FAMILY SUPPORT

F O R U M

The Official Newsletter of the Illinois Family Support Enforcement Association

Vol. 11 **AUGUST - SEPTEMBER, 1999** **No. 3**

HOW NOW CONFERENCE COW! *Photo by Tom Sweeney*

Chicago Conferences Draw Record Attendance

Colorful cows, ideal weather and a loaded agenda welcomed record numbers of participants to Chicago for NCSEA's 48th and IFSEA's 11th Annual Conferences on Child Support. More than 2,000 participants, including more than 700 from Illinois, attended the national conference held August 8-12, 1999 at the Chicago Palmer House. NCSEA's previous record attendance was 1,604.

More than 500 (double the previous record attendance) registered to attend IFSEA's "conference-within-a-conference" and Annual Members' Meeting, held Tuesday afternoon, August 10, though only approximately 100 actually attended. See a recap on page 8.

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FAMILY SUPPORT FORUM

is the official newsletter of the

ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION

P.O. Box 370
Tolono, IL 61880
published quarterly and distributed free to members of the Association.

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Rev. 9/99

***Depending on contributions*, the *FORUM* will *attempt* to publish four times a year - in March, June, August/September, and December. Items for publication are needed by the 8th of the month. News items and other articles of interest to Illinois family support practitioners are eagerly sought. Contact the Editor for details.**

Please Contribute - its YOUR Newsletter!

From the Statehouse . . .

. . . LEGISLATIVE UPDATE

1999 ILLINOIS SUPPORT-RELATED LEGISLATION

The following is an updated summary of bills relevant to family support enforcement passed by the Illinois Legislature during the Spring term. The summaries are drawn from materials previously printed in the FORUM and presented at IFSEA's 11th Annual Conference on Child Support, updated to reflect most recent action by the Governor.

by Thomas P. Sweeney

S.B. 19 P.A. 91-613,, eff. 10/1/99
(eff. 7/1/2000 as to Motor Vehicle Code sections)

(a) Non-support Punishment Act: Creates the Non-Support Punishment Act and repeals the Non-Support of Spouse and Children Act; lists four levels of criminal offenses for failure to pay support for a spouse, ex-spouse or child, classified as a Class A misdemeanor or Class 4 felony, as follows:

Section 15. Failure to support.

a) A person commits the offense of failure to support when he or she:

(1) willfully, without any lawful excuse, refuses to provide for the support or maintenance of his or her spouse, with the knowledge that the spouse is in need of such support or maintenance, or, without lawful excuse, deserts or willfully refuses to provide for the support or maintenance of his or her child or children under the age of 18 years, in need of support or maintenance and the person has the ability to provide the support; or

(2) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than $5,000, and the person has the ability to provide the support; or

(3) leaves the State with the intent to evade a support obligation required under a court or administrative order for support, if the obligation, regardless of when it accrued, has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than $10,000; or

(4) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than one year, or is in arrears in an amount greater than $20,000, and the person has the ability to provide the support.

(Cont'd. on page 10)

IFSEA Resolution Prompts Amendatory Veto Of Percent of Income Bill

by Thomas P. Sweeney

Prompted by the IFSEA Board of Directors, Governor George Ryan on July 30, 1999, vetoed a part of a bill that would permit entry of child support orders stated only as a percent of income. With compromise language proposed by IFSEA, the version of H.B. 421 recommended by the Governor would still permit entry of support orders containing percent of income terms, but only in conjunction with specific dollar terms.

Under current law, § 505 (a)(5) of the IMDMA requires that "The final order in all cases shall state the support level in dollar amounts." Over the last ten years the Appellate Courts have addressed numerous cases questioning the validity and enforceability of support orders either stated solely as a percent of income or combining a percent of income with a speci-

(Cont'd. on page 4)

("Percent of Income Veto," cont'd. from page 3)

fied minimum support level. In most, but not all, cases the courts have held percent of income terms were "improper but enforceable" under that statute. Finally in February, 1998, the Illinois Supreme Court reach that result in *In Re Marriage of Mitchell*, 181 Ill. 2d 169, 692 N.E. 2d 281 (1998).

H.B. 421 Introduced

Despite (or in response to) *Mitchell*, attorneys and judges have continued to advocate that percentage terms can be included in *agreed* support orders. The issue for them is how to obtain support from greatly varying or unpredictable income, such as from commission sales or from once-a-year bonuses. To address the same issue H.B. 421 was introduced to amend the relevant language of § 505 (a)(5) to read merely: "The final order, to the extent possible, shall state the support level in dollar amounts. The court may also enter any other appropriate order to properly apply the percentage support guidelines so that the proper support amount is collected on a timely basis."

The Family Law Section of the Illinois State Bar Association (ISBA), and the Chicago Bar Association (CBA) opposed the original language, and drafted the wording incorporated into the bill eventually passed by the Legislature:

> "The final order, to the extent possible in each case, shall state the support level in dollar amounts. However, if the court finds that the child support amount cannot be expressed exclusively as a dollar amount because all or a portion of the payor's net income is uncertain as to source, time of payment, or amount, the court may order a percentage amount of support *either in addition to or in lieu of* a dollar amount and enter such other orders as may be necessary to collect the applicable support as determined under this Act on a timely basis." (emphasis added)

Despite opposition from IDPA, H.B. 421 with the ISBA language was passed without a single opposing vote in either house of the General Assembly, and sent to the Governor in early June.

IFSEA's Resolution

On July 2, IFSEA's Board of Directors held a special meeting to consider what action to take to oppose the bill. Recognizing how strong support had been for the bill, the Directors acknowledged that urging a total veto would be futile. Instead efforts were focused on eliminating the language that would permit – and almost certainly result in -- entry of a great many orders stated entirely in percentage terms "in lieu of" specific dollar terms. A resolution was drafted, pointing out the burden such orders would place on employers required to withhold support and on custodial parents and enforcement personnel attempting to monitor compliance. IFSEA's resolution urged the governor to amendatorily veto the bill to read as follows:

> "The final order, in all cases, shall state the support level in dollar amounts. However, if the court finds that the child support amount cannot be expressed exclusively as a dollar amount because all or a portion of the payor's net income is uncertain as to source, time of payments or amount, the court may order a percentage amount of support in addition to a specific dollar amount and enter such other orders as may be necessary to determine and enforce, on a timely basis, the applicable support ordered."

Copies of IFSEA's resolution were sent to the Governor and to family law committees of the ISBA and CBA. Somewhat surprisingly the most influential members of the ISBA Family Law Section Council, which had drafted the final version of the bill, adopted IFSEA's recommendation, and so informed the governor. On July 30, 1999, the Governor issued his amendatory veto, adopting the language proposed by IFSEA.

". . . the difficulties presented with monitoring and enforcing such orders and complying with federal requirements are virtually insurmountable."

The Governor's Amendatory Veto

Though IFSEA's resolution consciously avoided any specific reference to IDPA, the Governor's veto message focussed almost entirely on how percentage orders would frustrate IDPA's ability to comply with federal requirements under Title IV-D. It reads in part:

> "This [percent of income] approach, in regard to support levels, may be most useful in the private sector. When it is applied in cases where a party is receiving services from the Illinois Department of Public Aid's child support enforcement program, the difficulties presented with monitoring and enforcing such orders and complying with federal requirements are virtually insurmountable."

Since IDPA would not know an obligor's income it could not know if a percent of income order is being complied with, the Governor's message noted.

> "[T]he Department cannot 'maintain and use an effective system' for monitoring compliance with support orders arid identifying the existence of

(Cont'd. on page 5)

McLean County StateÁs Attorney Announces Its Child Support Enforcement Program

by Todd C. Miller
Assistant McLean County State's Attorney

On July 27, 1999, the McLean County Board approved a Title IV-D Child Support Enforcement Program to be overseen by the State's Attorney's Office. State's Attorney Charles G. Reynard has been involved in negotiations with the Attorney General's Office, IDPA and the McLean County Board regarding such a program at various times over the last ten years. Finally, in December of 1998, the McLean County Board gave the go head for Mr. Reynard to begin researching and developing the program. A short-term Agreement of Cooperation was entered into between the State's Attorney's Office and IDPA to fund the research and development. Todd C. Miller, formerly an assistant in the Peoria County State's Attorney's support division, was hired on a contract basis to perform the work required under the Agreement.

The program that was ultimately proposed to the County Board and IDPA calls for Agreements of Cooperation between IDPA and the McLean County State's Attorney, the McLean County Circuit Clerk and the Chief Judge's Office of the Eleventh Judicial Cir-cuit. In several ways, the program differs from other State's Attorney IV-D programs in the State and, it is hoped, will serve as a model for future development of the child support enforcement system statewide.

McLean County will be the only downstate County and one of only three Counties in Illinois to take advantage of the Expedited Child Support Act and accompanying Supreme Court Rules. An Administrative Hearing Officer will be hired by and be under the supervision of the Chief Judge's Office. The Hearing Officer will hear cases two days per month which will double the hearing time currently available in the County.

State's Attorney staff and IDPA staff will be housed under one roof. While the IDPA staff will remain State employees and ultimately answerable to the Director of IDPA, they will be under the direct, day-to-day supervision of the State's Attorney. It is expected that this arrangement will greatly reduce the time necessary to complete work on any given file.

Agreements of Cooperation between IDPA and the State's Attorney's and Circuit Clerk's offices were approved by the Director of IDPA on September 3, 1999. Agreements regarding the Administrative Hearing Officer have received the approval of the Supreme Court, and are expected to be finalized soon. State's Attorney Reynard anticipates the program being fully staffed and operational by December 1, 1999.

(%Percent of Income Veto,Â contÁd. from page 4)

delinquencies in order to take timely enforcement action in accordance with federal requirements. Circuit clerks and enforcement personnel will experience similar difficulties with support orders expressed exclusively in terms of a percentage."

The Governor also cited difficulties IDPA would have determining if employers are withholding the appropriate amount. IDPA would also be unable to determine what portions of payments received were attributable to current support or arrearage payments, thus frustrating its ability to distribute payments in compliance with federal regulations. The Governor's message concludes:

"A child support order expressed in percentage terms allows the order to adjust to the payor's irregular income, such as bonuses or seasonal overtime. However, in order to comply with federal law, the Department must have the ability to monitor compliance with a support obligation of a specific dollar amount. These competing goals can be resolved by maintaining the requirement under current law for a base support order in fixed dollar terms, in accordance with the existing guidelines, and allowing the court to enter an additional support order in percentage terms..

"The Department will continue to enforce support orders of a specific dollar amount, which allows the Department to monitor compliance with the order in accordance with federal law. Periodically, the court may require a reconciliation of the percentage order to the specific dollar order, and order additional support to be paid if the percent of the payer's income exceeded the specific dollar order. The specific dollar order shall serve as a floor; the payor's obligation cannot be reduced if his income fell during the time period reviewed."

The Governor's veto is scheduled to be addressed by the General Assembly in November.

From the Courthouse . . .

. . .CASES & COMMENTARY

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

by Thomas P. Sweeney

Illinois Court Retains Jurisdiction to Enforce Support Despite UIFSA Order

In Re Marriage of Hartman, 305 Ill. App. 3d 338, 712 N.E. 2d 367 (2nd Dist., 6/8/99), affirmed contempt finding and arrearage judgment in Illinois dissolution previously enforced through UIFSA in Florida.

In their 1985 dissolution David was ordered to pay Lynn child support of $85 per week. After David moved to Florida Lynn initiated a UIFSA petition through IDPA. David subsequently entered into a settlement with the Florida Dept. of Revenue, acknowledging an arrearage of $18,798.49 accrued as of July 29, 1997, and agreeing to resume current support plus $5 per week toward the arrearage. In February, 1998, the Florida court accepted the agreement, reserving jurisdiction over issues of arrearages accrued from August 1, 1997 until then,

In March, 1998, David filed a petition in the Illinois court to modify his support obligation. In May Lynn countered with petition for rule alleging a support arrearage of $21,658.87. At the hearing in May David argued the issue had already been litigated in Florida, that the Florida court had reserved jurisdiction of the issues of support and enforcement, and therefore the Illinois court no longer had jurisdiction to find him in contempt. The trial court rejected his argument, found the arrearages to be the amount claimed (with credit for payments made through Florida) and found David in indirect, civil contempt for failure to pay the support. David was ordered to jail until he paid $4,000 toward the arrearage, was further ordered to pay $3,000 per year toward the arrearage, and to otherwise comply with the terms of the Florida order. His petition for modification was also denied. David appeals only the contempt orders..

Affirmed. Consistent with common law, § 205(a) of UIFSA makes clear that an Illinois court that enters a support order retains continuing, exclusive jurisdiction to enforce it where any of the parties continues to reside in the state. The Florida order did not "modify" the Illinois order, so Illinois' continuing jurisdiction was not terminated pursuant to § 205(b) or (c) of UIFSA. Even if Florida's order had been a modification Illinois would retain jurisdiction to enforce its orders for periods prior to the modification. Since Illinois retained continuing, exclusive jurisdiction the Illinois court had authority to exercise its contempt power under § 505(b) of the IMDMA.

The Court agreed that the Florida order was entitled to full-faith and credit. In fact, that is what the Illinois court did when it ordered David to otherwise comply with it. But the full-faith requirement did not prevent the Illinois court from recalculating the arrearage mount and ordering substantial additional payments. Arrearages continued to increase during the 40 weeks since the date arrearages were determined in Florida. "In light of David's continuing failure to abide by the trial court's original . . . support order, the trial court had the authority to hold David in contempt of court and require that he make additional annual payments towards the arrearage."

Nor was Lynn's action barred by *res judicata*. Because new arrearages had accrued the subject matter of the two proceedings was not the same. And because Lynn was not even notified, much less involved in the settlement agreement entered into in Florida, the parties were not identical either.

Father's Parentage Claim is Moot Following His Surrender for Adoption

Meza vs. Rodriguez, ___ Ill. App. 3d ___, 713 N.E. 2d 764 (2nd Dist., 6/25/99), affirmed dismissal of a putative father's petition to establish his paternity as precluded by his prior execution of an irrevocable surrender or parental rights for purposes of an adoption.

In June, 1997, Metz was notified that Lisa Rodriguez had identified him as S.R.'s father and that she intended to place S.R. for adoption. On October 9, 1997, Metz executed a form of irrevocable surrender of his parental rights, prepared and witnessed by employees of the Children's Home and Aid Society (CHASI) in the presence of a nurse from the DaKalb County Health Department. Two weeks later Metz filed a Peti tion to Establish the Father and Child Relationship, in

(Cont'd. on page 7)

("Cases & Commentary," cont'd. from page 6)

which he then filed motions to void or revoke his surrender and consent to adoption. The trial court rejected Metz's claim that the form signed by the witness to his surrender did not comply with statutory requirements and that his surrender had been obtained through duress or fraud. The court also rejected his claim that regardless of his surrender he should be able to proceed with a determination of parentage, and dismissed his petition. Metz appeals.

Dismissal of Metz's claims is affirmed. The Court found the forms used in the surrender were in substantial compliance with statutes, and Metz had failed to show clear and convincing evidence that his surrender was due to fraud or duress. Nor did the surrender process constitute unauthorized practice of law or an unconstitutional delegation of a judicial function. And Metz's effort to establish parentage was properly dismissed as moot "in light of his execution of the surrender documents." "We are aware of no authority that permits a putative father to maintain a paternity action after that parent has freely and voluntarily executed an irrevocable surrender document terminating his parental rights to the child." While adoption does not necessarily terminate inheritance rights of the child or the financial obligations of the natural parent, "we . . . see no legitimate purpose in expending judicial resources for the sole purpose of establishing Metz's identity as S.R.'s natural father."

Circuit Court Lacks Jurisdiction to Assess Guardian ad Litem Fees Against IDPA

Williams vs. Davenport, 306 Ill. App. 3d 465, 713 N.E. 2d 1224 (1st Dist., 6/30/99), reversed a circuit court order holding IDPA and the defendant jointly and severally liable for attorney's fees and costs of a *guardian ad litem* representing the child in an unsuccessful paternity case.

Rose Williams initiated this paternity action through the IDPA. On the defendant's motion a *guardian ad litem* was appointed to represent the child. After DNA tests excluded defendant's paternity, the court ordered IDPA and defendant jointly and severally liable for the *guardian ad litem's* attorney's fees and costs. The trial court rejected IDPA's claim of sovereign immunity. IDPA appeals.

Reversed. "We . . . find that the awarding of such expenses rests within the exclusive jurisdiction of the Court of Claims Act and therefore find the trial court lacked subject matter jurisdiction to enter its order. * * * To be outside the scope of the Court of Claims Act's jurisdiction the State must provide a waiver of immunity that has been expressed by specific legislative authorization and must appear in affirmative statutory language. [Citation] Given the strict rule of specificity '[s]tatutes which in general terms authorize the imposition of costs in various actions or proceedings, but which do not in express terms refer to the State, are not adequate to authorize the imposition of costs against the State.' [Citations]" Section 506 of the IMDMA "fails to contain language specifically referencing the State that could be construed as a waiver of sovereign immunity and more specifically the reimbursement of attorney fees to a *guardian ad litem*." Thus the order imposing liability against IDPA was void for lack of subject matter jurisdiction.

(As noted in the Legislative Update, § 506 of the IMDMA and § 18 of the Parentage Act have now been amended by P.A. 91-410, effective 1/1/2000, to declare that attorney's fees and costs for a child's representative may not be assessed against IDPA.)

Wages Lost for Maternity Leave Not Recoverable As Expenses Related to Pregnancy and Delivery

Stockton vs. Oldenburg, 305 Ill. App. 3d 897, 713 N.E. 2d 259 (4th Dist., 7/1/99), affirmed denial of a father's request for name change for the child, additional visitation and exclusive rights to take the child as his tax exemption, but reversed the order that he reimburse the child's mother for half the wages lost during her maternity leave.

Following a parentage determination, Matthew was ordered to pay child support of $860.17 per month, to pay half the day care expenses up to $200 per month, to provide health insurance for the child and pay half of all uncovered medical expenses. He was also ordered to reimburse Stacey $5,298.17 as one-half of total birth related expenses, which included half of $5,584.10 in wages Stacey lost during her pregnancy and following delivery. Matthew was allowed to take the child as a tax exemption in alternate years, but his requests to change the child's name to include his surname and for additional visitation were denied. Matthew appeals.

With one dissent, the portion of the order requiring reimbursement of lost wages is reversed. Section 14(a)(1) of the Parentage Act allows recovery of "reasonable expenses * * * related to the mother's pregnancy and the delivery of the child." Finding the statute "ambiguous" whether this should apply to lost wages, the majority concluded that awarding wages lost for periods following birth would be a form of maintenance to the mother, which is not authorized by the statute. "[S]ince the legislature could not have intended that result postdelivery, we conclude that the legislature did not intend to provide an award of maintenance during pregnancy either. We construe section 14(a)(1) of the Parentage Act as not authorizing a recovery of the mother's lost wages as an expense related to the mother's pregnancy and the delivery of the child." In his dissent, J. Myerscough asserts, "The recovery of lost wages in this limited context is not an award of maintenance but more in the nature of a payment of disability benefits. * * * Requiring the father to be responsible for half of this loss is not unreasonable, and

(Cont'd. on page 12)

Directors Elected, By-Laws Amended at IFSEA's 11th Annual Conference & Members' Meeting

By Thomas P. Sweeney

Approximately 100 participants attended IFSEA's 11th Annual Conference and Members' Meeting, held August 10, 1999. The abbreviated training program was combined with the Annual Members' Meeting into one two-hour session at the end of the second full day of the 48th Annual NCSEA Conference.

More than 500 had registered to attend the IFSEA program. However, a breakdown in distribution of IFSEA conference materials (including the room announcement), combined with the full schedule of NCSEA programs and events surrounding the IFSEA program, were believed to account for the reduced attendance.

The educational portion of the program was limited to updates on legislation, case law, the Illinois IV-D program and developments of the State Disbursement Unit. Sandwiched around the educational program was the Annual Members' Meeting featuring the election of Directors for 1999-2001 and adoption of four by-law amendments.

Election of Directors

Including nominations from the floor, there were four candidates for the two Directors to be elected from Region 1 (Cook County), six candidates for the four Directors to be elected from Region 2, and another six for the four Directors from Region 3. Steve Rissman, long-time Director from Region 1, declined his nomination for re-election. Other incumbents not seeking re-election were Linda Nicot (Region 2) and Judy Townsend (Region 3).

Elected to two-year terms ending in 2001 were:

- From Region 1: incumbent James W. Ryan, Hillside attorney; and newcomer Stephanie Cummings, Asst. State's Attorney from Chicago;
- From Region 2: incumbent Larry Nelson, Asst. Attorney General, Rockford; "at large" incumbent Nancy S. Waites, Asst. State's Attorney, Waukegan; and newcomers Jeffrey McKinley, Asst. Attorney General, Rock Island and Yvette Perez-Trevino, IDPA Deputy Administrator, Aurora; and
- From Region 3: incumbents Christine Kovach, Asst. State's Attorney, Edwardsville; Thomas P. Sweeney, Tolono attorney; and Thomas M. Vaught, Asst. Attorney General, Springfield; and "at large" incumbent Cheryl Drda, Asst. State's Attorney, Springfield.

IFSEA President Bill Henry announced his appointment of Linda Engelman and Sharon Lowe, both support staff for the Attorney General's office in Springfield, as "At Large" Directors for 1999-2000.

By-Law Amendments

Prior to the election of Directors, four By-Law amendments were adopted by voice vote. Amendment # 1 amended Art. IV to confirm that Circuit Clerk's employees, by whatever title, are eligible for IFSEA membership, and to specify that annual membership extends from conference to conference, or for a full year, whichever is longer. Amendment # 2 amended Art. VI to remove representatives of the Illinois Task Force on Child Support and the Legal Assistance Foundation of Chicago as appointed Directors of the association. Amendment # 3 amended Art. VII to clarify the vote required to elect Directors and to specify how ties are decided. And Amendment # 4 amended Art. VI to permit Directors to vote by proxy. Amendments 1 through 3 were approved without opposition; Amendment 4 was approved with one "no" vote.

Other Business

In other business there was discussion of IFSEA's "success" in obtaining the Governor's amendatory veto of H.B. 421 (see page 3), and the need for continued effort in this regard. Members were urged to contact their representatives in the General Assembly to urge them not to override the veto in November. As Chairman of the Publications Committee, Tom Sweeney advised that, due to continuing lack of contributions, he would not continue to promise that the *FORUM* would be published four times a year as in the past. Anne Jeskey and her staff were applauded for their efforts in organizing the conference. And Bill Henry was presented a plaque (with a removable gavel, no less!) in recognition of his service to the association.

1999 – 2000 Officers Elected

At the Board of Directors' Meeting held August 12, 1999, the following officers were elected for 1999-2000: President, Anne Jeskey; First Vice-President, Jeanne Fitzpatrick; Second Vice-President, Madalyn Maxwell; Secretary, Tom Sweeney; and Treasurer, Jim Ryan.

News From Washington

FEDERAL IV-D UPDATE

HHS Reports New Hire Directory, Other Successes

by Thomas P. Sweeney

On September 23, 1999, Health & Human Services Secretary Donna Shalala announced that 2.8 million parents delinquent in child support payments were found in fiscal year 1999 through the National Directory of New Hires, more than double the number found during the previous year.

These and other accomplishments of the federal IV-D program were released by Olivia Golden, HHS Assistant Secretary for Children and Families, in testimony before the House Ways and Means Committee.

New Hire Reporting

Pursuant to 1996 welfare reform legislation HHS launched the National Directory of New Hires in October, 1997, which matches all employees, both newly hired and those already holding jobs, with parents owing child support listed on the Federal Case Registry. In its first year of operation the directory found 1.2 million parents who were delinquent in child support payments, a figure that more than doubled to 2.8 million in its second year.

"Together, the National Directory of Hew Hires and the Federal Case Registry give States the unprecedented ability to track non-custodial parents across state linew, which historically is one of the most difficult tasks in collecting child support payments," Golden stated. "Before the implementation of the National Directory of New Hires, it could typically take a year to locate employment information on a non-custodial parent, especially if an interstate case was involved. Now we can locate a non-custodial parent and initiate wage withholding within one month of employment," she said.

Passport Denials Collect $2.25 million

Another of the programs created by the 1996 legislation that has shown dramatic results is the Passport Denial program. Under that program, non-custodial parents with arrearages of at least $5,000 can be denied U.S. passports upon application. Golden reported that the program, implemented in June, 1998, by the federal Office of Child Support Enforcement (OCSE) and the Department of State, is now denying 30 to 40 passports per day.

Since its inception this program has collected over $2.25 million in lump sum payments, over and above payments from obligors who set up payment plans and wage withholding as a result of being submitted for passport denial. "One obligor working overseas returned to the U.S. to renew his passport and his application was denied; the next day he brought in a $33,000 cashier's check which covered all the child support that he owed," Golden reported. "Another obligor paid his $17,000 arrearage in order to get his passport so he could visit extended family in another country."

Paternities Established Exceed Out-of-Wedlock Births

Golden also reported that the number of paternities established or acknowledged reached a record 1.5 million in FY 1998, almost tripling the 1992 figure of 512,000. Of these, over 614,000 paternities were established through in-hospital acknowledgement programs. An additional 844,000 paternities were established through the Child Support Enforcement program.

Beyond the numbers, Golden reported that for the first time ever, in the last two years there were more paternities established than children born out of wedlock. "We can now say we are making progress in reducing the number of children who do not have a father legally established in their liver," she said.

Other Achievements

Other achievements reported included:

- In FY 1998, a record $14.3 billion in child support was collected under the federal IV-D program, an increase of $6.3 billion, or nearly 80 percent since 1992.
- In FY 1998, the number of child support cases in which collections were made rose to 4.5 million, a 59 percent increase over the 2.8 million cases in 1992.
- Since its inception in 1981, the federal offset program has collected over $9.2 billion. Through August 23rd, over $1.2 billion has been collected this calendar year.

("Legislative Update," cont'd. from page 3)

(a-5) Presumption of ability to pay support. The existence of a court or administrative order of support that was not based on a default judgment and was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

A first offense of either of the first two categories is a Class A misdemeanor. A person convicted of either misdemeanor first offense, "if eligible," shall, in lieu of sentencing under the criminal code, be enrolled in the Earnfare program. If he successfully completes the program his conviction shall be expunged. A second or subsequent offense, or any offense of either of the third or fourth categories, is a Class 4 felony.

Upon conviction the court may impose sentences pursuant to the Code of Corrections, but *is required to* order restitution of all unpaid support due, and may impose fines under the following circumstances:

(1) from $1,000 to $5,000 if the support obligation has remained unpaid for a period longer than 2 years, or is in arrears in an amount greater than $1,000 and not exceeding $10,000;

(2) from $5,000 to $10,000 if the support obligation has remained unpaid for a period longer than 5 years, or is in arrears in an amount greater than $10,000 and not exceeding $20,000; or

(3) from $10,000 to $25,000 if the support obligation has remained unpaid for a period longer than 8 years, or is in arrears in an amount greater than $20,000.

If no support order exists the court may enter such an order. In addition to any other penalty imposed, an offender may also be ordered to perform community service (if available in the community) of not less than 30 or more than 120 hours per month, and/or sentenced to service in a work alternative program administered by the sheriff. Additionally, if the offender is found to be "in violation of this Act" for more than 90 days the court may order his driver's license suspended (regardless of a finding of contempt). If the offender is found "in violation of this Act" for more than 60 days, the court may certify him to the Department of Professional Regulation to take action to suspend or revoke any professional or other license. If unemployed the court may order employment search or training.

(a) License Suspensions: Section 10-65 of the Illinois Administrative Procedure Act and Sect. 60 of the Civil Administrative Code are amended to require the denial, suspension or revocation of professional licenses upon certification by a court that the licensee or applicant is "in violation of the Non-Support Punishment Act for more than 60 days." Several sections of the Vehicle Code authorizing suspension of driver's licenses for non-payment of support are amended to authorize such a suspension by order of the court upon a finding of a 90-day delinquency, but without a finding of contempt. [§§ 7-702 (b) and 7-703 (b)] New sections to the Vehicle Code:

- requires "the circuit court" to send notice to the obligor of its intention to suspend his license before reporting his non-compliance to the Secretary of State, and spells out the rights to be spelled out in the notice [new § 7-705.1], including the right to contest the claim of non-compliance [new § 7-706.1], and the right to "come into compliance" by entering into a repayment agreement approved by the court [new § 7-702.2].
- spells out the obligor's right to request, and procedures for scheduling and conducting, a hearing to contest the claim of non-compliance [new § 7-706.1], and
- establishes how an obligor who is "presently unable to pay all past-due support" may "come into compliance" by entering into a written payment agreement approved by the court, but only after "full disclosure" of extensive details of the obligor's finances and resources [new § 7-702.2].

Changes to the Vehicle Code become effective July 1, 2000; the other provisions take effect October 1, 1999.

S.B. 257 **P.A. 91-095, eff. 7/9/99**

Special court process servers: Amends § 2-202 of the Code of Civil Procedure; provides that on motion and in its discretion, the court may appoint as a special process server a private detective agency certified under the Private Detective & Locksmith Act; under the appointment, any worker of the detective agency who is registered under that Act may serve the process. The motion must include the number of the certificate issued to the detective agency by the Dept. of Professional Regulation.

S.B. 469 **P.A. 91-397, eff. 1/1/2000**

Interest on delinquent support: As amended, amends sections of the Public Aid Code, IMDMA, Non-Support of Spouse & Children Act and Parentage Acts, adding the following language: "A support obligation, or any portion of a support obligation, which becomes due and remains unpaid for 30 days or more shall accrue interest at the rate of 9% per annum."

S.B. 576 **P.A. 91-204, eff. 1/1/2000**

Post majority support: Amends § 513 of the IMDMA; authorizes a court to order parents to make contributions for a child's educational expenses, before or

(Cont'd. on page 11)

("Legislative Update," cont'd. from page 10)

after the child has attained majority, only until the child receives a baccalaureate degree; requires parties to consent to release academic records to paying parent as a condition of continued educational support.

S.B. 1063 P.A. 91-212, eff. 7/20/99

Child support disbursement unit; State Case Registry Data Update; Income Withholding::

- Amends the Public Aid Code and sections of other acts related to payment of support; requires IDPA to establish a State Disbursement Unit to collect and disburse support payments made under court and administrative support orders [new § 10-26 of the Public Aid Code];
- provides for agreements with State or local governmental units or a private entity to serve as the State Disbursement Unit;
- amends various acts to provide that all support orders entered or modified after October 1, 1999, involving IV-D service recipients or payment through income withholding shall require that support payments be made to the State Disbursement Unit;
- authorizes redirection of payments to the State Disbursement Unit by IDPA notice, applicable to all orders involving IV-D recipients and to withholding orders which do not involve IV-D recipients based on orders entered since January 1, 1994;
- requires specified information about the parties to every order entered administratively or by the court be provided to State Case Registry and updated by the Clerk or administrative agency within five days
- amends § 2-101 of the Code of Civil Procedure to provide that venue for actions to recover dishonored payments made to the State Disbursement Unit will be in the county where the principal office of the SDU is located;
- amends sections of the Income Withholding for Support Act to define and require payments be made to the State Disbursement Unit, and to require that income withholding notices contain the date of the order for support to which it relates, the "signature" of the obligee or printed name and phone number of the representative of the public office, and the social security numbers of all parties, including the children, involved in the order (previously only the obligor's social security number was required).

S.B. 1067 P.A. 91-400, eff. 7/30/99

Child support trust fund: Amends Public Aid Code; authorizes that the Child Support Enforcement Trust Fund may contain gifts, grants, donations, or awards from individuals, private businesses, nonprofit associations, and governmental entities.

H.B. 377 P.A. 91-410m eff. 1/1/2000

Representation of child: Amends IMDMA and Parentage Act; replaces existing provisions regarding appointment of an attorney to represent a child with a provision authorizing the court to appoint, in cases involving support, custody, visitation, etc. either an attorney, a guardian-ad-litem or a child's representative with the same power and authority as an attorney; requires entry of an order for assessment of fees for that representation, but by Senate amendment prohibits such assessment against IDPA.

H.B. 421 AMENDATORY VETO ISSUED 7/30/99

Child Support percent orders:
[See separate discussion beginning on page 3 above.]

H.B. 1774 P.A. 91-113, eff. 7/15/99

Mailed notice of hearing; Body attachment: Amends § 505 of the IMDMA to provide that, notice of proceedings to hold a respondent in contempt for failure to pay support may be served on the respondent by personal service or by regular mail addressed to his last known address, and that the respondent's last known address may be determined from records of the clerk of the court, from the Federal Case Registry of Child Support Orders, or by any other reasonable means. Section 713 of the IMDMA is also amended to provide that a body attachment may issue for an obligor who fails to appear after receiving notice as provided by the amended provisions of § 505.

H.B. 2845 P.A. 91-612, eff. 10/1/99

Fee for support record maintenance: As completely rewritten by Senate amendment, amends fee provisions of the Clerk of Courts Act to authorize Circuit Clerks to collect the $36 annual fee to maintain child support records, process payments to the KIDS system and record payments by the State Disbursement Unit. Provisions of original bill, for appointment of attorney to represent Circuit Clerks, were eliminated.

H.B. 1232 VETOED, 8/13/99

TANF/support payments: would amend Public Aid Code to provide that IDPA shall pay to families receiving assistance under the TANF Article an amount equal to either two-thirds of the monthly child support collected or the amount of monthly child support collected and required to be paid to the family under administrative rule, whichever is greater. As amended by the Senate the bill further required IDPA, in consultation with the Child Support Advisory Committee, to conduct an evaluation of the program by December 31, 2003.

("Cases & Commentary," cont'd. from page 7)

to require the mother to bear the entire loss is unreasonable."

In seeking the child's tax exemption in all years Matthew argued that the support he was ordered to provide amounts to more than half the child's shown expenses. The Appellate Court concluded, "Matthew has failed to prove that he actually makes a greater financial contribution to the support of the child than does Stacey." The Court made the following observation:

> "Financial responsibility for supporting a child is the joint and several obligation of each parent. [Citations] Raising a child involves necessary expenses such as food, clothing, shelter, and medicine. [Citation] Support includes the physical, mental, and emotional needs of the child. [Citation] Much of the custodial parent's contribution to the care of the child is not conveniently reducible to financial figures relating only to the child. The cost of maintaining a home, purchasing food for the family, laundering the family's clothing, and maintaining the family mode of transportation are necessary for the welfare of the child as part of an integrated family unit. In addition, the custodial parent expends time and energy in he care of the child. This contribution cannot be downplayed simply because it is not reducible to a financial figure. [Citation]"

An equal allocation of the tax exemption was not an abuse of discretion.

Support Reduction is Improper as Credit for Asset Dissipation, Overpaid Support

In Re Marriage of DiFatta, 306 Ill. App. 3d 656, 714 N.E. 2d 1092 (2nd Dist., 7/29/99), affirmed findings of dissipation, denial of maintenance and pension benefit allocation, but reversed an order reducing child support to offset amount of dissipated assets and support overpaid under temporary orders.

In the parties' judgment of dissolution the court held that their antenuptial agreement barred an award of maintenance, that petitioner had dissipated certain marital assets and that the respondent was entitled to all of his pension. The court also found the respondent had overpaid child support as the result of retroactive reduction in temporary support orders. Continuing child support was set at $130 per week, based on 20% of respondent's net income for an average 32-hour work week. The average number of work hours was derived by taking an average of hours worked over the previous ten years. However, the court temporarily reduced the support payments by $30 per week to offset the value of assets dissipated by the petitioner and support overpaid by the respondent. The court also granted respondent the tax exemption for the child. Petitioner appeals.

In an unpublished part of the opinion, the Appellate Court affirmed rulings as to maintenance denial, asset dissipation and pension disposition. In the area of child support the Court found the calculation of support based on an average work week derived from ten years work history was not inappropriate. Nor was the granting of the tax exemption to respondent since he was the only one employed at the time the order was entered and no evidence was presented to suggest he did not provide more than half the child's support.

However, the trial court erred in calculating the support overpayment (meticulously corrected by the Appellate Court) and in reducing prospective support to offset that overpayment and the value of assets dissipated by petitioner. The reduction amounts to a deviation below guidelines, requiring consideration of the factors in § 505(a)(2) and express findings justifying the deviation. Dissipation of marital assets is not an appropriate basis for such a deviation. While the court "may "reduce respondent's support obligation based on his overpayment of support, "the court must ensure that the reduction does not work a deprivation on the minor child." Support order reversed and remanded with directions.

"Slow Learner" Not Disabled to Justify Post-Majority Support Extension

In Re Marriage of Thurmond, 306 Ill. App. 3d 828, ___ N.E. 2d ____ (2nd Dist., 8/11/99), reversed order for support and 70% of college expenses for "slow learner," non-minor child.

In February, 1996, John petitioned to terminate child support. The youngest of the parties' three children, Alex, had turned 18 in April, 1995, and graduated from high school on June 1, 1996. Margaret countered with a petition for post-majority educational support, alleging that Alex suffered from "educational and learning disabilities." At the hearing the only evidence of Alex's disability was Margaret's testimony that he was a "slow learner," with an IQ of 89, which she described as "bordering on below average." However, Alex had completed high school in four years, receiving A's and B's in his final year, had been accepted at two junior colleges, and had been found ineligible for Social Security disability benefits. The trial court ordered John to continue paying $136 per week in child support plus 70% of Alex's college tuition and fees (amounting to an additional $99 per week) – all in addition to $200 per month ordered separately toward another child's college expenses. John appeals.

Reversed and remanded. The evidence that Alex was merely a "slow learner," was not sufficient to find "disability" as required by § 513 of the IMDMA, particularly in light of his high school record, an ACT test score better than 19% of high school junior and seniors taking the test, and his ineligibility for Social Security disability. And the order to pay 70% of Alex's college expenses was held to be contrary to the manifest weight of evidence where uncontested evidence showed John's net income was $667 per week, his expenses were

(Cont'd. on page 13)

("Cases & Commentary," cont'd. from page 12)

$1,945 per month, and he was ordered to pay $136 per week in support in this case and $200 per month in the separate order. On remand the trial court was directed to reconsider the award of educational expenses in light of John's ability to pay.

Support Assigned to IDPA (Prior to October, 1998) Include Arrearages Accrued During Gaps in Public Assistance Benefits

Dept. of Public Aid ex rel. Peavy vs. Peavy, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (2nd Dist., No. 2-98-0879, 9/7/99), affirmed a judgment entered in favor of IDPA for support arrearages accrued when the custodial mother terminated receipt of public assistance, including arrearages accrued during a period when she was not receiving public aid.

James and Tammy were divorced in April, 1981. Support for their two children was reserved. In August, 1981, IDPA intervened and obtained an order that James pay $40 per week as support. Tammy was then a recipient of public assistance. She continued to receive public assistance through June, 1982, and again from July, 1983 through October, 1985. Total aid received totaled $11,227.13.

In September, 1988, without notice to IDPA, James and Tammy agreed to an order terminating James' visitation rights, relieving him of all obligations to pay child support arrearages, and declaring void all obligations to pay past, present, or future support. Cased on this order James filed a motion in December, 1995, asking the court to direct IDPA to stop intercepting his tax refunds and release him from all support obligations. Finding that IDPA had been a necessary party to the order of September, 1988, the –court instead vacated that order.

IDPA then brought a petition to determine the amount of James' support arrearage. IDPA claimed the amount to be support due for the entire period from September, 1981 through the date assistance was finally terminated, October, 1985 (thus including arrearages accrued from July, 1982 through June, 1983 when Tammy did not receive assistance), less support paid and withheld through tax refunds. James asserted IDPA was not entitled to arrearages during the period when Tammy did not receive public assistance. The trial court rejected James' arguments and entered judgment in favor of IDPA for the arrearages accrued over the entire period through October, 1985. James appeals.

Affirmed. Considering this an issue of first impression in Illinois, the Appellate Court framed the issue as being whether, under § 10-1 of the Public Aid Code, Tammy had assigned to IDPA the right to collect arrearages that had accrued at the time of the assignment as well as support obligations that came due during the time she received public aid. The Court found that Tammy made two assignments of support – once when she applied for assistance in 1981, and again when she reapplied in July, 1983. To comply with federal statutes then in effect, § 10-1 requires a person accepting public assistance to assign "any and all rights, title and interest in any support obligation." "The legislature did not limit the assignment to the support obligation that came due during the period of public aid, . . . Clearly, the right to collect past due child support is a right, title, or interest in a support obligation. At the time Tammy made the second assignment in July 1983, she possessed the right to collect any unpaid support that had accrued during the previous year when she was not receiving aid. Thus, when Tammy began receiving aid again in July, 1983, she assigned her right to any past due support that had accrued, in addition to her right to any support that would come due while she was receiving AFDC."

The Court hints at recognizing that federal law has now changed regarding assignments of support rights entered into after October 1, 1998. Since the assignments in this case were earlier, those changes do not apply.

IRS Per Diem Allowance Not Deductible From Income Used to Set Support

In Re Marriage of Crossland, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (3rd Dist., No. 3-99-0039, 9/9/99), affirmed denial of a "per diem" allowance as a deduction from income in modifying support.

Alan was ordered to pay support for his two children in 1991. In March, 1998, Connie obtained an increase. In that proceeding the court allowed Alan to deduct from his net income the non-taxable "per diem" allowance of $32 per day allowed by the IRS. In October, 1998, Connie sought another modification in light of Alan's change in employer and increased income. In the hearing on that petition a different judge refused to deduct the $36 per day "per diem" then shown on his pay stubs. Alan appeals.

Affirmed. While the treatment of tax deductible per diem paid to over-the-road truck drivers for purposes of child support appears to be a matter of first impression, the Industrial Commission Division of the Appellate Court has ruled that payments to over-the-road truck drivers, designated by employers as "reimbursement," constitute "wages" to the extent the payments represent real economic gain rather than actual reimbursement for travel purposes. The rationale of that decision is "instructive" in considering whether such payments constitute "net income" for purposes of child support calculation.

Alan apparently also argued the deductability of the per diem allowance had been decided by its treatment in the first modification. However, any discussion of this argument was excluded from the published portion of the opinion.

One in Three Custodial Parents Without Child Support Are Poor, Census Bureau Reports

About a third (32 percent) of custodial parents who did not receive the child support payments awarded them in 1995 were poor, according to a government report released April 23, 1999. The report was co-sponsored by the Commerce Department's Census Bureau and the Department of Health and Human Services.

"Custodial parents receiving at least some of the child support they were owed had a poverty rate of 22 percent," said Census Bureau analyst Lydia Scoon-Rogers. "In general, 30 percent of custodial parents were poor in 1995, compared with 16 percent of all parents with children."

The data in this report were collected in the April 1994 and April 1996 supplements to the Current Population Survey (CPS) before passage of the 1996 Welfare Reform Act. In addition, changes to the April 1994 and April 1996 survey questionnaires mean that many of these data are not comparable with data from the April 1992 CPS and earlier supplements.

Other highlights in the report, titled *Child Support for Custodial Mothers and Fathers: 1995, P60-196*, include:

- In the spring of 1996, 13.7 million custodial parents lived with 22.8 million children under age 21 while the other parent was absent from the home. About 11.6 million (85 percent) of custodial parents were women and 2.1 million (15 percent) were men.
- About 7 in 10 (4.8 million out of 7.0 million) custodial mothers and fathers who were due child support payments received at least a portion of the amount they were owed in 1995. Average child support received was $3,732.
- The number of custodial parents who received the full amount of child support owed them increased from 2.3 million (34 percent) in 1993 to 2.7 million (39 percent) in 1995.
- Child support received totaled $17.8 billion of the $28.3 billion due in 1995.
- The 7.0 million noncustodial parents who owed child support in 1995 were more likely to have made payments if they had either joint custody or visitation rights. Seventy-four percent of the noncustodial parents who had these provisions made payments as opposed to 35 percent for those who did not.
- About 5.9 million custodial parents made 13 million contacts with a child support enforcement office or other government agency in 1995 for one or more services relating to child support.

The report presents data on parents who have custody of their children when the other parent is absent from the home. It focuses on the child support income that custodial parents with current awards received, as well as other provisions of awards, such as visitation, joint custody and health insurance.

The data were collected from the redesigned April 1994 and April 1996 supplements to the Current Population Survey co-sponsored by the Department of Health and Human Services' Office of Child Support Enforcement. As in all surveys, the data are subject to sampling variability and other sources of error.

Copies of the report, with detailed tables and other related information, can be found on the Census Bureau web site, *www.census.gov/hhes/www/childsupt.html*.

In the Next FORUM?

What Will YOU Contribute?

(Deadline for the next FORUM – December 8, 1999)

Membership Renewals Now Due!

Unless you registered <u>for the IFSEA Conference</u> * in August, or otherwise sent in a membership renewal form with your dues for 1999-2000, your membership in IFSEA expires in October.

**** Did you <u>actually</u> register for the IFSEA Conference in August?***

Registration for the IFSEA Conference was *separate from* and *in addition to* registration for the NCSEA Conference. If IDPA agreed to pay for and handle your registration for the NCSEA Conference, that does not necessarily mean your registration for the IFSEA Conference was taken care of. If you have not received an IFSEA Membership Certificate for 1999-2000, we did not receive a conference registration for you, and you need to renew your membership.

Don't forget to renew your membership

TODAY!

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

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(9/99)

IFSEA's 2000 Conference to be Held at Scenic Starved Rock State Park

by Jeanne Fitzpatrick

Next fall, October 15, 16, 17, 2000, the Illinois Family Support Enforcement Association will hold It's annual conference at Starved Rock Lodge in Utica, Illinois. Utica is located about 90 miles west of Chicago on Interstate 80 and 127 miles north of Springfield on Interstate 39. The rustic Starved Rock Lodge is located in the middle of Starved Rock State Park. The Park has fifteen miles of forested hiking trails with beautiful canyons and waterfalls. I hope the weather will be wonderful for our conference so that everyone can enjoy the lovely fall scenery. October is the most popular month to visit Starved Rock State Park. For more information on Starved Rock you can check out their website at www.starvedrocklodge.com.

We have reserved all of the available rooms and cabins. There are only 64 rooms and 11 cabin rooms available, so you should reserve yours SOON! To make a reservation, you can call the lodge at 815-667-4211 or 800-868-*7625*. Let them know that you are with the Illinois Family Support Enforcement Association. You will be charged the state rate, which at this time, is $69.62 plus tax per night. The rate is not guaranteed and is subject to change to whatever the state rate will be in October of 2000. The rooms will be held for IFSEA until one month before the conference. The lodge has a policy of charging the first night to your credit card. A word of caution about the rustic cabin rooms. There is no television and the bathroom has a shower, but no tub. There are several rooms to a cabin and I understand that they are noisy. A portion of the ceiling is open to all of the cabin rooms.

Because of the limited room availability at Starved Rock we are reserving a block of 35 rooms at the Holiday Inn Express in Oglesby, Illinois on Interstate 39 (Exit 54). The Holiday Inn is only 4.5 miles from Starved Rock and is a new hotel. The state room rate is $55/night and includes a breakfast bar in the morning *and cookies and milk at night*. We are planning to have a hospitality room at the Holiday Inn Express. The Holiday Inn will start taking reservations after October 15th. You can call 815-883-3535 or 1-800-HOLIDAY for reservations.

If anyone is interested in helping with the October 2000 conference, we are looking for volunteers to serve on the committees. If you can help, please contact Jeanne Fitzpatrick at 815-434-1210 or through GroupWise. Hope to see you at Starved Rock next year!!!

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