

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Maes DATE TYPED: 2/13/01 HB _____
 SHORT TITLE: Child Support Nonpayment Penalty Exceptions SB 427
 ANALYST: Dunbar

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ (1,800.0)		Recurring	OSF
	\$ (288.2)		Recurring	General Fund/Fed

(Parenthesis () Indicate Revenue Decreases)

Relates to 523

SOURCES OF INFORMATION

Human Services Department
 Attorney General
 Administrative Office of the Courts

SUMMARY

Synopsis of Bill

The bill amends current law to provide that a person delinquent on child support payments may be eligible for a restricted drivers license for the express purpose of seeking or maintaining employment, and that person may not be incarcerated for non-payment if that incarceration prevents gainful employment.

Significant Issues

The Human Services Department writes that SB 427 would:

- Limit the court's power to punish persons refusing to pay child support by contempt proceedings.
- Violate federal provisions of the Title IV-D child support enforcement plan.
- Violate federal requirements concerning child support enforcement tools.
- Jeopardizes TANF block grant funding,

Senate Bill 427 -- Page 2

- Violate the requirements of the state child support enforcement plan as required by 42 USC Sec. 654 and program requirements as required by 42 USC Sec. 666.
- Eliminate two enforcement tools: contempt and license revocation.

HSD and the Administrative Office of the Courts comment that the prohibition against incarceration for the violation of a court order may be viewed as contrary to the separation of powers doctrine and as a direct encroachment of the inherent power of the court to punish individuals for contempt of its orders.

The AG, on the other hand, states that it is well settled in the criminal context that additional penalty for involuntary nonpayment of fines due to demonstrated inability to pay is an impermissible discrimination violative of the Equal Protection and Due Process protections of the Constitution. Williams v. Illinois, 90 S.Ct. 2018. The AG believes that the proposed change in 40-4A-16 ensures that the child support obligor is not prevented from meeting the obligation by the imposition of incarceration that may offend the constitutional rights of the obligor.

HSD indicates that the action does not constitute a criminal contempt but civil contempt to force compliance with the courts orders. HSD points out that an individual in the child support context does not go to jail for non-payment but for failing to comply or attempt reasonable compliance with a court order. The court before incarcerating for civil contempt evaluates the individual's ability and attempts to comply with the court's orders. In reality, HSD says that CSED would not be pursuing the contempt option, if the NCP actually had no ability to pay.

PERFORMANCE IMPLICATIONS

SB 427 would eliminate two methods to obtain delinquent child support payments. License revocation and incarceration for contempt have been effective in cases involving severe arrearages where a parent has not made bona fide efforts to maintain their support. HSD understands that the courts rarely incarcerate people for contempt, but the threat of incarceration or license revocation offers an incentive to make timely child support payments. HSD implies that by eliminating these methods of child support collections that established performance measures will not be met.

FISCAL IMPLICATIONS

The Human Services Department Child Support Enforcement Division (HSD/CSED) has increased collections and obtained Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) certification while running at a 24-28% staff vacancy rate. HSD maintains that SB 427 would decrease collections by an estimated \$1.8 million.

A \$1.8 million shortfall in collections would produce a \$288.2 reduction in state and federal revenue.

HSD believes that the legislation places at risk TANF funding.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts commensurate with the increase in caseload and/or in the amount of time necessary to dispose of cases.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

HSD reports that the changes to 40-5A-4 would negate New Mexico's Parental Responsibility Act because the proposed restrictions permit any delinquent obligor, otherwise subject to license revocation for all but recreational licenses, to claim the exemption. The Human Services Department expresses concern that this change in legislation would put the state in violation of federal law, federal regulation, and the Title IV-D program state plan. Non-compliance with the Title IV-D state plan would jeopardize a portion of the state's TANF block grant. The applicable federal laws are in the Social Security Act, Sections 454(20) and 466(a)(16), which require the state's IV-D agency to have in effect "laws requiring the use of procedures for authorizing withholding, or suspension or restriction of driver's licenses, professional and occupational licenses and recreational and sporting licenses" for individuals who owe support.

OTHER SUBSTANTIVE ISSUES

HSD interprets the proposed changes to 40-4A-16.B. as eliminating show cause hearings as a means of enforcing delinquent child support. The restriction "if the incarceration would prevent him from seeking or maintaining gainful employment" would apply to all incarceration. Eliminating this option for flagrant child support offenders is problematic for HSD.

However, the Attorney General presumes that the licensure provisions offer more flexibility for the granting of restricted drivers licenses for child support obligors to seek or maintain employment. The AG views this as a practical accommodation to effectuate the goal of payment of support obligations.

In contrast, HSD maintains that restricted drivers licenses are meaningless. HSD thinks that every violator of child support duties would obtain a restricted license as these individuals have demonstrated their lack of regard for their support obligations or for court orders.

POSSIBLE QUESTIONS

Does the prohibition against incarceration in the bill violate the separation of powers doctrine?

BD/njw