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House Engrossed Senate Bill

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Jane Dee Hull
Secretary of State

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CHAPTER 170

SENATE BILL 1337

AN ACT

AMENDING SECTIONS 8-106, 12-852, 12-2452, 12-2453, 12-2454, 25-320, 25-320.01, 25-323, 36-322 AND 41-2201, ARIZONA REVISED STATUTES; AMENDING SECTION 12-2454.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1994, CHAPTER 374, SECTION 12; REPEALING SECTION 12-2454.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 270, SECTION 8; AMENDING TITLE 12, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3; BLENDING MULTIPLE ENACTMENTS; RELATING TO CHILD SUPPORT AND ENFORCEMENT.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 8-106, Arizona Revised Statutes, is amended to read:

8-106. <u>Consent to adoption; who shall consent; waiver; consent to the release of information; notification to potential fathers</u>

A. No adoption of a child shall be granted unless consent to adopt has been obtained and filed with the court from the following:

1. The child's birth or adoptive mother, if living.

2. The child's father if any of the following is true:

(a) The father was married to the child's mother at the time of conception or at any time between conception and the child's birth.

(b) The father has adopted the child.

(c) The ~~court has established the~~ father's paternity IS ESTABLISHED under title 12, chapter 7, article 3 OR SECTION 36-322.

3. A child who is twelve years of age or older and who gives consent in open court.

4. Any guardian of the person of the child appointed by a court and given authority by it to consent to the child's adoption.

5. An agency or the division which has been given consent to place the child for adoption by the parent or parents whose consent would be necessary under paragraph 1 or 2 of this subsection, or which has been given authority in other legal proceedings to place the child for adoption.

6. The guardian of any adult parent for whom a guardian is currently appointed.

B. It is not necessary for a person to obtain consent to adopt from the following:

1. An adult parent for whom a guardian is currently appointed.

2. A parent whose parental rights have been terminated by court order.

3. A parent who has previously consented to an agency's or the division's placement of the child for adoption.

4. A person whose consent is not required under subsection A of this section.

C. The minority of the child or parent shall not affect ~~his~~ THE CHILD'S OR PARENT'S competency to give consent in the instances set forth in this section.

D. A consent to adopt is irrevocable unless obtained by fraud, duress or undue influence.

E. An agency, the division or an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 shall obtain from a birth parent giving consent at the time consent for adoption is obtained a notarized statement granting or withholding consent for the child adopted to review the adoption records upon reaching twenty-one years of age. The agency, division or attorney shall inform the birth parent at the time of obtaining the notarized statement that the decision to grant or withhold consent may be changed at any time by filing a notarized statement with the court and the agency, division or attorney who obtained the original notarized statement.

F. A notarized affidavit signed by the mother listing all potential fathers shall be filed with the court. The affidavit shall attest that all of the information contained in the affidavit is complete and accurate.

G. Notice shall be served on each potential father as provided for the service of process in civil actions. The notice shall inform the potential father of all of the following:

1. The adoption is planned.

2. The potential father's right to consent or withhold consent to the adoption.

3. The potential father's responsibility to initiate paternity proceedings under title 12, chapter 7, article 3, within thirty days of completion of service.

4. The potential father's right to seek custody.

5. The potential father's responsibility to begin to provide financial support for the child if paternity is established.

6. The potential father's failure to file a paternity action pursuant to title 12, chapter 7, article 3, within thirty days of completion of the service of the notice prescribed by this section, bars the potential father from bringing or maintaining any action to assert any interest in the child.

H. A mother may apply to the court for permission to omit her address from the affidavit and from the notice to potential fathers. The court shall grant this request if the mother shows to the court's satisfaction this is necessary to protect her safety.

Sec. 2. Section 12-852, Arizona Revised Statutes, is amended to read:

12-852. Voluntary acknowledgment of paternity; action to overcome paternity

A. This state or the parent of a child born out of wedlock may establish the paternity of a child by filing one of the following with the clerk of the superior court:

1. A birth certificate signed by the mother and father of a child born out of wedlock.

2. A notarized statement signed by both parents acknowledging paternity or separate substantially similar notarized statements acknowledging paternity.

3. An agreement by the parents to be bound by the results of genetic testing including any genetic test previously accepted by a court of competent jurisdiction, or any combination of genetic testing agreed upon by the parties, and an affidavit from a certified laboratory that the tested father has not been excluded.

B. On filing a document required in subsection A of this section with the clerk of the superior court, the clerk shall issue an order establishing paternity, which shall include the social security number of the parents.

C. On entry of an order by the clerk of the superior court, the paternity determination has the same force and effect as a judgment of the superior court. IN A NON-IV-D CASE, THE CLERK SHALL TRANSMIT A COPY OF AN ORDER GRANTED UNDER THIS SUBSECTION TO THE STATE TITLE IV-D AGENCY.

D. PURSUANT TO RULE 60(c) OF THE ARIZONA RULES OF CIVIL PROCEDURE, the mother, father or child, a party to the proceeding on a motion or the court on its own motion may bring an action to challenge a voluntary acknowledgment of paternity ESTABLISHED IN THIS STATE. The court shall order the mother, her child or children and the alleged father to submit to genetic testing and shall direct that appropriate testing procedures determine the inherited characteristics, including blood and tissue type. If the court finds by

clear and convincing evidence that the genetic tests demonstrate that the established father is not the biological father of the child, the court shall vacate the determination of paternity and terminate the obligation of that party to pay ongoing child support. AN ORDER VACATING THE DETERMINATION OF PATERNITY OPERATES PROSPECTIVELY ONLY AND DOES NOT ALTER THE OBLIGATION TO PAY CHILD SUPPORT ARREARAGES OR, UNLESS OTHERWISE ORDERED BY THE COURT, ANY OTHER AMOUNT PREVIOUSLY ORDERED TO BE PAID PURSUANT TO SECTION 12-849.

Sec. 3. Section 12-2452, Arizona Revised Statutes, is amended to read:

12-2452. Jurisdiction, venue and procedure; additional enforcement provisions

A. The superior court shall have original jurisdiction in proceedings brought by this state or by a person having physical custody of a child to establish, enforce or modify the duties of support as prescribed in this chapter. All such proceedings shall be civil actions except as provided in section 12-2458. Proceedings to establish, enforce or modify the duties of support as prescribed in this chapter may be originated in the county of residence of the respondent or the petitioner or of the child or children who are the subject of the action.

B. Except as provided in section 12-2457, in title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

C. Upon filing of the petition, the court shall issue an order requiring the respondent to appear at the time and place set for the hearing on the petition. Service of the order and a copy of the petition shall be as provided in the rules of civil procedure. IF THE RESPONDENT RECEIVES NOTICE OF A HEARING BUT FAILS TO APPEAR, THE COURT SHALL ISSUE A CHILD SUPPORT ARREST WARRANT AND SHALL REQUIRE THAT THE RESPONDENT PAY AT THE TIME OF ARREST AN AMOUNT SET BY THE COURT TO SECURE THE RESPONDENT'S RELEASE FROM CUSTODY PENDING AN APPEARANCE AT THE NEXT SCHEDULED HEARING. ANY AMOUNT THAT IS PAID SHALL BE DEPOSITED WITH THE CLERK OF THE COURT OR CLEARINGHOUSE AND CREDITED FIRST TO THE RESPONDENT'S CHILD SUPPORT OBLIGATION AND THEN TO ARREARAGES. THE COURT MAY GRANT A DEFAULT JUDGMENT FOR ARREARAGES ON A PRIMA FACIE SHOWING OF THE AMOUNT DUE.

D. The state may file with the clerk of the superior court a request to establish a child support order and a proposed order including a document that indicates how the support amount was calculated. The request, proposed order and document shall be served on the parent pursuant to the Arizona rules of civil procedure. The state shall file proof of service with the clerk of the superior court. The obligated parent may petition the court for a hearing within fifteen days after service of the request and proposed order. If the parent does not request a hearing, the court shall review the

submitted order and document and sign the submitted support order or enter another appropriate order. The state shall enforce the order.

E. At a hearing upon a petition to enforce child support if it appears from evidence presented at the hearing that a person ordered to pay child support is at least one month in arrears and is or may be licensed or certified as a professional under title 32, the court, in addition to any other enforcement action available to the court, may direct the licensing board or agency to conduct a hearing in accordance with title 32, chapter 37 concerning the suspension of the license or certificate of the person ordered to pay support. The court may direct a department or agency to conduct a hearing pursuant to section 32-3701 to suspend the license or certificate of a person ordered to pay support if the person is not licensed pursuant to title 32, but holds or may hold a license or certificate issued pursuant to title 3, 4, 5, 6, 8, 15, 20, 36 or 41 or title 28, chapter 8.

F. Each licensing board or agency that issues professional licenses or certificates shall record the social security number of the licensee or certificate holder in its data base in order to aid the department of economic security in locating noncustodial parents or the assets of noncustodial parents.

Sec. 4. Section 12-2453, Arizona Revised Statutes, is amended to read:

12-2453. Order for support; methods of payment; modification; revocation; statute of limitations; judgment on arrearages; notice

A. In any proceeding in which there is at issue the support of a child, the court may order either or both parents to pay any amount necessary for the support of the child. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, any subsequent support payments and handling fees shall be paid only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person shall be permitted to pay support by personal check as long as such payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee. Upon a showing of good cause, the court may order that the parent or parents required to make such payments of support give reasonable security for such payments. If the court sets an appearance bond and the obligor fails to appear, the bond shall be forfeited and credited against any arrearages owed by the person required to pay support. This subsection does not apply to payments that are made by means of a wage assignment.

B. If the court has ordered that support be paid directly to the custodial parent, the state may file a motion to redirect in a title IV-D case. On receipt of the motion, the clerk of the superior court shall order the person obligated to pay support or maintenance to make those payments

through the clerk. As used in this subsection, "title IV-D case" means a proceeding for support instituted by this state as required by 42 United States Code sections 651 through 669.

C. In a case where the court has ordered that support be paid directly to the custodial parent, if the payment is not received within ten days of the date in the court order for payment of support, the person receiving support may enforce the support order by all civil remedies provided by law.

D. Any order for child support may be modified or revoked upon a showing of changed circumstance which is substantial and continuing, except as to any amount that may have accrued as an arrearage prior to the date of the filing of the notice of the motion or order to show cause to modify or revoke. The order of modification or revocation may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or to revoke or to any date subsequent to such filing. The order of modification or revocation may include an award of attorney's fees and court costs to the prevailing party.

E. The right of a parent, guardian or custodian or the department of economic security to receive child support payments as provided in the court order vests as each installment falls due. Such an order is continuing from the date of entry and is not barred from enforcement except as provided in subsection F of this section. Each vested child support installment is enforceable as a final judgment by operation of law.

F. This state or any of those parties listed in subsection E of this section may file an action within three years after the emancipation of the youngest of all of the children who were the subject of the court order. In such a proceeding there is no bar to the establishment of a money judgment for all of the unpaid child support arrearages for the entire minority of the children. After such a judgment has been entered, it becomes subject to the limitations set out in section 12-1551, subsection B. Money judgments for child support arrearages established during the minority of the children are not barred or limited in enforcement and collection unless they are not renewed within ten years after the emancipation of all of the children who were the subject of the court order. In the case of a disputed emancipation event, this subsection shall be liberally construed to effect its intention of diminishing the limitation on the collection of child support arrearages. As used in this subsection, "emancipation" includes the termination of disability in those cases in which court orders extend child support beyond the age of emancipation as allowed under section 12-2451, subsection A or section 25-320, subsection B.

G. If the state or person entitled to receive child support or spousal maintenance if the spousal maintenance is combined with a child support order has not received court ordered payments, the state or person may file with the clerk of the superior court an affidavit indicating the name of the person obligated to pay support and the amount of the arrearages. The state

or person filing the affidavit shall provide notice to the person obligated to pay support, PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE OR by certified mail, return receipt requested, of the provisions of this section, including the person's right to request a hearing within twenty days, and that an affidavit of arrearages has been filed with the clerk of the superior court for purposes of obtaining a judgment against the person and shall attach a copy of the affidavit. The state or person shall provide the clerk with PROOF OF SERVICE OF THE NOTICE OR a notice of mailing stating that the notice required by this subsection was sent to the person obligated to pay support, the name of the person to whom the notice was sent, the date of mailing to the person and the date of receipt by the person and shall attach the copy of the return receipt. Within twenty days after receipt of the notice, the person alleged to be in arrears may request a hearing in the superior court if the arrearage amount or identity of the person is in dispute. The court shall hold the hearing within ten days after receiving the request. If the person alleged to be in arrears fails to request a hearing within ~~ten days~~ THE TIME PROVIDED, or if the court finds that the objection is unfounded, THE COURT SHALL REVIEW the affidavit ~~of arrearages has the same force and effect as a judgment of the superior court~~ AND GRANT AN APPROPRIATE JUDGMENT against the person obligated to pay support ~~for the amount of arrearages indicated in the affidavit~~.

Sec. 5. Section 12-2454, Arizona Revised Statutes, is amended to read:

12-2454. Order for assignments; violation; classification; termination

A. In any proceeding in which the court orders a person to pay support as defined in section 12-2451, the court shall assign to the person or agency entitled to receive the support that portion of the person's earnings, income, entitlements or other monies without regard to source as necessary to pay the amount ordered by the court. In title IV-D cases in which the title IV-D agency requests an order of assignment:

1. If the obligor's disposable earnings from the primary employer meet the support obligation, the court shall not issue an order for assignment to a secondary employer of the obligor.

2. If the obligor's disposable wages from the primary employer do not meet the support obligation, the court shall issue an order for assignment to a secondary employer of the obligor in order to meet the full support obligation.

B. If a person obligated to pay child support or spousal maintenance is in arrears, at the time of filing of a petition, for an amount equal to at least one month's child support or spousal maintenance, the court shall order an assignment of a portion of the person's earnings, income, entitlements or other monies without regard to source to the person or agency entitled to receive child support or spousal maintenance payments. The assignment shall include payment for current child support or current spousal maintenance and may include an installment payment for arrearages or

any other support as defined in section 12-2451. An assignment ordered under this section does not apply to amounts made exempt under section 33-1131, subsection C or any other applicable exemption law, and any order of assignment is void to the extent it may purport to reach any such exempt amount, but only to that extent. If an obligor does not have periodic earnings, income or entitlements, the court shall order an assignment against any monies owed to the obligor or held for the benefit of the obligor. The order of assignment shall direct the holder of the monies to withhold and pay to the person or agency entitled to receive the child support the amount necessary to pay the amount ordered by the court.

C. In any spousal maintenance proceeding in which the court orders a person to pay spousal maintenance, the court for good cause may order an assignment of the person's earnings, income, entitlements or other monies without regard to sources as necessary to pay the amount ordered by the court.

D. On petition or request of this state or the person entitled to receive child support or spousal maintenance brought pursuant to subsection B of this section, the court shall issue an order to show cause or to appear to the person obligated to pay child support or spousal maintenance to appear before the court to show cause why an assignment of the earnings, income, entitlements or other monies of the person obligated should not be made. The petition or request and order to show cause or to appear shall be served on the person obligated.

E. An employer or other payor may answer and may appear at the hearing on the order to show cause or to appear, but shall not be required to do so. An employer or other payor shall not be required to pay any fee for appearance in any proceeding under this section. An order of assignment under this section shall by its terms expressly direct the withholding and payment of either a certain dollar amount out of, or a certain percentage of, earnings, income, entitlements or other monies and shall specify the period over which the assignment shall be effective. If contested, the petitioner or respondent at the hearing on the order to show cause or to appear is entitled to receive court costs and reasonable attorney fees, except that the court may not impose any liability for court costs or attorney's fees against or order payment of court costs or attorney's fees to an employer or other payor or a public agency for such hearing.

F. The court may order an assignment for child support or spousal maintenance directly against any earnings, income, entitlements or other monies of the person obligated to pay child support or spousal maintenance without the signature of the person obligated to pay child support or spousal maintenance, which order shall constitute an assignment by operation of law of such amounts and of the additional amounts provided in subsection G of this section. The order of assignment shall include a statement that an

employer shall not discharge or otherwise discipline an employee as a result of an assignment authorized by this section.

G. Actual notice of the assignment and a copy of this subsection and subsections B, E, F, H, Q, R and ~~O~~ T of this section shall be provided to the employer or other payor of monies. The assignment is binding on the employer or other payor of monies fourteen days after the employer or payor receives actual notice that the assignment has been made. The employer or other payor shall be deemed to have actual notice on the date of receiving the notice of the assignment by mail as authorized in this section or on any date of receiving actual notice, and the order is binding until further notice. The employer or other payor shall withhold the amount specified in the assignment from the earnings, income, entitlements or other monies payable to the person obligated to pay support and shall transmit such amount to the clerk of the superior court or support payment clearinghouse within ~~ten~~ TWO BUSINESS days after the date the employee is paid. The employer may combine withheld monies for several employees in a single payment and separately identify the portion of the payment which is attributable to each employee. The employer or other payor may also withhold and retain for application to the employer's or payor's cost of compliance an additional one dollar per pay period or four dollars per month, whichever is greater. The employer or other payor shall notify the clerk or clearinghouse in writing when the person ordered to pay support or spousal maintenance is no longer employed by the employer or the right to receive other earnings, income, entitlements or monies has been terminated. The employer shall also notify the clerk or clearinghouse in writing of the former employee's last known address and the name and address of the former employee's new employer if known. If the employer reemploys the person ordered to pay support within ninety days of termination from employment, the employer is again bound by the order of assignment and is required to perform as required by this section. If a payor is again obligated to pay entitlements or monies to the person ordered to pay support within ninety days of termination of such right, the payor is again bound by the order for assignment and is required to perform pursuant to this section.

H. An order of assignment under this section shall be binding upon future employers and other future payors, as an assignment by operation of law, fourteen days after a certified copy of the assignment order is served on an employer or other payor as provided under the rules of civil procedure or by registered mail. Such employer or other payor shall have an opportunity for a hearing by order to show cause or request for hearing if desired. The filing of a petition for order to show cause or request for hearing by an employer or payor delays implementation of the order of assignment pending a hearing.

I. An assignment shall be ordered for the purpose of paying any, or a combination, of the following:

1. All or a portion of the arrearage of child support or spousal maintenance, or both.

2. All or a portion of the current child support or spousal maintenance, or both.

3. All or a portion of the current child support or spousal maintenance, or both, because of the past conduct of the person so obligated or because of the threatening conduct of the person so obligated.

4. All or a portion of any support as defined in section 12-2451.

J. The obligation for current child support must be fully met before any payments under the order entered pursuant to subsection I of this section may be applied to payment of arrearages.

K. An order for assignment may be modified by the court at any time upon a petition or request of either party and upon a hearing and showing of change in circumstances which is substantial and continuing.

L. Upon petition or request to the court and a hearing, the court may terminate the order of assignment for spousal maintenance if all arrearages have been satisfied and the court deems termination of the assignment order to be in the interest of justice.

~~M. Upon petition or request to the court and a hearing, the court may terminate the order of assignment if all obligations of support as defined in section 12-2451 have been satisfied, and the person obligated to pay child support is no longer obligated to pay the child support.~~

M. IF ALL OBLIGATIONS OF SUPPORT AS DEFINED IN SECTION 12-2451 HAVE BEEN SATISFIED AND THE PERSON OBLIGATED TO PAY SUPPORT IS NO LONGER OBLIGATED, AND THE PARTIES, INCLUDING THE STATE IF THE STATE IS PROVIDING TITLE IV-D SUPPORT SERVICES OR HAS A CLAIM FOR ARREARAGES, FILE A NOTARIZED STIPULATION WITH THE CLERK OF THE SUPERIOR COURT, THE CLERK SHALL ISSUE AN ORDER TERMINATING THE ORDER OF ASSIGNMENT FOR CHILD SUPPORT OR ARREARAGES. THE STIPULATION SHALL STATE THAT THE CURRENT OBLIGATION OF SUPPORT NO LONGER EXISTS AND THAT ALL ARREARAGES EITHER HAVE BEEN SATISFIED OR WAIVED. THE STIPULATION SHALL ALSO CONTAIN THE NAME AND ADDRESS OF THE EMPLOYER OR PAYOR OF THE PERSON OBLIGATED TO PAY SUPPORT. WITHIN FIVE BUSINESS DAYS AFTER THE DATE THE STIPULATION IS FILED, THE CLERK SHALL SEND BY FIRST CLASS MAIL A CERTIFIED COPY OF THE ORDER TERMINATING THE ORDER OF ASSIGNMENT TO THE EMPLOYER OR PAYOR. NOTWITHSTANDING ANY LAW TO THE CONTRARY, A FEE SHALL NOT BE CHARGED TO A PARTY WHO FILES A STIPULATION PURSUANT TO THIS SUBSECTION.

N. THE STATE OR A PERSON OBLIGATED TO PAY SUPPORT MAY FILE A PETITION OR REQUEST WITH THE CLERK OF THE SUPERIOR COURT FOR AN ORDER TERMINATING THE ORDER OF ASSIGNMENT IF THE OBLIGATION TO PAY SUPPORT HAS ENDED OR WILL END WITHIN NINETY DAYS AFTER THE FILING OF THE PETITION OR REQUEST OR IF ALL ARREARAGES EITHER HAVE BEEN PAID OR WILL BE PAID WITHIN THE PERIOD OR HAVE BEEN WAIVED. THE PETITION OR REQUEST SHALL STATE THE REASON WHY TERMINATION IS REQUESTED AND SHALL CONTAIN THE NAME AND ADDRESS OF THE EMPLOYER OR PAYOR OF THE PERSON OBLIGATED TO PAY SUPPORT. A COPY OF THE PETITION SHALL BE

SERVED PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE ON THE PERSON ENTITLED TO RECEIVE SUPPORT AND ON THE STATE IF THE STATE IS PROVIDING TITLE IV-D SUPPORT SERVICES OR HAS A CLAIM FOR ARREARAGES. A PARTY RECEIVING NOTICE MAY REQUEST A HEARING WITHIN TWENTY DAYS. ON PROOF OF SERVICE AND IF NO HEARING HAS BEEN REQUESTED WITHIN THE TIME ALLOWED, THE CLERK SHALL ISSUE AN ORDER TERMINATING THE ORDER OF ASSIGNMENT AS APPROPRIATE. WITHIN TWO BUSINESS DAYS AFTER THE DATE THE ORDER IS ISSUED, THE CLERK SHALL SEND BY FIRST CLASS MAIL A CERTIFIED COPY OF THE ORDER TERMINATING THE ORDER OF ASSIGNMENT TO THE EMPLOYER OR PAYOR. IF A HEARING IS REQUESTED, THE COURT SHALL SET THE HEARING WITHIN TWENTY DAYS AFTER RECEIVING THE REQUEST AND SHALL ISSUE AN APPROPRIATE ORDER.

~~N.~~ O. The person or agency to whom support has been ordered to be paid shall notify the clerk of the superior court or support payment clearinghouse of any address change within a reasonable period of time after such change. If the clerk or clearinghouse is unable to deliver payments under an assignment for a period of three months due to the failure of the person to whom the support has been ordered to be paid to notify the clerk or clearinghouse, the clerk or clearinghouse shall not make further payment under the assignment and shall return payments to their source. Under such circumstances the court or clerk shall order the release of the employer or payor from the assignment upon request of the employer or payor, or clearinghouse, or on the clerk's own initiative. An assignment order from which an employer or payor has been released may be reinstated by following the procedures for new assignments pursuant to this section.

~~O.~~ P. Unless a court has ordered otherwise, the person ordered to pay child support or spousal maintenance shall notify the clerk or clearinghouse in writing of the addresses of ~~his~~ THE PERSON'S residence and employment and, within ten days, of a change in either one. Failure to do so may subject the person to sanctions for contempt of court, including reasonable attorney fees and costs.

~~P.~~ Q. An employer shall not refuse to hire a person or shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section. An employer who refuses to hire a person or discharges or otherwise disciplines an employee as a result of the wage or salary assignment is subject to contempt and fines as established by the court. Any person wrongfully refused employment or employee wrongfully discharged or otherwise disciplined is entitled to recovery of damages suffered, plus reinstatement if appropriate, plus attorney's fees and costs incurred. An employer or other payor who fails without good cause to comply with the terms of the assignment may be liable for amounts not paid to the clerk or clearinghouse pursuant to the assignment order, reasonable attorney fees and costs incurred and may be subject to contempt.

~~Q.~~ R. An assignment issued pursuant to this section has priority over all other attachments, executions, garnishments or assignments.

~~R.~~ S. Notwithstanding any provision of this section to the contrary, the court may order an assignment of earnings, income, entitlements or other monies in any decree or order establishing support or maintenance, although the person owed support or maintenance has not complied with the provisions of this section or requested such assignment. The court shall order the assignment if the obligor requests.

~~S.~~ T. If a person is obligated to pay child support for more than one family and the amount available for withholding is not sufficient to meet the total combined child support obligation, any monies withheld from the obligor's earnings, income, entitlements or other monies shall be allocated to each family by the employer or payor as follows:

1. The amount of current child support ordered in each case shall be added to obtain the total child support obligation.

2. The court ordered amount in each case shall be divided by the total child support obligation to obtain a percentage of the total amount due.

3. The amount withheld from the obligor's earnings, income, entitlements or other monies shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

Sec. 6. Section 12-2454.01, Arizona Revised Statutes, as amended by Laws 1994, chapter 374, section 12, is amended to read:

12-2454.01. Ex parte order for assignments; violation; classification

A. If a person obligated to pay ~~child~~ support or spousal maintenance is in arrears for an amount equal to at least one month's child support or spousal maintenance or wishes to implement a voluntary assignment, the state, the person entitled to receive the child support or spousal maintenance or the person obligated to pay support or maintenance may file a verified petition or request with the clerk of the superior court requesting the clerk to issue an order for assignment for current child support, ~~or~~ spousal maintenance ~~and for unpaid monthly installments~~ OR OTHER SUPPORT AS DEFINED IN SECTION 12-2451, if applicable. If the petition or request is filed by this state it need not be verified.

B. In a title IV-D case if there are no arrearages, the person to whom support or maintenance has been ordered to be paid, or the state, upon request of such person, may file a petition with the clerk of the superior court requesting the clerk to issue an order of assignment for current child support or spousal maintenance. In title IV-D cases in which the title IV-D agency requests an order of assignment:

1. If the obligor's disposable earnings from the primary employer meet the current child support obligation ~~and any arrearage payment~~, the court shall not issue an order for assignment to a secondary employer of the obligor.

2. If the obligor's disposable ~~wages~~ EARNINGS from the primary employer do not meet the current child support obligation ~~and any arrearage payment~~, the court shall issue an order for assignment to a secondary employer of the obligor in order to meet the ~~current and past due child~~ FULL support obligations.

C. The petition or request shall be provided by the clerk of the court and shall contain:

1. The name of the person or agency entitled to receive child support or spousal maintenance.

2. A statement that the person obligated to pay child support or spousal maintenance is in arrears for an amount equal to at least one month's child support or spousal maintenance ~~and for unpaid monthly installments to be paid on any arrearages~~ or wishes to implement a voluntary wage assignment.

3. FOR ANY PETITION OR REQUEST BROUGHT UNDER SUBSECTION B OF THIS SECTION, A STATEMENT THAT THE CASE IS A TITLE IV-D CASE AND THAT THERE ARE NO ARREARAGES.

~~3.~~ 4. The name and address of the payor of earnings, income, entitlements or other monies.

D. Following receipt of the petition or request, the clerk of the superior court, without notice to the person obligated to pay support or maintenance, shall order the person to make an assignment of a portion of the person's earnings, income, entitlements or other monies without regard to source as is sufficient to pay the amount ~~ordered by the court~~ REQUESTED to the person or agency entitled to receive the child support or spousal maintenance. The order shall operate as an assignment and is binding upon any existing or future employer or other payor of the person ordered to pay support or spousal maintenance upon whom a copy of the order is served. The assignment shall be issued for ~~currently accruing~~ CURRENT child support, ~~or~~ spousal maintenance OR OTHER SUPPORT AS DEFINED IN SECTION 12-2451 and arrearages, if applicable. In those cases in which the payment is made through the court or support payment clearinghouse, the support and maintenance records of the clerk of the superior court or clearinghouse are prima facie evidence that the person is at least one month in arrears in support under this section. The assignment order shall be accompanied by a written notice in English and Spanish as prescribed in this section. If an obligor does not have periodic earnings, income or entitlements, the court shall order an assignment against any monies owed to the obligor or held for the benefit of the obligor. The order of assignment shall direct the holder of the monies to withhold and pay to the person or agency entitled to receive the child support the amount necessary to pay the amount ordered by the court.

E. The person or agency to whom support or maintenance has been ordered to be paid shall notify the clerk of the superior court or support payment clearinghouse of any address change within a reasonable period of

time after such change. If the clerk or clearinghouse is unable to deliver payments under an assignment for a period of three months due to the failure of the person to whom the support or spousal maintenance has been ordered to be paid to notify the clerk or clearinghouse, the clerk or clearinghouse shall not make further payment under the assignment and shall return payments to their source. Under such circumstances the court, clerk or clearinghouse shall order the release of the employer or payor from the assignment upon request of the employer, payor or clearinghouse or on the clerk's own initiative.

F. An assignment order made pursuant to this section does not become binding until thirty-one days after service of a copy of this subsection and subsections G, H, J, K, N, O, ~~and~~ P AND Q of this section and two copies of the petition or request, order and notice upon an employer or other payor. The copy and two copies of the petition or request, assignment order and notice shall be served on a person's employer or other payor as provided under the rules of civil procedure, except that an employer or payor, wherever located, may be served by registered mail. Service by mail as authorized in this section is complete when the mailing is received by the employer or other payor. The employer or other payor shall withhold the amount specified in the assignment from the earnings, income, entitlements or other monies payable to the person obligated to support and shall transmit such amount to the clerk of the superior court or support payment clearinghouse within ~~ten~~ TWO BUSINESS days after the date the employee is paid. The employer shall advise the clerk of the court or clearinghouse of the date the monies were withheld, may combine withheld amounts for several employees in a single payment and shall separately identify the portion of the payment which is attributable to each employee. The employer or other payor may also withhold and retain for application to the employer's or payor's cost of compliance an additional sum not exceeding three dollars for each pay period in which earnings or other funds are withheld.

G. An order of assignment under this section shall be binding upon future employers and other future payors, as an assignment by operation of law, fourteen days after a certified copy of the assignment order is served on the employer or other payor as provided under the rules of civil procedure or by registered mail. The employer or other payor shall have an opportunity for a hearing by order to show cause or request for hearing if desired. The filing of a petition for an order to show cause or request by the employer or payor shall delay implementation of the order of assignment pending a hearing.

H. The order of assignment shall direct the employer or other payor to deliver or mail by registered mail a copy of the petition or request, assignment order and notice to the person ordered to pay child support or spousal maintenance within ten days of service thereof on the employer or other payor. The employer or other payor shall comply with the service

requirements of the order. Service by registered mail is complete when the mailing is received by the person ordered to pay child support or spousal maintenance.

I. A person alleged to be in arrears may move to quash or request to stop or modify an assignment order issued under this section at any time. If the person requests to have a hearing prior to the assignment order becoming binding on the first employer or other payor, the motion to quash or request to stop or modify and notice of the hearing must be filed within ten days after delivery by the person's employer or other payor on such person of the petition or request, assignment order and notice. The person alleged to be in arrears shall state under oath that at the time the petition or request was filed the person was not at least one month in arrears for child support or spousal maintenance or if the amount shown in the petition or request and order is incorrect or has been modified. The court shall set the motion to quash or request to stop or modify for a hearing within ten days after receipt of the motion or request and notice of hearing. The person alleged to be in arrears shall mail to the person or agency entitled to receive support at the return address contained in the petition or request a copy of the motion or request and notice of hearing immediately upon the scheduling of the hearing on the motion or request. If the motion or request and notice of hearing are filed with the court by the person alleged to be in arrears before the date the order of assignment becomes binding on the employer or other payor, the court in its discretion may order the clerk of the court or support payment clearinghouse not to disburse any monies until after the hearing on the motion or request.

J. The employer or other payor shall continue to withhold and forward support or spousal maintenance as ordered by the clerk of the superior court until otherwise ordered by the court. The employer or other payor shall notify the clerk in writing when the person ordered to pay support or spousal maintenance is no longer employed by the employer or the right to receive earnings, income, entitlements or other monies has been terminated. The employer shall also notify the clerk in writing of the former employee's last known address and the name and address of the former employee's new employer if known. If the employer reemploys the person ordered to pay support within ninety days of termination from employment, the employer is again bound by the order of assignment and is required to perform pursuant to this section. If a payor is again obligated to pay entitlements or monies to the person ordered to pay support within ninety days of termination of such right, the payor is again bound by the order of assignment and is required to perform pursuant to this section.

K. An order for assignment may be modified by the court at any time upon petition or request of either party or the employer or other payor and upon a hearing and showing of change in circumstances which are substantial and continuing.

L. Upon petition or request to the court and a hearing, the court may terminate the order of assignment for spousal maintenance if all arrearages have been satisfied, and if the court deems termination of the assignment order to be in the interest of justice.

M. Upon petition or request to the court and a hearing, the court may terminate the order of assignment ~~for child support~~ if all ~~arrearages~~ OBLIGATIONS OF SUPPORT AS DEFINED IN SECTION 12-2451 have been satisfied, and the person obligated to pay child support is no longer obligated to pay the child support.

N. An employer shall not refuse to hire a person or shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section, and the order of assignment shall include such statement. An employer who refuses to hire a person or discharges or otherwise disciplines an employee as a result of the wage or salary assignment is subject to contempt and fines as established by the court. Any person wrongfully refused employment or employee wrongfully discharged or otherwise disciplined is entitled to recovery of damages suffered, plus reinstatement if appropriate, plus attorney fees and costs incurred. An employer or other payor who fails without good cause to comply with the terms of the assignment may be liable for amounts not paid to the clerk or clearinghouse pursuant to the assignment order, reasonable attorney fees and costs incurred and may be subject to contempt.

O. An assignment ordered under this section does not apply to amounts made exempt under section 33-1131, subsection C or any other applicable exemption laws, and any order of assignment is void to the extent it may purport to reach any such exempt amount, but only to that extent.

P. An assignment issued pursuant to this section has priority over all other attachments, executions, garnishments or assignments.

Q. If a person is obligated to pay child support for more than one family and the amount available for withholding is not sufficient to meet the total combined child support obligation, any monies withheld from the obligor's earnings, income, entitlements or other monies shall be allocated to each family by the employer or payor as follows:

1. The amount of current child support ordered in each case shall be added to obtain the total child support obligation.

2. The court ordered amount in each case shall be divided by the total child support obligation to obtain a percentage of the total amount due.

3. The amount withheld from the obligor's earnings, income, entitlements or other monies shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

R. On issuance of an assignment order the clerk shall issue a notice directed to the obligor, or person ordered to pay support or maintenance, in substantially the following form which shall also be in Spanish:

Notice

To: The obligor (person ordered to pay support)

You are hereby notified that part of your earnings, income, entitlements or other monies is being taken away by the enclosed assignment order which is based on the enclosed request. The assignment order has been issued for currently accruing child support or spousal maintenance, or both, based on the requesting party's claim that you are obligated to pay the same and are behind in an amount equal to at least one month's payment. In addition, the requesting party may be claiming a right to collect ~~past due support~~ ARREARAGES ON ANY OTHER SUPPORT AS DEFINED IN SECTION 12-2451, ARIZONA REVISED STATUTES.

If you believe the enclosed assignment order is improper or unlawful, that your property is exempt by law or that your employer or other payor is withholding more than is permitted by law, you may request a hearing before the superior court pursuant to section 12-2454.01 or 25-323.01, Arizona Revised Statutes. You may request a hearing at any time. However, if you wish to stop your first employer or other payor served with the order of assignment from deducting any amounts before there is a determination by a court, you must file a request to stop or modify the order of assignment on forms provided by the clerk of the court within ten days of your receipt of the request, order for assignment and this notice.

If you request a hearing, it will begin no later than ten days after receipt of the request to stop or modify by the court. You should know that if the court decides against you at such hearing, you may have to pay the attorney fees and costs of the party who requested the order of assignment.

An assignment order made pursuant to this section does not become binding on the employer or other payor until thirty-one days after service of two copies of the request for assignment, assignment order and this notice on the employer or other payor and applies to current employers. An assignment order made pursuant to this section does not become binding on future employers or other payors until fourteen days after service of two copies of the request for assignment, the assignment order and this notice on the future employer or other payor.

You should know that under federal and state law (section 33-1131, Arizona Revised Statutes) no more than one-half of your disposable earnings for any pay period may be taken to satisfy an order issued for the support of any person. Moreover, the amount of disposable earnings exempt from the enclosed

assignment order must be paid to you on the regular payday for the pay period in which wages were earned. The employer or other payor may deduct three dollars for each pay period for costs. Disposable earnings means that remaining portion of a debtor's wages, salary or compensation for such debtor's personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program, after deducting from such earnings those amounts required by law to be withheld.

You should also know that the employer or other payor will continue to withhold the amount set forth in the order each pay period and will forward the amount to the clerk or clearinghouse to pay to the party requesting the assignment until either:

1. You file a request with the court and, after a hearing, the court modifies the order of assignment for spousal maintenance or terminates the order of assignment for spousal maintenance if all arrearages are paid and if the court deems termination of the assignment order to be in the interest of justice.

2. You file a request with the court and, after a hearing, the court modifies the order of assignment for child support or terminates the order of assignment for child support when all ~~arrearages~~ SUPPORT OBLIGATIONS AS PRESCRIBED IN SECTION 12-2451, ARIZONA REVISED STATUTES, are paid and you are no longer obligated to pay child support.

An employer may not refuse to hire, may not discharge or may not otherwise discipline you as a result of this order of assignment. If you are wrongfully refused employment, discharged or otherwise disciplined you may recover damages suffered, plus reinstatement if appropriate, plus reasonable attorney fees and costs incurred against the employer.

Unless a court has ordered otherwise, you have a duty to notify the clerk of the court in writing of the address of your residence and of your employment and, within ten days, of a change in either one. Your failure to do so may subject you to sanctions for contempt of court, including reasonable attorney fees and costs pursuant to section 25-324, Arizona Revised Statutes.

Sec. 7. Repeal

Section 12-2454.01, Arizona Revised Statutes, as amended by Laws 1995, chapter 270, section 8, is repealed.

1 Sec. 8. Title 12, chapter 15, Arizona Revised Statutes, is amended by
2 adding article 3, to read:
3 ARTICLE 3. CHILD SUPPORT ARREST WARRANTS
4 12-2491. Child support arrest warrant; definition
5 A. ON MOTION OF A PARTY OR ON ITS OWN MOTION THE COURT MAY ISSUE A
6 CHILD SUPPORT ARREST WARRANT IF THE COURT FINDS THAT ALL OF THE FOLLOWING
7 APPLY TO THE PERSON FOR WHOM THE WARRANT IS SOUGHT:
8 1. THE PERSON WAS ORDERED BY THE COURT TO APPEAR PERSONALLY AT A
9 SPECIFIC TIME AND LOCATION.
10 2. THE PERSON RECEIVED ACTUAL NOTICE OF THE ORDER, INCLUDING A WARNING
11 THAT THE FAILURE TO APPEAR MIGHT RESULT IN THE ISSUANCE OF A CHILD SUPPORT
12 ARREST WARRANT.
13 3. THE PERSON FAILED TO APPEAR AS ORDERED.
14 B. THE JUDICIAL OFFICER SHALL ORDER THE CHILD SUPPORT ARREST WARRANT
15 AND THE CLERK SHALL ISSUE THE WARRANT. THE WARRANT SHALL CONTAIN THE NAME
16 OF THE PERSON TO BE ARRESTED AND OTHER INFORMATION REQUIRED TO ENTER THE
17 WARRANT IN THE ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM. THE WARRANT
18 SHALL COMMAND THAT THE NAMED PERSON BE ARRESTED AND EITHER REMANDED TO THE
19 CUSTODY OF THE SHERIFF OR BROUGHT BEFORE THE JUDICIAL OFFICER OR, IF THE
20 JUDICIAL OFFICER IS ABSENT OR UNABLE TO ACT, THE NEAREST OR MOST ACCESSIBLE
21 JUDICIAL OFFICER OF THE SUPERIOR COURT IN THE SAME COUNTY. A WARRANT THAT
22 IS ISSUED PURSUANT TO THIS SECTION REMAINS IN EFFECT UNTIL IT IS EXECUTED OR
23 EXTINGUISHED BY THE COURT.
24 C. THE COURT SHALL DETERMINE AND THE WARRANT SHALL STATE THE AMOUNT
25 THE ARRESTED PERSON SHALL PAY IN ORDER TO BE RELEASED FROM CUSTODY.
26 D. A FACSIMILE OF THE JUDICIAL OFFICER'S SIGNATURE THAT IS APPLIED TO
27 THE WARRANT AT THE DIRECTION AND UNDER THE SUPERVISION OF THE JUDICIAL
28 OFFICER IS DEEMED TO BE THE AUTHORIZED SIGNATURE OF THE JUDICIAL OFFICER.
29 E. FOR THE PURPOSES OF THIS ARTICLE, "CHILD SUPPORT ARREST WARRANT"
30 MEANS AN ORDER THAT IS ISSUED BY A JUDICIAL OFFICER IN A NONCRIMINAL CHILD
31 SUPPORT MATTER AND THAT DIRECTS A PEACE OFFICER IN THIS STATE TO ARREST THE
32 PERSON NAMED IN THE WARRANT AND BRING THE PERSON BEFORE THE COURT.
33 12-2491.01. Time and manner of execution; information
34 A. A CHILD SUPPORT ARREST WARRANT IS EXECUTED BY THE ARREST OF THE
35 PERSON NAMED IN THE WARRANT. THE WARRANT MAY BE EXECUTED AT ANY TIME.
36 B. WHEN MAKING AN ARREST PURSUANT TO A CHILD SUPPORT ARREST WARRANT,
37 THE ARRESTING OFFICER SHALL INFORM THE PERSON NAMED IN THE WARRANT THAT THE
38 ARRESTING OFFICER HAS A CHILD SUPPORT ARREST WARRANT UNLESS:
39 1. THE NAMED PERSON FLEES OR FORCIBLY RESISTS BEFORE THE ARRESTING
40 OFFICER HAS AN OPPORTUNITY TO INFORM THE NAMED PERSON.
41 2. PROVIDING THIS INFORMATION WILL IMPERIL THE ARREST.
42 C. IN ORDER TO EXECUTE A CHILD SUPPORT ARREST WARRANT, THE ARRESTING
43 OFFICER MAY USE REASONABLE FORCE TO ENTER ANY BUILDING IN WHICH THE PERSON
44 NAMED IN THE WARRANT IS OR IS REASONABLY BELIEVED TO BE.

D. THE ARRESTING OFFICER DOES NOT HAVE TO POSSESS THE WARRANT AT THE TIME OF THE ARREST. IF AFTER THE ARREST THE ARRESTED PERSON REQUESTS TO SEE THE WARRANT, THE ARRESTING OFFICER SHALL SHOW THE ARRESTED PERSON A COPY OF THE WARRANT AS SOON AS PRACTICABLE.

E. THE ARRESTED PERSON SHALL BE BROUGHT BEFORE THE ISSUING JUDICIAL OFFICER AS SOON AS POSSIBLE OR, IF THAT JUDICIAL OFFICER IS ABSENT OR UNABLE TO ACT, THE NEAREST OR MOST ACCESSIBLE JUDICIAL OFFICER OF THE SUPERIOR COURT IN THE SAME COUNTY. IN ANY EVENT, THE ARRESTED PERSON SHALL BE BROUGHT BEFORE A JUDICIAL OFFICER OF THE SUPERIOR COURT IN THE ISSUING COUNTY OR THE COUNTY OF ARREST WITHIN TWENTY-FOUR HOURS OF THE EXECUTION OF THE WARRANT. IF THE PERSON IS ARRESTED IN A COUNTY OTHER THAN THE COUNTY IN WHICH THE WARRANT WAS ISSUED, THE ARRESTING OFFICER SHALL NOTIFY THE SHERIFF AND THE LOCAL TITLE IV-D AGENCY, IF APPLICABLE, IN THE COUNTY IN WHICH THE WARRANT WAS ISSUED THAT THE PERSON HAS BEEN ARRESTED. AS SOON AS PRACTICABLE, THE SHERIFF OF THE COUNTY IN WHICH THE WARRANT WAS ISSUED SHALL TAKE CUSTODY OF AND TRANSPORT THE ARRESTED PERSON TO THE ISSUING JUDICIAL OFFICER OR A JUDICIAL OFFICER OF THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WARRANT WAS ISSUED. IF THE ARRESTED PERSON IS NOT TAKEN INTO CUSTODY AND TRANSPORTED WITHIN SEVENTY-TWO HOURS AFTER ARREST, THE ARRESTED PERSON SHALL BE RELEASED AND ISSUED A WRITTEN NOTICE DIRECTING THE ARRESTED PERSON TO APPEAR AT A SPECIFIED DATE AND TIME IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WARRANT WAS ISSUED. THE NOTICE SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORDER OF THE SUPERIOR COURT. THE NOTICE SHALL STATE THAT IF THE ARRESTED PERSON FAILS TO APPEAR AS DIRECTED A CHILD SUPPORT ARREST WARRANT MAY BE ISSUED. A COPY OF THIS NOTICE SHALL BE SENT TO THE COURT AND THE LOCAL TITLE IV-D AGENCY, IF APPLICABLE, IN THE COUNTY IN WHICH THE WARRANT WAS ISSUED.

12-2491.02. <u>Procedure after arrest; payment for release from custody</u>

A. WHEN A PERSON WHO IS ARRESTED PURSUANT TO A CHILD SUPPORT ARREST WARRANT IS BROUGHT BEFORE THE COURT, THE JUDICIAL OFFICER SHALL ADVISE THE ARRESTED PERSON OF THE NATURE OF THE PROCEEDINGS AND SHALL SET A DATE FOR THE NEXT COURT APPEARANCE. THE ARRESTED PERSON MAY BE RELEASED FROM CUSTODY PENDING THE HEARING IF THE ARRESTED PERSON PAYS THE AMOUNT SET BY THE COURT PURSUANT TO SECTION 12-2491 OR A LARGER AMOUNT AS THE COURT DETERMINES. THE COURT SHALL NOT REDUCE THE AMOUNT ORDERED TO BE PAID. THE ARRESTED PERSON SHALL NOT BE RELEASED FROM CUSTODY WITHOUT PAYING THE AMOUNT UNLESS THE COURT FINDS IN WRITING OR ON THE RECORD THAT A COMPELLING REASON EXISTS TO RELEASE THE ARRESTED PERSON. MONIES RECEIVED PURSUANT TO THIS SUBSECTION SHALL BE DEPOSITED AND CREDITED PURSUANT TO SECTION 12-2452, SUBSECTION C.

B. IF THE ARRESTED PERSON PAYS THE FULL AMOUNT SET FORTH IN THE WARRANT BEFORE THE ARRESTED PERSON IS BROUGHT BEFORE A JUDICIAL OFFICER, THE ARRESTED PERSON MAY BE RELEASED AFTER RECEIVING A NOTICE TO APPEAR IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WARRANT WAS ISSUED PURSUANT TO THE PROCEDURE PRESCRIBED IN SECTION 12-2491.01, SUBSECTION E. IF THE ARRESTED

PERSON FAILS TO APPEAR AS DIRECTED, A CHILD SUPPORT ARREST WARRANT MAY BE ISSUED.

C. THE ARRESTING AGENCY SHALL FORWARD ALL AMOUNTS THAT ARE PAID BY THE ARRESTED PERSON FOR RELEASE PURSUANT TO THIS SUBSECTION TO THE CLERK OF THE SUPERIOR COURT IN THE COUNTY IN WHICH THE WARRANT WAS ISSUED FOR DEPOSIT AND CREDIT PURSUANT TO SECTION 12-2452, SUBSECTION C.

12-2491.03. Preexisting warrants

A CIVIL ARREST WARRANT THAT IS ISSUED BEFORE THE EFFECTIVE DATE OF THIS SECTION FOR THE FAILURE TO APPEAR IN A CHILD SUPPORT ENFORCEMENT PROCEEDING UNDER THIS CHAPTER OR TITLE 25, CHAPTER 3 AUTOMATICALLY BECOMES A CHILD SUPPORT ARREST WARRANT AFTER THE EFFECTIVE DATE OF THIS SECTION. THIS ARTICLE APPLIES TO ALL PROCEDURES UNDER THE WARRANT, UNLESS THE AGENCY THAT IS RESPONSIBLE FOR CHILD SUPPORT ENFORCEMENT IN A COUNTY ELECTS NOT TO CONVERT WARRANTS ISSUED IN THAT COUNTY.

12-2491.04. Entry into criminal information system

CHILD SUPPORT ARREST WARRANTS SHALL BE ENTERED IN THE WANTED PERSON FILE OF THE ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM.

Sec. 9. Section 25-320, Arizona Revised Statutes, is amended to read:

25-320. Child support; factors; methods of payment; additional enforcement provisions

A. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support of the child, without regard to marital misconduct. If no child support has been ordered by a child support order and if the court deems child support appropriate, the court shall direct, using a retroactive application of the child support guidelines to the date of filing a dissolution of marriage, legal separation, maintenance or child support proceeding, the amount which the parents shall pay for the past support of the child and the manner in which payment shall be made, taking into account any amount of temporary or voluntary support which has been made. Such retroactive child support shall be enforceable in any manner provided by law. The supreme court shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines shall be the amount of child support ordered unless a written finding is made, based on criteria approved by the supreme court, that application of the guidelines would be inappropriate or unjust in a particular case. The supreme court shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The guidelines and criteria for deviation from them shall be based on all relevant factors, including:

1. The financial resources and needs of the child.

2. The financial resources and needs of the custodial parent.

3. The standard of living the child would have enjoyed had the marriage not been dissolved.

4. The physical and emotional condition of the child, and his educational needs.

5. The financial resources and needs of the noncustodial parent.

6. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

7. The duration of visitation and related expenses.

B. In the case of a mentally or physically disabled child, if the court, after considering the factors set forth in subsection A of this section, deems it appropriate, the court may order support to continue past the age of majority and to be paid to the custodial parent, guardian or child, even if at the time of the filing of a petition or at the time of the final decree, the child has reached the age of majority.

C. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A PARENT PAYING SUPPORT FOR A CHILD OVER THE AGE OF MAJORITY PURSUANT TO THIS SECTION SHALL BE ENTITLED TO OBTAIN ALL RECORDS RELATED TO THE ATTENDENCE OF THE CHILD IN THE HIGH SCHOOL OR EQUIVALENCY PROGRAM.

D. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, any subsequent support payments and handling fees shall be paid only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person shall be permitted to pay support by personal check as long as such payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee.

E. The provisions of subsection D of this section do not apply to payments made by means of an assignment.

F. An order for child support shall assign responsibility for providing medical insurance for the child who is the subject of the support order and shall assign responsibility for the payment of any medical costs of the child which are not covered by insurance. In title IV-D cases, the parent responsible pursuant to court order for providing medical insurance for the child shall notify the clerk of the court or the clearinghouse prescribed in section 46-441 if the child is no longer covered under an employer's insurance plan. The clerk of the court or the clearinghouse shall

notify the child support enforcement agency in the department of economic security of the lapse in insurance coverage.

G. In title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

H. The court shall presume, in absence of contrary testimony, that a noncustodial parent is capable of full-time employment at least at the federal adult minimum wage. This presumption does not apply to noncustodial parents under the age of eighteen who are attending high school.

I. An order for support shall provide for an assignment pursuant to sections 12-2454 and 25-323.

J. At a hearing upon a petition to enforce child support if it appears from evidence presented at the hearing that a person ordered to pay child support is at least one month in arrears and is or may be licensed as a professional under title 32, the court, in addition to any other enforcement action available to the court, may direct the licensing board or agency to conduct a hearing in accordance with title 32, chapter 37 concerning the suspension of the license or certificate of the person ordered to pay support. The court may direct a department or agency to conduct a hearing pursuant to section 32-3701 to suspend the license or certificate of a person ordered to pay support if the person is not licensed pursuant to title 32, but holds or may hold a license or certificate issued pursuant to title 3, 4, 5, 6, 8, 15, 20, 36 or 41 or title 28, chapter 8.

K. Each licensing board or agency that issues professional licenses or certificates shall record the social security number of the licensee or certificate holder in its data base in order to aid the department of economic security in locating noncustodial parents or the assets of noncustodial parents.

Sec. 10. Section 25-320.01, Arizona Revised Statutes, is amended to read:

25-320.01. <u>Child support arrearage; driver's license suspension; hearing</u>

A. If the court finds from the evidence presented at a hearing to enforce a child support order that the obligor has wilfully failed to pay support and continues to wilfully fail to pay child support and is at least two months in arrears, the court shall send a certificate of noncompliance to the department of transportation in a form prescribed by the department of transportation. The department of transportation shall suspend the obligor's driver's license pursuant to section 28-413, subsection A, paragraph ~~10~~ 11.

B. The court shall hold a review hearing not more than one hundred twenty days after it issues the certificate to the department of

transportation. If the obligor establishes at this hearing that the obligor is in compliance with the support order, the court shall send a certificate of compliance to the department of transportation. The obligor may then apply for license reinstatement as prescribed by the department of transportation and shall pay all applicable fees as prescribed by section 28-205.

C. A non-IV-D obligee may petition the court for an order to suspend the driver's license of a person who is at least two months in arrears on a child support obligation if the non-IV-D obligee complies with the notice requirements of this section. The court may act on this petition in the same manner it acts on other petitions filed under this section.

D. The non-IV-D obligee shall provide notice to the obligor. The notice shall contain the following:

1. A statement that the obligee is entitled to receive child support payments and the monthly amount.

2. A statement that the obligor is in arrears in making child support payments and the amount of the arrearage.

3. A statement that the obligee intends to petition the court for a driver's license suspension hearing.

4. A statement that the driver's license of the obligor may be suspended if the court finds that the obligor has wilfully failed to pay child support, continues to wilfully fail to pay child support, and is at least two months in arrears.

E. The obligee shall attach a copy of the order of support to the notice. The obligee shall serve the notice by first class mail.

Sec. 11. Section 25-323, Arizona Revised Statutes, is amended to read:

25-323. Assignments

Pursuant to the requirements of section 12-2454, in any proceeding in which the court orders a person to pay support as defined in section 12-2451, the court shall assign to the person or agency entitled to receive the support that portion of such person's earnings, income, entitlements or other monies without regard to source as necessary to pay the amount ordered by the court. THE COURT MAY TERMINATE ORDERS OF ASSIGNMENT PURSUANT TO SECTION 12-2454.

Sec. 12. Section 36-322, Arizona Revised Statutes, is amended to read:

36-322. Birth registration

A. A certificate of live birth for each child born alive in this state shall be filed with the designated registrar within seven days following the birth with the document prescribed in subsection C of this section. If a statement is filed pursuant to section 12-852, subsection ~~D~~ A, the document shall be forwarded to the designated registrar with the birth certificate.

B. If a birth occurs in a moving conveyance, such birth shall be considered to have occurred in the place where the child was initially removed from the conveyance.

C. When a birth occurs in an institution, the person in charge of the institution or ~~his~~ THE PERSON'S designated representative shall obtain the personal data, prepare the certificate, obtain the required signatures of the informant and attendant, and file the certificate with the designated registrar. The personal data shall include the social security numbers of the mother and father. The social security numbers shall be filed with the certificate as a separate document. The social security numbers shall not appear on the birth certificate. The persons certifying to required information shall furnish this information and affix their signatures in sufficient time to enable the certificate and the accompanying document to be filed within the prescribed period. If a child is born out of wedlock in an institution, the parents shall have an opportunity to voluntarily acknowledge paternity immediately before or after the birth of the child.

D. If the mother or father does not have a social security number, another legal identifying number may be used pursuant to subsection L of this section.

E. When the birth occurs outside an institution, the necessary data prescribed in subsection C of this section shall be obtained and the certificate and the accompanying document shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth.

2. In the absence of a physician, any other person in medical attendance at or immediately after the birth.

3. In the absence of the person prescribed in paragraph 2, the mother, the father, or any other family member who can supply the required information, or the person in charge of the premises where the birth occurred.

4. In the absence or inability of a person prescribed in paragraph 3 to act, any other person who witnessed the birth and can supply the required information.

F. If the mother of a child is married at the time of birth of the child or was married at any time in the ten months immediately preceding such birth, the name of her husband shall be entered on the birth certificate as the father and is otherwise presumed to be the father of the child, except where paternity has been established otherwise by a court of competent jurisdiction. In such instance, the name of the man so adjudged shall be entered on the record as the father.

G. If the mother of a child is unmarried at the time of birth of the child and was unmarried throughout the ten months immediately preceding such birth, the name of the alleged father, if any, shall not be entered on the birth certificate unless sworn statements THAT COMPLY WITH SECTION 12-852, SUBSECTION A, PARAGRAPH 2 acknowledging such paternity are voluntarily presented by both the alleged father and the mother, or unless paternity has been established by a court of competent jurisdiction. THE VOLUNTARY

ACKNOWLEDGMENT OF PATERNITY THAT IS MADE PURSUANT TO THIS SUBSECTION IS A DETERMINATION OF PATERNITY AND HAS THE SAME FORCE AND EFFECT AS A JUDGMENT OF THE SUPERIOR COURT, EXCEPT THAT:

1. THE MOTHER OR THE ALLEGED FATHER MAY RESCIND THE ACKNOWLEDGMENT AT ANY TIME WITHIN SIXTY DAYS AFTER PRESENTING THE STATEMENT ACKNOWLEDGING PATERNITY BY FILING WITH THE DEPARTMENT OF ECONOMIC SECURITY A NOTARIZED RESCISSION OF PATERNITY ON A FORM PROVIDED BY THE DEPARTMENT. THE DEPARTMENT OF ECONOMIC SECURITY SHALL PROVIDE A COPY OF EACH RESCISSION OF PATERNITY TO THE STATE REGISTRAR.

2. A PERSON MAY CHALLENGE A PATERNITY DETERMINATION PURSUANT TO SECTION 12-852, SUBSECTION D.

H. THE STATE REGISTRAR SHALL NOTIFY THE STATE TITLE IV-D AGENCY OF ALL PATERNITY DETERMINATIONS THAT ARE MADE UNDER SUBSECTION G OF THIS SECTION.

~~H.~~ I. Either parent may sign the birth certificate attesting to the accuracy of the personal data. If no parent is available to sign, the record may be signed by another family member or other person possessing personal knowledge of the information attested to.

~~I.~~ J. Except in class A registration districts, the birth certificate of a child born out of wedlock shall be filed directly with the state registrar.

~~J.~~ K. The state registrar shall not refuse to register a birth certificate because the certificate fails to include the name of the father required by subsection F of this section.

~~K.~~ L. Registration of a birth certificate shall be accompanied by the social security numbers of the mother and father. If the provisions of subsection G of this section apply, the social security number of the alleged father of the child shall be provided whether paternity has been established or acknowledged. This information shall be available on request to the child support enforcement agency for purposes of locating the absent parent or alleged father or for establishment or enforcement of child support orders.

~~L.~~ M. If the mother or father does not have a social security number, another legal identifying number may be used, including a tribal enrollment number, an immigration AND naturalization service alien registration number or a nonimmigrant visa number. If a person has an immigration AND naturalization service alien registration number and a nonimmigrant visa number, that person shall submit both numbers.

~~M.~~ N. The department shall adopt rules providing for good cause exceptions to the requirements of this section. Good cause exceptions shall include a case in which a parent is not a United States citizen, in which the name, identity or whereabouts of the father ~~is~~ ARE unknown, in which the name of the father does not appear on the birth certificate, in which the child was conceived as a result of incest or ~~forcible rape~~ SEXUAL ASSAULT, or in which legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

Sec. 13. Section 41-2201, Arizona Revised Statutes, is amended to read:

41-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the Arizona criminal justice commission.

2. "Component information system" means an independent information system serving one or more criminal justice agencies and which may participate in the criminal justice information system.

3. "Criminal history record information" means data collected on individuals by criminal justice agencies which consists of identifiable descriptions and notations of arrests, detentions, indictments, criminal informations or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. Criminal history record information does not mean identification information, such as fingerprint records, to the extent such information does not indicate involvement of the individual in the criminal justice system, information associated with the administrative functions or correctional treatment process of a criminal justice agency or juvenile justice information.

4. "Criminal justice agency" means any court or government agency or division of such agency which performs the administration of criminal justice~~, including child support enforcement,~~ pursuant to statutory authority or executive order and which allocates a substantial part of its budget to the administration of criminal justice OR WHICH PERFORMS CHILD SUPPORT ENFORCEMENT SERVICES.

5. "Manager" means the criminal justice information system manager.

6. "System" means the criminal justice information system.

APPROVED BY THE GOVERNOR APRIL 11, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 1996