup>93</sup> The IV-D agency must also file a copy of the

82. *Id.* § 110-129(7).

83. *Id.* § 110-129(8). The federal regulations do not require that IV-D cases receive the same treatment as non-IV-D cases. *See supra* note 39.

84. “Obligor” is the term used for a noncustodial parent who owes support under a court order. N.C. GEN. STAT. § 110-129(12) (Supp. 1986).

85. *See supra* text accompanying note 81.

86. The “[o]bligee,” in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support is owed or the individual’s legal representative.” N.C. GEN. STAT. § 110-129(11) (Supp. 1986).

87. The notice to the obligor must contain at least the following information:

- (1) Whether the proposed withholding is based on the obligor’s failure to make legally obligated payments in an amount equal to the support payable for one month or on the obligor’s request for withholding;
- (2) The amount of overdue support, the total amount to be withheld, and when the withholding will occur;
- (3) The name of each child for whose benefit the child support is due, and information sufficient to identify the court order under which the obligor has a duty to support the child;
- (4) The amount and sources of disposable income;
- (5) That the withholding will apply to the obligor’s wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;
- (6) An explanation of the obligor’s rights and responsibilities pursuant to this section;
- (7) That withholding will be continued until terminated pursuant to G.S. 110-136.10.

*Id.* § 110-136.4(b).

88. *Id.* § 110-136.4(c).

89. *Id.*

90. *See supra* note 42.

91. N.C. GEN. STAT. § 110-129(10) (Supp. 1986).

92. “ ‘Payor’ means any payor, including any federal, state, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act.” *Id.* § 110-129(13).

93. The notice to the payor will include “information regarding the payor’s rights and responsibilities, the amount of disposable income . . . on which that withholding is based, the penalties [for

notice with the clerk of superior court.<sup>94</sup>

After receiving the notice the payor must then withhold the specified amount<sup>95</sup> from the obligor's pay and send that amount to the appropriate clerk of superior court within ten days after the obligor receives his or her pay.<sup>96</sup> The payor must continue withholding until otherwise notified by the clerk or IV-D agency and must notify the IV-D agency or the clerk if the obligor is terminated from his or her employment.<sup>97</sup> Finally, the payor must "[w]ithhold for child support before withholding pursuant to any other legal process under State law against the same disposable income."<sup>98</sup> Thus, if the obligor's wages have been garnished previously by creditors, or for any other reason, the child support withholding gets priority. In IV-D cases the clerk will send the sums paid in either to the Department of Human Resources (the IV-D agency in North Carolina) when so required by federal law or to the custodial parent in other cases, "unless a court order requires otherwise."<sup>99</sup>

Two different procedures for implementing income withholding apply to non-IV-D cases. First, the obligee<sup>100</sup> may file a motion or complaint in the district court for an order of income withholding, or the parties may agree to income withholding by consent order.<sup>101</sup> Second, in cases in which the obligor has been ordered to pay child support to the clerk of court,<sup>102</sup> the clerk will send notice to the obligor who fails to make a payment that the support order may be enforced by income withholding or "other appropriate means."<sup>103</sup> If the obligor

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noncompliance by the payor] under this section, and the maximum percentages of disposable income that may be withheld." *Id.* § 110-136.8(a).

94. *Id.* § 110-136.4(c), (d).

95. The notice to the payor will specify the amount to be withheld which includes: "(1) An amount sufficient to pay current child support; and (2) An additional amount toward liquidation of arrearages; and (3) A processing fee of two dollars (\$2.00) to cover the cost of withholding to be retained by the payor for each withholding, unless waived by the payor." *Id.* § 110-136.6(a). The amount of withholding "shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding." *Id.* § 110-136.6(b). If multiple withholding orders exist against the same obligor, the withholding may not exceed 45% of disposable income when the obligor supports a spouse and other dependent children or 50% of disposable income if the obligor is not supporting a spouse or other dependent children. *Id.*

96. *Id.* § 110-136.8(b)(1).

97. *Id.* § 110-136.8(b)(5).

98. *Id.* § 110-136.8(b)(3).

99. *Id.* § 110-136.9.

100. The obligee is usually the custodial parent in non-IV-D cases.

101. N.C. GEN. STAT. § 110-136.5(a) (Supp. 1986).

102. Under North Carolina General Statutes § 50-13.9 the court can order that support payments be paid to the clerk of court and then paid out to the custodial parent by the clerk. *Id.* § 50-13.9 (1984). This enables the court, through the clerk, to monitor the payments and have the non-custodial parent answer if he or she falls behind in payments. *See supra* note 72. This provision amended the statute to include income withholding as a remedy. *See* Act of July 9, 1986, ch. 949, § 4, 1986 N.C. Sess. Laws 246, 253-54 (codified at N.C. GEN. STAT. § 50-13.9(d) (Supp. 1986)).

103. The notice from the clerk

shall demand immediate payment . . . [and] shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, or other appropriate means.

N.C. GEN. STAT. § 50-13.9(d) (Supp. 1986).

then fails to make the required payment, he or she will be required to appear in district court and show cause why the support order should not be enforced by income withholding and why he or she should not be held in contempt of court.<sup>104</sup> Under either of these procedures the obligor may avoid income withholding or other means of enforcement by showing a "mistake of fact."<sup>105</sup> In addition, the obligor in a non-IV-D case may also contest withholding by showing that "the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or . . . that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason."<sup>106</sup>

The wage withholding provisions also provide for enforcement of support orders entered in other states through income withholding. All child support orders issued in other states can be enforced in North Carolina by a petition "addressed to this state," and a support order entered in North Carolina can be enforced in a similar manner in other states.<sup>107</sup> Notice of the foreign support order is served "upon the payor by a North Carolina agency or judicial officer."<sup>108</sup> In this manner, the employer is not placed in the difficult position of determining whether to honor a withholding order issued in another state.

The income withholding procedures supplement the existing laws for support enforcement. A party still may initiate a proceeding for garnishment or civil contempt or pursue other remedies provided by state law.<sup>109</sup> However, once a withholding order is issued, it can be terminated only by notice from the IV-D agency or the court.<sup>110</sup>

Compared with other methods of enforcing child support, income withholding promises to be more effective, especially in IV-D cases, in which noncustodial parents have fewer defenses to permit them to escape withholding.<sup>111</sup> Although North Carolina's garnishment statute allows future earnings to be withheld to force an absent parent to comply with a support order,<sup>112</sup> the new

104. *Id.*

105. *See supra* notes 42, 90-91 and accompanying text.

106. N.C. GEN. STAT. § 110-136.5(c) (Supp. 1986). These three defenses, which are in addition to "mistake of fact," are not available in IV-D cases.

107. *Id.* § 110-136.3(d). This provision is required under federal law; states must have a procedure for enforcing child support orders, entered in other states, through income withholding. 42 U.S.C. § 666(b)(9) (Supp. III 1985); 45 C.F.R. § 303.100(g) (1986).

108. N.C. GEN. STAT. § 110-136.3(d)(4) (Supp. 1986).

109. Act of July 9, 1986, ch. 949, § 9, 1986 N.C. Sess. Laws 246, 255 (codified at N.C. GEN. STAT. § 110-129 (Supp. 1986)).

110. Income withholding can be terminated only when the court or IV-D agency gives notice that:

- (1) The child support order has expired or become invalid; or (2) The initiating party, the obligor, and the district court agree to termination because there is another adequate means to collect child support or arrearages; or (3) The whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages to the State are paid in full.

N.C. GEN. STAT. § 110-136.10 (Supp. 1986).

111. *See supra* notes 91, 106 and accompanying text.

112. *See* N.C. GEN. STAT. § 110-136 (Supp. 1985); *see also* *Elmwood v. Elmwood*, 295 N.C. 168, 244 S.E.2d 668 (1978) (section 110-136 allows for entry of a continuing order to reach future earnings).

system is more automatic and thus reduces the obligor's ability to avoid wage withholding to meet the support obligations. Under the garnishment statute, the decision to garnish the absent parent's wages is almost exclusively within the discretion of the court.<sup>113</sup> The new income withholding statute shows a clear legislative intent that income withholding be the rule, not the exception, when an absent parent falls behind in support payments. Income withholding in both IV-D and non-IV-D cases also compares very favorably with the older statutes relating to criminal prosecution for failure to support and with both civil and criminal contempt proceedings for enforcing child support obligations.<sup>114</sup>

The North Carolina version of income withholding should bring the state into complete compliance with federal law. Although in most non-IV-D cases the parties must still go back to court to get an order for income withholding, the new law still goes slightly beyond the requirements of the federal law.<sup>115</sup>

Although it promises to be more effective and complies with federal law, the income withholding procedure will not be without its share of problems. First, reluctant employers must now be oriented and forced to comply with the provisions of the new law. If employers fail to withhold an obligor's earnings, they are liable for all amounts they should have withheld on receiving notice.<sup>116</sup> However, because employers may be viewed by many courts as innocent parties, securing these sums from employers may prove even more difficult than enforcing the support order. The new law also prohibits an employer from discharging an employee who is subject to income withholding and provides civil penalties of one hundred to one thousand dollars for violations.<sup>117</sup> However, most employers will likely have little difficulty escaping these provisions by finding reasons for discharging such an employee "on other grounds." The new law also prohibits an employer from refusing to employ or from disciplining an employee because he or she is subject to income withholding,<sup>118</sup> but again, the employer could easily find other excuses and an offense may be hard to prove. In addition, a large number of administrative and management problems could occur in the workplace that might frustrate the ultimate goals of the new law.<sup>119</sup> For example, the employer must make certain that once withholding is ordered, undue delay does not occur in implementing it.<sup>120</sup> Also, the employer's accounting personnel must make certain that multiple withholdings sent to the clerk at one

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113. See N.C. GEN. STAT. § 110-136 (Supp. 1985).

114. See *supra* notes 71-72.

115. Because the federal law requires only that some form of withholding be available in non-IV-D cases, see 45 C.F.R. § 303.100(h) (1986), the general assembly could have opted to have it available under much more limited circumstances than in IV-D cases. In fact, the State's garnishment statutes may have met the federal requirements in non-IV-D cases. See N.C. GEN. STAT. § 110-136 (Supp. 1985).

116. N.C. GEN. STAT. § 110-136.8(e) (Supp. 1986).

117. *Id.*

118. *Id.*

119. For a brief discussion of the problems and proposed solutions related to employer cooperation in income withholding, see OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, MANDATORY INCOME WITHHOLDING IMPLEMENTATION MONOGRAPH 43-49 (1985).

120. *Id.* at 43.

time are properly identified so that the proper obligees can be credited.<sup>121</sup>

Another problem arises from the different defenses permitted noncustodial parents to prevent income withholding in IV-D and non-IV-D cases. Except for the fact the federal law does not require that IV-D and non-IV-D cases be similarly treated, little justification appears at first glance for the difference between the two. If the ultimate goal of income withholding is to assist children in receiving the amount of support to which they are entitled, then the same rules should apply, regardless of how the custodial parent enforces the obligation. Because the state must always comply with constitutional procedural due process and equal protection requirements, the procedure used in IV-D cases must satisfy these protections. Why then should the noncustodial parent be given the additional defenses provided for in non-IV-D cases? Alternatively, why should a noncustodial parent be deprived of such defenses because the support order is being enforced through a IV-D agency?

Income withholding may prove impractical in many cases. For example, the definition of disposable income under the new statute includes almost any type of income received by a noncustodial parent.<sup>122</sup> Unless the payor has some method of determining the obligor's disposable income, withholding sums of money under the law becomes difficult, if not impossible.<sup>123</sup> Difficulty in implementing the withholding, however, is not a valid defense in IV-D cases under the federal law.<sup>124</sup> Although the general assembly was forced into an awkward position in dealing with IV-D cases, it recognized the necessity of flexibility in determining when income withholding is feasible. The new law avoids this problem, at least in part, by including a provision permitting the IV-D agency to enforce a support order by other means when the absent parent cannot be located, his or her disposable income cannot be determined, or for any other reason.<sup>125</sup> Thus, although difficulty in implementing income withholding is not a defense for the noncustodial parent in IV-D cases, the IV-D agency can seek enforcement by other means if it so chooses.

The general assembly also enacted legislation to deal with the second major obstacle to enforcement of child support obligations. Chapter 993 of the 1986 Session Laws introduced a system for expediting child support cases and estab-

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121. *Id.*

122. Disposable income under the new law includes,

any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions.

N.C. GEN. STAT. § 110-129(6) (Supp. 1986).

123. For example, income withholding may prove difficult when the obligor is an independent contractor or is otherwise self-employed.

124. 45 C.F.R. § 303.100(a)(5) (1986).

125. N.C. GEN. STAT. § 110-136.4(g) (Supp. 1986).



lishing child support amounts.<sup>126</sup> Under the new law, all child support cases in district court, except when paternity is contested, must be disposed of within sixty days of the date of filing.<sup>127</sup> However, one thirty day extension may be granted by the court if the parties agree or if a party or his or her attorney cannot be present at the hearing.<sup>128</sup> Unfortunately, the new law contains no provisions to ensure compliance with the sixty day requirement. It provides for no additional judges or procedures whereby child support cases can be handled more quickly by the district courts.

Those judicial districts that fail to meet the state sixty day requirement may still be able to avoid implementing an expedited process plan as mandated by federal law if they can comply with the federal time frames for processing child support cases.<sup>129</sup> The Department of Human Resources and the Administrative Office of the Courts are required to seek a waiver<sup>130</sup> of the federal expedited process requirement from the Secretary of Health and Human Services.<sup>131</sup> However, in those judicial districts where a waiver is not granted, a "child support hearing officer" will be appointed to hear most child support cases and to enter an order of support that will remain in effect until altered by either the hearing officer or the district court on de novo appeal.<sup>132</sup> Of course, if the new law's sixty day deadline is met, the district courts will easily meet the federal requirement for expediting child support cases.<sup>133</sup> Thus, a child support hearing officer will be appointed only in those districts that fail to comply with the state sixty day requirement, but only if they also fail to meet the federal time requirements.

In those judicial districts where expedited process is implemented, a child support hearing officer will hear support cases before they go to district court. Under the new law, the hearing officer must be a clerk of superior court, an assistant clerk, or a magistrate, between twenty-one and seventy years of age, and must also be certified by the Administrative Office of the Courts through a course of training.<sup>134</sup> Hearing officers will be appointed by a joint agreement among the Director of the Administrative Office of the Courts, the chief district

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126. Act of July 12, 1986, ch. 993, 1986 N.C. Sess. Laws 351 (codified at N.C. GEN. STAT. §§ 50-32 to -39, 7A-178, -183 (Supp. 1986)).

127. N.C. GEN. STAT. § 50-32 (Supp. 1986).

128. *Id.*

129. *See supra* notes 49-54 and accompanying text.

130. *See supra* note 49.

131. N.C. GEN. STAT. § 50-33 (Supp. 1986).

132. *See id.* § 50-35.

133. *See supra* note 50 and accompanying text.

134. N.C. GEN. STAT. § 50-39 (Supp. 1986). In addition, the hearing officer must

establish that he has one of the following qualifications: a. Election or appointment as the clerk of superior court; or b. Three years experience as an assistant clerk of superior court working in child support or related matters; or c. Six years experience as an assistant clerk of superior court; or d. Four years experience as a magistrate whose duties have included, in substantial part, the disposition of civil matters; or e. Pursuant to G.S. 7A-171.1, five to seven years eligibility for pay as a magistrate; or f. Three years experience working in the field of child support enforcement or a related field.

judge, and the clerk of superior court in the affected county.<sup>135</sup>

In child support cases the hearing officer will have the same authority as a district court judge except in cases of contempt.<sup>136</sup> The rules of evidence that apply to civil actions apply during the hearings, and the officer may require the parties to produce financial and employment records.<sup>137</sup> The hearing is held without a jury and no "verbatim recording or transcript shall be required or provided at state expense."<sup>138</sup> The hearing officer will determine the parties' child support rights and obligations and enter an appropriate order "based on the evidence and the child support laws of the state."<sup>139</sup> Once the order is entered, the parties may abide by the order or may appeal to district court,<sup>140</sup> but unless appealed by written notice within ten days after entry of the judgment, the order of the hearing officer becomes final.<sup>141</sup> If a party does appeal, the hearing officer's order remains binding and the support amount set by the hearing officer must be paid until altered or stayed by the district court.<sup>142</sup>

If a party so moves, or if the hearing officer decides to do so, a case may be transferred to district court before the hearing, if the case involves "complex issues."<sup>143</sup> Complex issues include, but are not limited to, contested paternity, a custody dispute, contested visitation rights, and issues involving "the ownership, possession, or transfer of an interest in property to satisfy a child support obligation."<sup>144</sup> If the case is transferred to district court, the hearing officer will enter a temporary order of support pending the resolution of the case, except in cases in which paternity is contested.<sup>145</sup> In addition, the chief district court judge is required to establish procedures for giving priority to cases transferred from a support hearing officer for a hearing in district court.<sup>146</sup>

In judicial districts in which child support cases cannot be disposed of within the required time limit, expedited process could prove a welcome relief to custodial parents. If the noncustodial parent decides to appeal the award set by the hearing officer, the new procedure will provide for a support order during the period in which the case is pending before the district court, thus putting less pressure on the custodial parent to settle in order to gain needed support. The hearing officer's order may be stayed by the district court judge, but the legislative intent of chapter 993 and the requirements of the federal regulations<sup>147</sup> indicate an enforceable support order should be in effect while the case is being

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135. *Id.* § 50-34(b).

136. *Id.* § 50-37.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.* § 50-38.

141. *Id.*

142. *Id.*

143. *Id.* § 50-36(e).

144. *Id.*

145. *Id.*

146. *Id.*

147. 45 C.F.R. § 303.101(b)(4) (1986) ("If a case involves complex issues requiring judicial resolution the state must establish a temporary support obligation under expedited process.")

appealed. Thus, the district court should agree to stay a support order issued by a hearing officer only in exceptional cases and only when it appears the hearing officer has made a gross miscalculation or abused his or her discretion in setting a support award.

The hearing officer lacks the power to hold a noncustodial parent in contempt for failing to comply with a support order.<sup>148</sup> However, the new law does permit the hearing officer to make a finding of probable cause when a parent refuses to comply with an order and then refer the case to district court in which the parent may be jailed for civil or criminal contempt.<sup>149</sup> If a noncustodial parent chooses to appeal from an order of a hearing officer, the chances of success certainly will not be enhanced if the appeal is accompanied by a probable cause finding for contempt issued by the support hearing officer for failure to comply with an earlier order.

Although the new statutes are silent on the matter, hearing officers should be able to hear cases in which the noncustodial parent contests income withholding in IV-D cases and motions by the custodial parent to begin income withholding in non-IV-D cases.<sup>150</sup> Because the hearing officer has the same authority and power as a district court judge in all child support cases, except the power to jail a party for contempt, the hearing officer should be able to hear cases involving income withholding.<sup>151</sup>

The hearing officer and the procedures he or she employs in setting child support awards are at the heart of the quasi-judicial system of expedited process adopted in North Carolina. For the system to be effective, the hearing officer must be selected carefully and trained properly to ensure that he or she is capable of setting a proper support award.<sup>152</sup> While chapter 993 was pending in the general assembly, the qualifications for hearing officers generated much debate,<sup>153</sup> although the new law does require higher qualifications than originally proposed,<sup>154</sup> the minimum qualifications still are far less than those for a district

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148. N.C. GEN. STAT. § 50-37 (Supp. 1986).

149. *Id.*

150. *Id.* §§ 50-35, -37.

151. *See id.* § 50-37.

152. The selection of the child support hearing officer will be made by the clerk of superior court, the chief district court judge and the Director of the Administrative Office of the Courts, all of whom have a significant interest in selecting capable individuals in order to ease the crowding of court dockets and reduce the number of appeals to district court. *Id.* § 50-34(b).

153. In a memo to the Legislative Research Committee on Child Support, the Family Law Section of the North Carolina Bar Association expressed "strong feelings about the qualifications proposed for the support referee." Letter from Family Law Section of the North Carolina Bar Association to The Legislative Research Committee on Child Support (March 21, 1986) (discussing expedited process and child support guidelines). The letter went on to say: "It is sadly ironic that while a repeated legislative purpose of the new child support bills is a recognition of the vital importance of child support matters, these matters would then be required to be placed before an individual with an alarming lack of qualifications." *Id.* At that time, the expedited process bill (Senate Bill 939) did not require the hearing officer to have any number of years experience as a clerk or magistrate. The additional qualifications were later amended to the bill before ratification. *See* LEGISLATIVE REPORTING SERVICE, DAILY BULLETIN, (N.C. Inst. of Gov't) July 11, 1986, at 1738.

154. *See supra* note 134 and accompanying text.

court judge.<sup>155</sup> However, the hearing officer must be a clerk, assistant clerk, or a magistrate, all of whom now handle a wide range of important and difficult matters.<sup>156</sup> Furthermore, the method of selecting the hearing officers should help ensure that the most qualified persons available fill the positions.<sup>157</sup>

The North Carolina system of expedited process will comply with the federal regulations, provided cases can be handled swiftly enough to meet the federal time schedule. Although the federal law requires expedited process only in IV-D cases, the general assembly wisely chose not to distinguish them from non-IV-D cases for the purpose of expedited process.<sup>158</sup> If the new law applied only to IV-D cases, judicial districts would be inclined to push IV-D cases into earlier hearing dates at the expense of non-IV-D cases. By doing so, many districts could avoid implementing expedited process, even though non-IV-D cases would take even longer to resolve. In addition, any custodial parent who chooses to do so can apply to a IV-D agency and become a IV-D case.<sup>159</sup> If expedited process were available only in IV-D cases, a flood of applicants might be thrust on an already overburdened IV-D agency and greatly hinder the effectiveness of the entire program.<sup>160</sup>

A second major problem area for the North Carolina version of expedited process is ensuring all parties receive ample protection of due process rights as required by federal law<sup>161</sup> and the state<sup>162</sup> and federal constitutions.<sup>163</sup> The system is designed to establish child support obligations and initiate orders for enforcement in a timely manner, but care must be taken to assure that the rights and responsibilities of both parties are fairly adjudicated and not simply rushed through the system in an effort to meet the federal time schedules.<sup>164</sup>

In outlining the due process rights of individuals in other areas, the United States Supreme Court has held that a full adversarial proceeding is required

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155. N.C. CONST. art. IV, § 22 ("Only persons duly authorized to practice law in the courts of this state shall be eligible for election or appointment as a . . . Judge of District Court.").

156. For example, clerks may punish for civil and criminal contempt in proceedings before them, appoint and remove guardians and trustees, audit accounts of fiduciaries, N.C. GEN. STAT. § 7A-103 (1981), and issue custody orders for involuntary commitment, *id.* § 122c-261 (Supp. 1985). Clerks also act as "ex officio judge" for probate of wills and administration of estates. *Id.* § 7A-241 (1981). Magistrates preside over civil cases involving \$1500 or less, *id.* § 7A-210 (Supp. 1985), issue custody orders for involuntary commitment, *id.* § 122C-261, punish for direct criminal contempt, issue writs of habeas corpus, *id.* § 7A-292 (1981), and issue arrest warrants and search warrants, *id.* § 7A-273. An assistant clerk of superior court is authorized to perform all the duties and functions of the office of clerk of superior court. *Id.* § 7A-102.

157. See *supra* note 152.

158. One problem with a dual system would be that less affluent custodial parents would have cases decided through expedited process because nearly all cases involving AFDC recipients are IV-D cases. The more affluent parents would go to the courts. See Roberts, *Expedited Process and Child Support Enforcement: A Delicate Balance* (pt. 1), 19 CLEARINGHOUSE REV. 483, 484 (1986).

159. See *supra* note 5.

160. See Roberts, *supra* note 31, at 1316 (indicating the same problem could result if income withholding were made available only in IV-D cases).

161. See 45 C.F.R. § 303.101(c) (1986).

162. N.C. CONST. art. I, § 19.

163. U.S. CONST. amend. XIV, § 1.

164. For an in-depth discussion of the problems of expedited process and meeting due process requirements, see Roberts, *supra* note 158.

prior to termination of welfare benefits.<sup>165</sup> However, later decisions have attempted to limit this holding to the special circumstances surrounding the termination of welfare benefits.<sup>166</sup> In *Cleveland Board of Education v. Loudermill*<sup>167</sup> the Court stated that due process requirements are met if the party is given an opportunity to respond prior to termination of a property interest,<sup>168</sup> provided the party is later given the opportunity for a full evidentiary hearing or judicial review.<sup>169</sup>

In North Carolina the hearing procedures before the support hearing officer may suffice to meet the due process requirements without a de novo appeal, because both sides are given the opportunity to present evidence and be heard before an impartial officer.<sup>170</sup> Even if the hearing procedures fall short of meeting the due process requirements, however, the ability of either party to appeal to the district court for a de novo hearing should satisfy the requirements of *Loudermill*. Thus, as long as both sides are given a full evidentiary hearing, either in district court initially or on de novo appeal following a proceeding before a hearing officer, the North Carolina version of expedited process should meet due process requirements. Much will depend, however, on the way the system operates when a hearing officer is appointed as well as on the way cases are handled in those districts that meet the time requirements without appointing a hearing officer.

In response to the federal requirement that all states establish guidelines for setting child support awards,<sup>171</sup> the general assembly enacted chapter 1016.<sup>172</sup> The federal regulations do not specify the criteria to be used in setting support awards, but instead leave this to the states to develop. The regulations require only that the states establish guidelines "by law or by judicial or administrative action" and that the guidelines be made "available to persons in the states whose

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165. See *Goldberg v. Kelly*, 397 U.S. 254 (1970). In *Goldberg* several New York City AFDC recipients alleged that terminating their aid without a prior notice and hearing denied them due process of law. *Id.* at 255-60. For a discussion of AFDC, see *supra* note 15. The Court held that welfare benefits are statutory entitlements for those eligible to receive them and as such could not be terminated prior to a hearing without adequate notice to the recipient and an opportunity to respond to specific reasons for termination. *Goldberg*, 397 U.S. at 266.

166. See, e.g., *Mathews v. Eldridge*, 424 U.S. 319, 339-43 (1976) (and cases cited therein) (noting that the financial condition of a defendant in a proceeding to terminate welfare benefits is not present in other types of cases).

167. 470 U.S. 532 (1985). In *Loudermill* a security guard hired by the Cleveland Board of Education was fired for dishonesty in filling out his job application. *Id.* at 535. The Court held that state employees in Ohio have a property right in continued employment which is subject to due process protections, but that a chance to respond to charges prior to termination of employment coupled with administrative procedures after discharge meets the due process demands. *Id.* at 538-41; see *Roberts, supra* note 158, at 488 (discussing *Loudermill* and procedural due process in the context of expedited process). States have "two options in meeting federal due process requirements: either provide full protection at the predeprivation stage, or provide less protection at the initial stage but full protection later in a de novo judicial review." *Id.*

168. In this case, termination of employment benefits was involved. *Loudermill*, 470 U.S. at 535.

169. *Id.* at 542-43; see *Mathews v. Eldridge*, 424 U.S. 319, 343 (1976).

170. See N.C. GEN. STAT. § 50-36 (Supp. 1986).

171. 45 C.F.R. § 302.56 (1986).

172. Act of July 15, 1986, ch. 1016, § 1, 1986 N.C. Sess. Laws 586, 586 (codified at N.C. GEN. STAT. § 50-13.4 (Supp. 1986)).

duty it is to set award amounts."<sup>173</sup>

At the request of then Chief Justice Joseph Branch, a committee of the Conference of Chief District Judges<sup>174</sup> was appointed during the summer of 1985 to study uniform guidelines to be used in setting child support awards.<sup>175</sup> The committee report, which was later adopted as the report of the full Conference, recommended "statewide . . . guidelines for determining the support obligation of each parent" based on the number of children being supported.<sup>176</sup> The report then went on to identify eight factors to be considered in applying any variation from the stated guidelines.<sup>177</sup> The committee report also called on the general assembly to amend North Carolina General Statutes section 7A-148 "to direct the Conference of Chief District Court Judges to promulgate uniform child support guidelines and to periodically review and revise such guidelines."<sup>178</sup>

In accordance with the report, chapter 1016 calls on the Conference of District Judges to "prescribe uniform statewide advisory guidelines for the computation of child support obligations."<sup>179</sup> The new law also provides for variation

173. 45 C.F.R. § 302.56 (1986).

174. State law requires an annual meeting of the chief district court judges to "discuss mutual problems affecting the courts and the improvement of court operations." N.C. GEN. STAT. § 7A-148 (1985).

175. NORTH CAROLINA CONFERENCE OF CHIEF DISTRICT JUDGES, REPORT OF THE CHILD SUPPORT GUIDELINES COMMITTEE (February 21, 1986) [hereinafter CONFERENCE REPORT].

176. The report recommended the following guidelines be used statewide in setting support amounts:

One child	17% of the parent's gross income
Two children	25% of the parent's gross income
Three children	29% of the parent's gross income
Four children	31% of the parent's gross income
Five or more children	34% of the parent's gross income

*Id.* at 1. These formulas are identical to those used in the district courts in Mecklenburg County, which were adopted from the "Wisconsin Percentage of Gross Income Standard for Setting Child Support Awards." Mason, *supra* note 70, at 32.

177. The report states that

any variation of the amount ordered from the amount computed by application of the guidelines be based on one or more of the following:

- (a) Special needs of the child, including physical and emotional health needs, educational needs, day care costs, or needs related to the child's age.
- (b) Shared physical custody arrangements or extended or unusual visitation arrangements.
- (c) A party's other support obligations to a current or former household, including the payment of alimony.
- (d) A party's extremely low or extremely high income, such that application of the guidelines produces an amount that is clearly too high in relation to the party's own needs or the child's needs.
- (e) A party's intentional suppression or reduction of income, hidden income, income that should be imputed to a party, or a party's substantial assets.
- (f) Support that a party is providing or will be providing other than by periodic money payments, such as lump sum payments, possession of a residence, payment of a mortgage, payment of medical expenses, or provision of health insurance coverage.
- (g) A party's own special needs, such as unusual medical or other necessary expenses.
- (h) Any other factor the court finds to be just and proper.

CONFERENCE REPORT, *supra* note 175, at 1-2.

178. CONFERENCE REPORT, *supra* note 175, at 2.

179. Act of July 15, 1986, ch. 1016, § 1, 1986 N.C. Sess. Laws 586, 586 (to be codified at N.C.

of these guidelines based on the same eight criteria contained in the Conference report.<sup>180</sup> In addition, the new law requires the court to "hear evidence and from the evidence find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to pay support."<sup>181</sup> This latter provision adds flexibility to the guidelines established and allows the court to consider other relevant factors, while also providing a simple formula for guidance in establishing support awards.<sup>182</sup>

The guidelines set forth in the Conference Report, if adopted by the Conference of Chief District Judges,<sup>183</sup> would greatly improve the setting of child support obligations in North Carolina. Under current state law, trial judges make findings of fact and set support awards based on their determination of a number of factors including the reasonable needs of the child.<sup>184</sup> Although some judicial districts have developed guidelines and some individual judges do use a support schedule,<sup>185</sup> the guidelines in the Conference Report and in chapter 1016 represent the first statewide effort at reducing the inequities that have resulted from the lack of uniform guidelines or the misapplication of other formulas in certain cases.<sup>186</sup> Eventually, the general assembly may be forced to adopt more complex formulas and guidelines, as have a few other states.<sup>187</sup> In the meantime,

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GEN. STAT. § 50-13.4). Although the Conference Report called on the general assembly to amend § 7A-148, which deals with the Conference of Chief District Judges, chapter 1016 instead amended § 50-13.4.

180. N.C. GEN. STAT. § 50-13.4(c1) (Supp. 1986); see *supra* note 177.

181. N.C. GEN. STAT. § 50-13.4(c1) (Supp. 1986).

182. Part of the Conference report stated that "[g]uidelines cannot operate to preclude the exercise of a judge's discretion in setting child support amounts based on the facts of particular cases." CONFERENCE REPORT, *supra* note 175, at 2.

183. The Conference of Chief District Judges has adopted the committee report as the report of the full conference, but as of this writing, has not implemented the report's recommendations.

184. "Payments ordered for support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case." N.C. GEN. STAT. § 50-13.4(c) (1984).

185. Mason, *supra* note 70, at 29. Courts in Wake County use a formula based on a percentage of the parent's net monthly income. *Id.* In June 1984 the district court in Mecklenburg County adopted the same formula outlined in the Chief District Judges Conference Report, see *supra* note 176, which was taken from the Wisconsin Percentage of Gross Income Standard for Setting Child Support Awards. Mason, *supra* note 70, at 32. *But see* Note, Plott v. Plott: *Use of a Formula to Determine Parental Child Support Obligations—A Continuation of Inconsistent and Inequitable Decisions*, 64 N.C.L. REV. 1378, 1381-1390 (1986) (criticizing the North Carolina Supreme Court's decision in *Plott v. Plott*, 313 N.C. 63, 326 S.E.2d 863 (1985), which approved the trial court's use of a formula in setting a support award that was based on "the parties' relative abilities to pay").

186. See Mason, *supra* note 70, at 29 ("Neither the North Carolina courts nor the legislature has devised a particular formula for figuring the proper amount.").

187. See, e.g., Thompson & Parkin, *Formulas and Guidelines for Support*, JUV. & FAM. CT. J., Fall 1985, at 33 (Special Issue) (discussing the use of guidelines and formulas in setting child support awards); Williams, *Child Support and the Costs of Rearing Children: Using Formulas to Set Adequate Awards*, JUV. & FAM. CT. J., Fall 1985, at 41 (Special Issue) (discussing the use of formulas in setting child support awards and making comparisons among those used in several states). Although some states have adopted guidelines by statute, see, e.g., OR. REV. STAT. § 107.105(c) (1985) (listing seven factors, which are not exclusive, to be considered by a court in determining the amount of support to be awarded), many of the more complex formulas have been adopted by judicial decision, see, e.g., *Melzer v. Witsberger*, 505 Pa. 462, 471-477, 480 A.2d 991, 995-99 (1984) (approving the use of a mathematical formula based on the parent's obligation to support, the parent's income, and the needs of the child); *Lucy K.H. v. Carl W.H.*, 415 A.2d 510 (Del. Fam. Ct.

however, the approach outlined in the Conference Report is a step in the right direction. The use of formula guidelines based on a percentage of the parent's gross income, rather than the needs of the parents and child, should reduce litigation and thus ease the burden on the state's judicial system.<sup>188</sup> At the same time, by providing factors to be considered in varying from the formulas, including the child's special needs, the new guidelines should allow the courts to avoid problems associated with inflexible formulas.<sup>189</sup>

Overall, the 1986 amendments enacted by the general assembly should improve the effectiveness and enforceability of child support orders in North Carolina. Although following the same procedures for income withholding in IV-D and non-IV-D cases may have been a better approach, the income withholding provisions should deter avoidance of child support obligations and improve collections by both custodial parents and the State's IV-D agency. Although the income withholding provisions will not be without problems, these are easily outweighed by the benefits derived to the state and the custodial parents by improving collections of child support awards.

Those judicial districts that can meet the federal time requirements for hearing child support cases set by the new law will avoid implementing a new system of expedited process and appointing a support hearing officer to hear child support cases. In those districts, if any, that utilize a hearing officer, expedited process could prove a valuable tool for reducing the load of child support cases when the only real matter in dispute is the support amount. At the same time, the more complicated cases can go directly to district court. By improving the rate at which child support cases are processed and by providing interim support orders for cases that take longer to resolve, expedited process will help provide support to children and custodial parents who might otherwise depend on public assistance for support or simply do without while their cases are litigated.

Finally, by providing advisory guidelines to judges setting support awards, the general assembly and the Conference of Chief District Judges may improve the quality and consistency of support awards and help eliminate the need for protracted litigation in many cases. The guidelines will not only assist district court judges in setting support awards, but should also prove invaluable in helping child support hearing officers set awards and eventually reduce the number of appeals to district court. By reducing the amount of litigation involved in child support cases, thus easing the burden on the judicial system, many of the

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1979) (applying the "Melson Formula" and including the worksheets used to determine the support award).

188. At least one study of North Carolina cases indicates that determining the reasonable needs of the parties is "the most frequently litigated issue in child support cases." Note, *supra* note 185, at 1389.

189. See Note, *supra* note 185, at 1383 ("Most commentators agree that strict adherence to an inflexible formula would cause more unfairness than it would alleviate.").



problems associated with enforcing child support orders may be brought under control.

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