MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 30, 1985

The meeting of the Juciciary Committee was called to order by Chairman Tom Hannah on Wednesday, January 30, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Bing Poff who was excused.

CONSIDERATION OF HOUSE BILL NO. 444: Rep. Jan Brown, sponsor of this bill, testified before the committee. She stated that this bill requires child support orders to state that if the person obligated under the order to pay support is delinquent in the payments, his income will be subject to witholding procedures. (See Exhibit A)

Mr. John McRae, staff attorney for the Department of Revenue, appeared before the committee to offer testimony on each of the bills. A summary of the child support enforcement amendments of 1984 was submitted to the committee and marked as Exhibit B. Also submitted was a copy of the remarks of the president of the United States signing ceremony for the bill which was marked as Exhibit C.

Mr. McRae said that the state of Montana does presently have in existence in title 40, chapter 5, part 3, the Mandatory Income Deduction Act. It provides that upon a delinquency of three months, the person can apply to the court for an income deduction withholding order.

This bill would require reference in all new support orders, all new modifications of the existing orders and so forth making a reference that the obligator's income is subject to withholding under the procedures of title 40, chapter 5, part 3 and House Bill 443.

There were no further proponents nor were there any opponents to the bill. Rep. Brown closed.

The floor was opened up for questioning. Rep. Hannah wonders why this bill is needed. He referred to lines 15 and 16 where it says that a statement must be included in the court order. Rep. Hannah asked if a court has the freedom to include the statement at this time? Mr. McRae responded yes, but further stated that they are not doing it except in very rare cases. Rep.

Hannah wanted to know why they aren't doing this. Mr. McRae stated that he doesn't think the courts are really into enforcing this kind of situation.

Rep. Addy wanted to know why this is a separate bill from HB 443. Mr. McRae said that it would not be pointless to pass HB 444 if HB 443 is not passed. We would still have the reference in the bill to income withholding under title 40, chapter 5, part 3.

Rep. Addy asked if that wasn't the whole reason you have HB 444 because as long as you can use these drastic enforcement procedures, you want to keep actual notice to the people that are going to be subject to them. Mr. McRae said that was correct.

There being no further questions, hearing closed on HB 444.

CONSIDERATION OF HOUSE BILL NO. 445: Rep. Jan Brown, chief sponsor for HB 445, appeared and testified in its support. She stated that HB 445 provides that if a person obligated to pay child support becomes delinquent in an amount equal to the total of 3 months' support payments, the court shall order the obligated person to post bond or other security in an amount equal to the total of 2 yearssupport payments. A copy of her testimony was marked as Exhibit D and is attached.

John McRae, staff attorney for the Department of Revenue, testified in support of HB 445. Mr. McRae said that in Montana, it has been long established that the various courts do have within their discretion the capability to require security or bonds in order to make child support payments. This is merely an attempt to put the same thing into the statute. In the caselaw development of it, they have not specified any particular procedure to be followed. This bill does set forth a procedure. The federal bill which this is attempting to be in compliance with merely states that each state must pass some procedure for the imposition of bonds and other securities. It does not suggest what those procedures should be. Mr. McRae explained some of the other procedural provisions of the bill.

There being no further proponents or opponents, Rep. Brown closed.

The floor was opened to questions from the committee.

Rep. Kruegar wanted to know if Mr. McRae would be open to allowing the committee some flexibility in terms of giving the court some discretion. Mr. McRae stated

that he doesn't have any problem with adding discretion.

Rep. Eudaily asked if an administrative order can do the same thing that a court order can. Mr. McRae said it could. He stated that they are trying to give some validity to the existence to these administrative orders for child support.

Rep. Eudaily asked if this would require rule making authority to implement HB 445 under administrative order. Mr. McRae said that they have the rule making under the Administrative Procedures Act already to establish these administrative orders. Mr. McRae stated that they didn't need an extension of this authority because they already have the authority to make an order.

Brenda Desmond addressed a question stating that she didn't think an extension is required in this bill because all they are doing is referencing the administrative order that is created under Title 40, chapter 5. All they are saying here is if that administrative order has been established somewhere else and if someone is not complying with it, then they can try to get a bond. So the administrative agency's role is finished by the time this problem arises.

Rep. Kruegar referred to section 5 of the bill. He doesn't see the need for the contempt language because the court already has those powers if an individual fails to abide by the orders. Mr. McRae placed it there for clarification.

There being no further discussion, the hearing closed.

CONSIDERATION OF HOUSE BILL NO. 446: Rep. Jan Brown, chief sponsor of this bill, testified in support of its passage. She said that this bill imposes a lien against real and personal property for unpaid child support. A copy of her testimony was marked as Exhibit E and is attached hereto.

John McRae testified in support of this bill. He said that under the federal law this procedure is left up to the individual states. There is no provision outlined for recording the lien. Mr. McRae referred to a statement made by John Cadby relating to this legislation. The statement was marked Exhibit F and attached hereto.

There being no further proponents or opponents, the hearing closed on HB 446. The floor was opened up for questioning.

Rep. Kruegar pointed our some problems in the bill.

In response to a question of Rep. Kruegar's, Mr. McRae said that this bill is mandated by the federal law but the procedure is up to the states.

Rep. Mercer asked if this bill will satisfy the federal statutes if subsection 3 and 4 are deleted. Mr. McRae stated that it would.

Rep. Hannah had questions with regards to the order of events on these liens if the bill were passed. Rep. Hannah stated that he doesn't have a lot of sympathy with the banks on one hand, but on the other hand, the loans were made based on certain facts that they initially knew. We are then coming in after the loan had been made and laying another card on the deck that may create a substantial burden on that particular debtor's ability to pay. I am wondering if we would satisfy the law if we said from this point forward . . Mr. McRae said the law would be satisfied because the federal statute provides that it is to take effect in October of 1985, and that type of language could be inserted.

Rep. Hannah wanted to know why this bill was needed if the liens can be put on now. Mr. McRae said that as it stands now, it is only applicable to real property in the state of Montana.

Rep. Hannah asked if the committee were to strike real property in this bill and leave only references to personal property, would we satisfy the mandate? Mr. McRae stated that they would have the same conclusion.

There being no further questions, hearing closed on HB 446.

CONSIDERATION OF HOUSE BILL NO. 447: Rep. Jan Brown, chief sponsor, of this bill, testified on its behalf. She said that HB 447 permits the attachment or garnishment of workers' compensation benefits for the payment of certain child support obligations. A copy of her testimony was marked as Exhibit G and is attached to the minutes.

John McRae expanded on Rep. Brown's testimony in regards as to what this bill will do. The intent of the bill is to pass the burden onto the businesses to each individual and make expense of these compensation as a part of doing business. In effect, the various business organizations are footing the bill for workmen's compensation, but they are also taxpayers.

Mr. McRae related some specific examples and the types of problems that the were trying to address. Mr. McRae stated that they did limit this to support orders being enforced by the revenue department.

There being no further proponents or opponents, Rep. Brown closed. Hearing closed on HB 447 and the floor was opened up for questioning.

Rep. Keyser asked if a person got a divorce and was then injured following the divorce, what would the injury payments he received be based on. Mr. McRae stated that payments for worker's compensation are set forth statutes, and it depends on various factors as to the amount he would receive. But it is all statutory. The marital status of the person has nothing to do with the amount of payment that he will receive from that injury, although the statute still provides for the family in case of death benefits.

Rep. Addy wanted to know what Mr. Blewett would think if the legislature adopted a policy that any necessary benefits could be the cause for a tax . . . . of workmen's comp benefits. Expenses necessary for food, other medical expenses, clothing, shelter, etc. Rep. Addy wonders where it all stops.

Mr. Blewett commented about the present law concerning attachment of workers compensation for medical payments. A special clause was added on to that section that said that the attachment may only be made when the insurer accepts liability in which case the attachment only rests between the medical provider and insurer. This circumstance doesn't seem to me to be too far from the individual himself. He has a responsibility.

CONSIDERATION OF HOUSE BILL NO. 448: Rep. Jan Brown, chief sponsor, testified in support of this bill. She said that this is an act to create a presumption of parentage whenever blood test results indicate a high probability of paternity.

Testifying on behalf of the bill was John McRae. He reviewed the serological testing procedure in cases of disputed paternity with the committee. He submitted an article dealing with the probability of paternity which was marked as Exhibit H and attached hereto. Also submitted were various articles pertaining to types of testing pertaining to this subject which have been marked as Exhibits I, J, K, and L and attached hereto.

There being no further proponents or opponents, Rep. Brown closed. The floor was opened up for questioning.

Mr. Kruegar wanted to know why if they have the right to challenge why do you need the presumption? Mr. McRae said for one, it shifts the burden and lets us know that they are challenging.

Mr. McRae stated that determining paternity without the existence of these genetic tests is very difficult. Mr. McRae said that in some cases, attorneys don't do their homework and require us to go through this whole testing process without even considering a reasonable settlement.

Rep. Mercer asked if the blood test shows that a person isn't the father, then the case is completely over. Mr. McRae said "yes".

Rep. Rapp-Svrcek asked how much of these pre-trial costs would you be able to save if this presumption were enacted into law.

Mr. McRae replied that every paternity case is investigated when it first comes in so that we satisfy in our own minds through our own investigators that we do, indeed, have a case. Then we file a petition with the court. Immediately after the parties are served, we would move for the pre-trial hearing before we go into any form of discovery. Based on the results of the pre-trial conference, we would ask for the blood tests. Based on the results of the test, we would either dismiss it or we would proceed with all the rest of the normal discovery. But if the tests indicated paternity and the burden shifted at that point, there would be no necessity for the rest of discovery.

Rep. Montayne expressed his concern over the fact that in one case we allow an individual to be penetrated for blood testing while in another case we disallow it. He feels that this is inconsistent and further feels that it is a violation of a person's constitutional rights.

There being no further discussion, hearing closed on HB 448.

CONSIDERATION OF HOUSE BILL NO. 456: Hearing commenced on HB 456 with Rep. Jan Brown, chief sponsor, testifying in support of it. She stated that this bill provides for support of children receiving public assistance during the pendency of a dissolution of marriage, legal separation, child support, invalidation of marriage, or modification of child support proceeding. A copy of her testimony was marked as Exhibit M and attached hereto.

John McRae testified in support of this bill. He said that typically, child support is a disputed area between parties. As a result in many cases, it gets lost in the adversarial process. We propose to become involved in some of these cases only when necessary to establish these pending orders prior to the final order. He stated that we have operated like this in the past when requested by the district court. We can logically assess what the needs of the child are, and what the ability of the parents is to provide for a child and make recommendations accordingly to the court. At present, we have only a limited legal capacity to intervene.

Rep. Hannah feels that a fiscal note would be appropriate for this bill. Following receipt of the note, the committee will take action on this bill.

Mr. McRae feels that these child support bills will bring in a sufficient amount of money. He said that they are returning more money to state through their present program than they are spending.

Rep. Addy recalled a bill from last session that made the level of AFDC payments the minimum level of support that could be presumed to be proper in a child support case. Is there some reason that that law doesn't have any effect in Montana? Mr. McRae stated that law was passed but it is not having an effect. It is part of 40-4-204.

There being no further questions, hearing closed on HB 456.

EXECUTIVE SESSION was called at 10:10 a.m.

ACTION ON HOUSE BILL NO. 442: Chairman Hannah informed the committee that this bill was considered yesterday. However, since no action had been taken on it, the bill has been stripped of all proposed amendments.

Rep. Rapp-Svrcek moved that HB 442 DO PASS. The motion was seconded by Rep. O'Hara and discussion followed.

Rep. Mercer stated that he intends to propose an amendment. The Department of Revenue provided Rep. Mercer with a case that the Supreme Court decided. It does distinguish between state agencies and other people and children so that when we amend this bill, we can say that everyone other than the child is foreclosed within three years after the date of birth, but the child has to have some time after age 18. Rep. Mercer doesn't want to adopt the amendment he proposed yesterday because it would extend the statute of

limitations way too long. So what the amend would say is for anyone other than the child, the action must be brought three years after the birth of the child. But with respect to the child, a child could bring an action anytime but not later than 2 years after obtaining the age of majority.

Brenda Desmond, committee researcher, had a question at this point. When a person applies for public assistance, they have to assign certain rights to the department to pursue claims on behalf of the person who is receiving the public assistance. Do they assign the right to file a paternity action against the father of the child? Mr. McRae stated that they do assign the rights, but nevertheless, even in spite of such an assignment, the case referred to (Wilson case) would foreclose us from the ability to pursue child support after the child is 3 years old.

Rep. Mercer proposed the following language: on line 3, page 2, reinsert the stricken material and add after the stricken material, ", except the child, however, may bring an action at any time, but in no event later than 2 years after the child attains the age of majority".

Brenda expressed concern that some kind of distinction be made between actions brought by the child, actions brought by the guardian or parent of the child on behalf of the child, and actions brought by the department under a right that has been assigned. You want a chance to cut off the department, but you don't want to cut off the child or the parent from being able to file on behalf of the child until he reaches 18.

Rep. Mercer stated the trouble he sees if we don't put a statute of limitations on the department. It is very possible that there could be a serious abuse after the child turns the age of 18, and a putative father could end up with tremendous child support obligations to the state.

Rep. Hannah asked if we were to reinsert the language on page 3 so that it read, "brought later than 3 years after the birth of the child." and added a new sentence, which said, "The child, however, may bring an action no later than two years after that child obtains the age of majority" -- is that the same as you would want. Rep. Mercer said it would solve his problem.

In response to a question asked by Rep. Gould, Rep. Mercer said that in the case of a retarded child, the guardian can exercise the rights of the child.

No action was taken at this time.

ACTION ON HOUSE BILL NO. 444: Rep. Hammond moved that HB 444 DO PASS. The motion was seconded by Rep. Brown. The committee agreed to postpone action on HB 444 until HB 443 is acted upon since the bills are tied together.

ACTION ON HOUSE BILL NO. 445: Rep. Hammond moved that HB 445 DO PASS. The motion was seconded by Rep. O'Hara and discussion followed.

Rep. Kruegar moved to amend HB 445 on page 1, line 8, by striking "SHALL" and inserting "MAY". Also, on line 20, strike, "shall" and insert "may".

Rep. Kruegar further moved to amend on page 2, line 7 after "security" strike "must" and insert "may" and after "in" strike "the" and insert "an"; further amend page 2, line 8 by striking "of" and inserting "up to".

Rep. Kruegar further moved to amend page 2 by deleting subsection 5 in its entirety.

Rep. Darko seconded the first part of Rep. Kruegar's motion to amend by striking "shall" and inserting "may".

Rep. Kruegar said this amendment would allow courts to look at each individual case and decide accordingly.

Reps. Mercer, Brown and Gould spoke in favor of the amendment. Upon request of Rep. Mercer, the amendment was divided.

With regard to Rep. Kruegar's firt amendment to amend Section 1 of the bill by striking on line 20 the word, "shall" and inserting "may" and then again on page 2, line 4 striking the word, "shall" and inserting "may", the motion failed. (See roll call vote.)

Rep. Kruegar moved to amend page 2, line 7 by striking "must" and inserting "may" and then by striking "the" and inserting "an". Furthermore, amend page 2, line 8 by striking "of" and inserting "up to".

Rep. Eudaily suggested amending the title of the bill on line 9 by striking, "EQUAL" and inserting "UP" to make it consistent with the above amendment proposed by Rep. Kruegar. There being no opposition to this suggestion, it was made a part of Rep. Kruegar's motion. The motion was seconded and carried unanimously.

Rep. Kruegar further moved to delete subsection 5 in its entirety. He doesn't see its necessity. The question was called, the motion was seconded and carried unanimously.

Rep. Mercer moved that HB 445 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara and further discussed.

Rep. Brown stated that he supports the intent of this bill but without Rep. Kruegar's first proposed amendment, he feels that it takes away areas in which the court deserves as much discretion as it needs in order to deal with the various cases it hears. Upon that, Rep. Brown moved that HB 445 BE TABLED. The motion was seconded by Rep. Kruegar and a roll call vote taken. Motion to table failed 6-10.

Rep. Mercer doesn't feel the judge will be put in a bind at all in determining some of these cases. He says there are plenty of protections as provided in the bill for the person who makes child support payments. He feels that the bill provides crystal clear language as is.

Question was called and the motion to pass the bill as amended was voted upon. The motion was carried with Rep. Brown dissenting.

BACK TO HOUSE BILL NO. 442: Rep. Mercer moved that HB 442 DO PASS. The motion was seconded by Rep. O'Hara and discussion followed.

Rep. Mercer moved to amend the title of the bill on line 6 following the word "BROUGHT" insert the words, "BY THE CHILD" following the word "UNTIL" insert "TWO YEARS AFTER" and on the same line following "CHILD" strike "BECOMES 21 YEARS OF AGE" and insert "ATTAINS THE AGE OF MAJORITY AND BY ANY OTHER INTERESTED PARTY UNTIL 3 YEARS AFTER THE BIRTH OF THE CHILD". Rep. Hannah seconded the motion.

One page of 2 following "may" strike "not"; on line 3, following "brought" insert "by the child no later than 2 years after the child attains the age of majority and by any other interested party no"; following "of" insert "the birth of".

Rep. Addy stated that we are stating a statute of limitation as a permissive rather than a limitation. he wonders if we should say "may not" rather than "may". Brenda stated that this could be done.

Rep. Addy stated another problem he had and that being if the child is over the age of 3 years when the mother first applies for AFDC, the Department of Revenue will have no opportunity at all to determine the paternity. He wondered if this was the intent of the committee.

Rep. Mercer stated that the whole purpose behind a statute of limitation is so that a person can breathe easily at some time in his life. It is different in his mind to have a child seeking out his father when he is 18 years old, 20 years old -- is a heck of alot different from having the Department of Revenue coming after you 10, 15, 20 years after you may or may not have cared for the child.

The question was called on the amendment, and the motion to amend carried with Reps. Brown, Eudaily, Darko, Grady, Kruegar, Bergene and Miles voted against the amendment.

Rep. Addy moved to amend HB 442 to make the three years reference to one year and also to provide that the department may bring an action within one year after the mother has applied for AFDC. Discussion followed.

Rep. Montayne further moved to pass consideration on this bill today. The motion was seconded by Rep. Kruegar and failed.

Rep. Brown moved a substitute motion that the original language of "three years" be kept. (He later withdrew this motion)

Rep. Hannah spoke against Rep. Addy's motion. It is my feeling for any number of reasons where someone conceivably not know that he was the father. He thinks there needs to be a point where the mother needs to indentify the father. It is more than reasonable to say that three years after the birth of the child is an appropriate time.

Rep. Bergene made a substitute motion to keep the language as it was drafted originally. (Referring to 21 years of age) She stated that she didn't want to vote on any statute of limitation. The motion was seconded by Rep. Montayne.

Rep. Mercer spoke against Rep. Bergene's motion stating the statute of limitation should be kept. The question was called and motion failed. (Reps. Grady, Darko, Montayne, Bergene, Miles, Kruegar and Brown voted in favor of the substitute motion)

Rep. Addy stated that the first part of his amendment provides that the department may bring an action within one year after the mother applies for AFDC.

The second part would limit the child's ability to bring an action after they attain the age of legal majority to one year after that date.

The committee voted on Rep. Addy's first amendment. (See roll call vote) Motion passed 10-6.

The committee voted on Rep. Addy's second amendment which would limit the child's ability to bring an action after they attain the age of legal majority to one year after that date. Motion failed 5-11. (See roll call vote)

Rep. Hammond moved that HB 442 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara and motion carried unanimously. Brenda Desmond will prepare appropriate amendments and submit them to the committee for review.

ADJOURN: A motion having been made and seconded, the meeting adjourned at 11:25 a.m.

Tom Hannah

REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/30/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff			✓
Paul Rapp-Svrcek	✓		

EXHIBIT F
1/30/85
HB 446

submitted by John Cadby
MOntana Bankers Asso.

MONTANA H. B. 446
(as introduced)

Lien For Child Support -
Judgment Or Order

SYNOPSIS:

This bill creates a confusing set of procedures with respect to judgments or orders for unpaid child support. The bill provides that "every judgment or order for child support issued by a district court" is to become a lien upon the property of the obligor or as to any property he may acquire at any time until the lien ceases. The act also provides that the lien is "in addition to any other lien created by the judgment or order." The act provides that "the lien is foreclosed in the manner provided for the foreclosure of judgment liens."

SUGGESTED POSITION:

Opposition to the bill as written.

COMMENT:

This bill ignores the fact that judgments for child support are controlled by existing law. The bill would call for codification of these new and confusing procedures as a part of Title 40, chapter 4, part 2, which deals with child support.

The bill ignores completely the fact that judgment liens are regulated by Title 25 pursuant to §71-3-1504 (liens in general are covered by Title 71, chapter 3 et seq.)

Under Title 25, and specifically §25-9-301 et seq., there are provisions for the docket of a judgment, including a judgment for child support. Under §25-13-101 et seq. the enforcement of a judgment is controlled by the provisions thereof which allows for a writ of execution.

The apparent intent of this bill is to create some sort of a special lien for child support which is neither controlled by the general lien provisions under Title 71, chapter 3, nor the judgment lien provisions under Title 25.

Apparently it is the intent of this bill to allow a child support order (not a judgment) to be a lien upon all of the obligor's property or any after acquired property and for the lien to be enforced by giving notice to anyone having possession of property or owing a debt. Under present law clerk of the court is required to record judgments in the judgment book pursuant to §3-5-507. There appears to be no provision for recording or establishment of liens and it would be impossible to check court records for the various types of orders which relate to unpaid child support. A better solution is to require child support judgments or orders to be filed as judgments and then allow enforcement of the liens created thereby under existing law.

This bill could cause difficulty for lending institutions in attempting to determine lien priorities.

George T. Bennett 1/28/85
442-8950
Opinion No. 27

STANDING COMMITTEE REPORT

January 30 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 445

FIRST reading copy (WHITE color)

REQUIRING PERSON DELINQUENT IN CHILD SUPPORT PAYMENTS TO POST BOND

Respectfully report as follows: That HOUSE Bill No. 445

be amended as follows:

1. Title, line 9.
Strike: "EQUAL"
Insert: "UP"

2. Page 2, line 7.
Strike: "must"
Insert: "may"

Strike: "the"
Insert: "an"

3. Page 2, line 8.
Strike: "of"
Insert: "up to"

4. Page 2, following line 20.
Strike: subsection 5 in its entirety.

DO PASS

AND AS AMENDED,
DO PASS

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/30/85 BILL NO. 445 TIME 10:35

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		
Kurt Krueger	✓	
John Mercer		✓
Joan Miles		✓
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Kruegar moved to amend section 1 of the bill on lines 20 and on page 2, line 4 by striking "shall"and inserting, "may". Motion was seconded by Rep. Darko and failed.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/30/85 BILL NO. 445 TIME 10:45

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		
Kurt Krueger	✓	
John Mercer		✓
Joan Miles		✓
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Brown moved that HB 445 BE TABLED. The motion was seconded by Rep. Kruegar and failed 6-10.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/30/85 BILL NO. 442 TIME 11:20

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser		
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved that the committee adopt an amendment providing that the Dept. of Revenue may bring an action within one year after the mother applies for AFDC. The motion was seconded and carried 10-6.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/30/85 BILL NO. 442 TIME 11:20

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		
Kurt Krueger		✓
John Mercer		✓
Joan Miles		✓
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved that amendment be adopted which would limit the child's ability to bring an action after they attain the age of legal majority to one year after that date. Motion failed 5-11.

EXHIBIT A
House Bill 444
House Judiciary
1/30/85

Mr. Chairman and Members of the Committee:

For the record, I am Jan Brown, House District 46.

House Bill 444 requires child support orders to state that if the person obligated under the order to pay support is delinquent in the payments, his income will be subject to withholding procedures.

The new federal legislation requires the states to enact a law requiring that all new or modified child support orders include a provision in the order for income withholding when an arrearage occurs.

Montana presently does have an income deduction act, but the Montana act does not require reference to such procedures to be part of the child support orders.

Without the necessity of creating new income deduction procedures, by requiring support orders to merely reference the existing income deduction procedures, Montana will be in compliance with the new federal law.

The fact that such a reference is made part of the support order is to put the obligor on notice that income deductions may be imposed, and therefore tend to discourage default.

I have other proponents and staff persons here to answer questions.

EXHIBIT B
1/30/85
HB 444

Child Support Enforcement 86-87 Modification

1. In August 1984, HB 4325 or the "Child Support Enforcement Amendments of 1984" was passed by Congress. The bill:

   a) mandates program activity in child and spousal support areas regardless of public assistance receipt
   b) pushes the responsibility for interstate enforcement on to the Child Support Enforcement Program (CSEP)
   c) requires the use of several new and hopefully more cost effective tools:

      (1) mandatory wage assignments for in- and out-of-state obligors
      (2) state tax offsets for in- and out-of-state applicants
      (3) federal tax offsets for all applicants who have a Montana order or where the custodial parent is receiving assistance in Montana
      (4) expedited process to establish support orders for in- and out-of-state orders.

2. These requirements will result in a substantial caseload increase for the Montana CSEP. Estimates are based on current caseload figures, apparent increased use of a more effective and efficient collection system and experiences of other states. Three specific areas will require increased staffing and a fourth will require additional funding only:

   a) the NAFDC caseload will increase by 200% due to mandatory publicity programs and the use of federal tax offset for all families receiving IVD assistance

b) the support payments unit will be required to handle some 93,000 payments per year as compared to 29,000 currently

c) a new interstate unit will be required to provide out-of-state wage assignment, state tax offset, federal tax offset, expedited support order establishment and more rapid hearing procedure services

d) expedited process and more effective enforcement tools mean greater use of the administrative process. Additional contracted hearings officer expense will therefore be incurred.

3. For your further information, a line itemed budget breakdown is attached.

SUPPLEMENTAL BUDGET FY 86, 87
CHILD SUPPORT ENFORCEMENT PROGRAM
To Comply with
FEDERAL "CHILD SUPPORT ENFORCEMENT AMENDMENTS 1984"

		FY 86	FY 87
1000	PERSONNEL SERVICES		
1100	Salaries		
1101	Regular (13 FTEs)	$181,252.00	$181,252.00
1100	Total	$181,152.00	$181,152.00
1400	Employee Benefits		
1401	FICA @ .067	12,143.88	12,143.88
1402	Retirement @ .064170	11,630.94	11,630.94
1403	Insurance @ 100 x 1 yr x 13 FTEs	15,600.00	15,600.00
1404	Workers Comp. @ .008	1,450.02	1,450.02
1410	State Unemployment Tax @ .005	906.26	906.26
1400	Employee Benefits Total	41,731.10	41,731.10
1000	Personal Services Total	$222,983.10	$222,983.10
2000	OPERATING EXPENSES		
2100	Contracted Services		
2102	Consulting & Professional Services	25,000.00	25,000.00
2110	Printing	2,000.00	2,000.00
2135	Education & Training	1,500.00	1,500.00
2100	Contracted Services Total	28,500.00	28,500.00
2200	Supplies and Materials		
2225	Books & Reference Materials	300.00	300.00
2236	Office Supplies/Central Stores	2,000.00	2,000.00
2241	Office Supplies/Non-state Proc.	400.00	400.00
2200	Supplies & Materials Total	2,700.00	2,700.00
2300	Communications		
2301	Local Service & Equipment	6,530.23	6,530.23
2302	Long Distance Service	2,000.00	2,000.00
2304	Postage & Mailing	4,000.00	4,000.00
2309	Advertising	2,500.00	2,500.00
2314	Telephone STS Usage	7,663.00	7,663.00
2316	Telephone One-time Charges	500.00	500.00
2300	Communications Total	23,193.23	23,193.23
2400	Travel		
2407	In-state Meals	250.00	250.00
2408	In-state Lodging	250.00	250.00
2400	Travel Total	500.00	500.00

2500	Rent		
2527	D/A Buildings	7,521.32	7,521.32
2500	Rent Total	7,521.32	7,521.32
2700	Repair & Maintenance		
2704	Office Equipment	500.00	500.00
2750	Maintenance Contracts	1,278.00	1,278.00
2700	Repair & Maintenance Total	1,778.00	1,778.00
2800	Other Expenses		
2809	Registration Fees for Training Contract	1,300.00	1,300.00
2800	Other Expenses Total	1,300.00	1,300.00
2000	Operating Expenses Total	$65,462.54	$65,462.00
3000	EQUIPMENT		
3112	Office Equipment	37,558.00	-0-
3000	Equipment Total	37,558.00	-0-
	TOTAL	$326,033.00	$288,475.00
	General Fund	97,809.90	86,542.50

* Estimates are made with FY 1984 figures and do not account for inflation.

Remarks of the President at Signing Ceremony at Child Support Conference

August 16, 1984, Washington, D.C.

THE PRESIDENT: Thank you. And thank you for letting me join you.

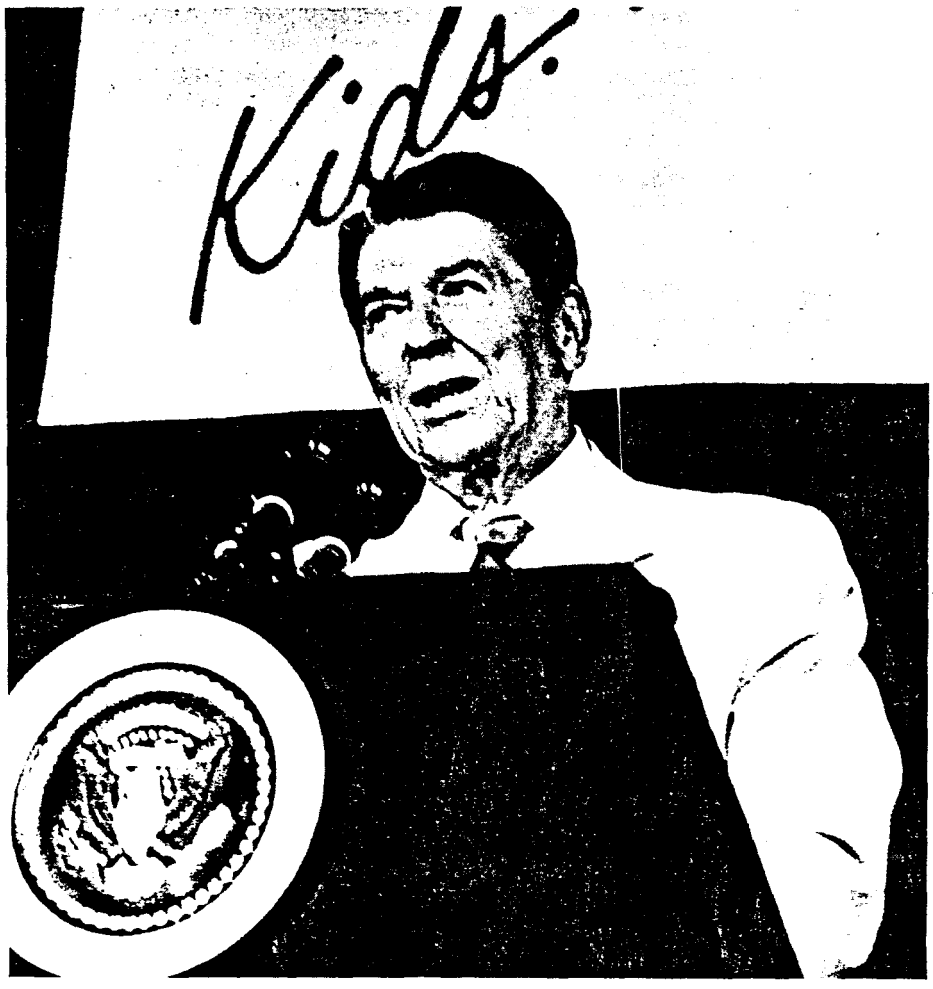
This symposium is an example of the commitment with which Margaret Heckler—Secretary Heckler—and this administration are approaching the very important problem of child support enforcement. And with your help we hope to put the new authority for child support enforcement provided by House Resolution 4325 into practice quickly and efficiently. The advice from this symposium should help us get things off to a running start.

"One in four American children live in single-parent homes"

Of course, advice from "on high" isn't always as pleasant as the guidance that we're getting here. Perhaps you heard about that fellow that fell off a cliff and about half way managed to grab a shrub or a limb sticking out from the side of the cliff. He was dangling about 500 feet above the rocks down below. And he looked up and yelled, "Is anyone up there?" and no one answered. He yelled, "Lord, if you're up there, tell me what to do." And a voice came from the heavens and said, "If you believe, let go." And he took another look at the rocks down below and said, "Is there anyone else up there?" Well, we've had some children in this country, and they've been dangling above the rocks waiting for help.

"The failure of some parents to support their children is a blemish on America."

And today we sign into law legislation that will give them the helping hand they need. It's an unfortunate fact of our times that one in four American children live in single-parent homes and millions of these children endure needless deprivation and hardship due to lack of support by their absent parent.



President Reagan addresses Symposium attendees after the bill signing ceremony.

The failure of some parents to support their children is a blemish on America. As a decent and caring people, it behooves us to come to grips with the devil-may-care attitude of some of our citizens that has left too many children in dire straits.

Understanding the situation, we've already moved forward to do what we can. In this administration, the Department of Health and Human Services has put a special emphasis on the Federal-State child support enforcement program. In 1983, this program collected some $2 billion in support for the children. Yet this is still only a portion of what is owed. And with billions of dollars still unpaid each year, our child support enforcement system needs new tools, new muscle, and new commitment throughout the nation. And that's what this legislation is all about.

"Our child support enforcement system needs new tools, new muscle, and new commitment . . ."

continued on page 4

Remarks of the President at Signing Ceremony

continued from page 3

Last year, I proposed that we bolster our Federal-State child support system by mandating effective and proven collection practices. I believe that we should emphasize service to all children, welfare and non-welfare alike, and improve incentives for state government to get the job done. The Child Support Enforcement Amendments bill contains all these features.

This legislation represents a significant break from the tradition of simply throwing tax money at a problem. Instead of creating more dependency on

"We're requiring responsible behavior by our citizens . . ."

government, we're requiring responsible behavior by our citizens. And this is the kind of innovative and principled approach to problem-solving that will make a difference. It will not only make a difference in the lives of our children, but for so many women who have been forced through no fault of their own on to welfare rolls due to abandonment. Left with the full load to bear, they often find themselves trapped in a cycle of unhappiness and destitution.

The goal of our efforts is not just the transfer of funds. We also hope to discourage abandonment, and, if families do split up, to encourage the absent parents to invest time and love in their children. Permitting individuals to ignore parental obligations and giving the bill to the taxpayers in the form of higher welfare costs have been tantamount to a stamp of approval. And this is not the kind of message public policy should be sending out.

". . . it's deeds, not words, that count . . ."

There's been much talk of late about importance of family and traditional values in our society. Well, that's a traditional—or a welcome change, I should say—from the days when the simple virtues of goodness and decency were often laughed out, even ridiculed. But one thing is certain—it's deeds, not words, that count. Many policies of the past were anything but supportive of the family. Programs like this, on the other hand, are not only aimed at justice for the children, but also at encouraging ethical behavior and bolstering vital social institutions like the family.

We hope that by placing the responsibility where it should be, on the parent, people will be encouraged to make moral decisions. Our administration is trying to bring this kind of spirit to all its endeavors.

I want to congratulate everyone concerned with this effort. By passing this legislation, the Congress has acted honorably, in the best bipartisan manner, for the benefit of children who really need the help.

"We hope that by placing the responsibility where it should be, on the parent, people will be encouraged to make moral decisions."

Many people deserve thanks on this occasion for what they've done to make this possible. Those of you here on the platform have earned a special word of appreciation.

Since the Congress is in recess, many other members who worked long and hard on this bill can't be with us. And I want to express my special appreciation to Senate Finance Committee Chairman Dole, Senators Bill Armstrong and Russell Long, under whose able management the legislation passed in the Senate. In the House, Dan Rostenkowski, Carroll Campbell, Barbara Kennelly and Barber Conable were instrumental in steering the bill through the legislative process.

State and local governments have also been a positive force. And I believe this legislation underscores a change that's taken place in the way we do things. As demonstrated by this symposium, we've developed new working partnerships with State and local government, and, in the months ahead that working relationship will be put to use to carry out this new law with maximum effectiveness.

"new working partnerships with state and local government"

And you've already heard a little bit of history about my home State of California and all. And it was a part of a key welfare overhaul reform at that time. And our success was what moved me to testify before the Senate Finance Committee in support of a nationwide child support enforcement system. So, as you can tell, I have a very special reason myself to celebrate today.

"I believe this legislation underscores a change that's taken place in the way we do things."

And with that said, I shall go sign House Resolution 4325, the Child Support Enforcement Amendments of 1984. ■

EXHIBIT D

House Bill 445
House Judiciary
January 30, 1985

Mr. Chairman and Members of the Committee:

For the record, I am Jan Brown, House District 46.

House Bill 445 provides that if a person obligated to pay child support becomes delinquent in an amount equal to the total of 3 months' support payments, the court shall order the obligated person to post bond or other security in an amount equal to the total of 2 years support payments.

Current Montana case law authorizes the courts in enforcing support orders to require bonds or other security to insure payment. However, the new federal legislation requires that states which receive federal funds for public assistance confer such authority upon state courts by statute. The federal legislation also requires that the person owing past due child support be given notice and opportunity for a hearing prior to imposition of the bond or security orders.

I have other proponents and staff persons to answer questions.

EXHIBIT E

House Bill 446
House Judiciary
1/30/85

Mr. Chairman and Members of the Committee:

For the record, I am Jan Brown, House District 46.

House Bill 446 imposes a lien against real and personal property for unpaid child support.

The new federal legislation requires that procedures be established for the imposition of liens on real and personal property of the obligor to secure the payment of child support. To give effect to the intent of the federal law, House Bill 446 creates a lien having the priority of a secured creditor. It also provides for a procedure to enforce the lien by allowing the obligee to put a hold on any property of the obligor held by third parties.

I have other proponents and staff persons to answer questions.

EXHIBIT G
House Bill 447
House Judiciary
1/30/85

Mr. Chairman and Members of the Committee:

For the record, I am Jan Brown, House District 46.

House Bill 447 permits the attachment or garnishment of workers' compensation benefits for the payment of certain child support obligations.

The purpose of the Workers Compensation fund is to guarantee a certain amount of income to permit an injured worker to meet the worker's needs and the needs of the worker's dependents.

However, many injured workers, especially divorced ones, fail to contribute any part of their compensation toward the support of dependent children residing with an ex-spouse. Consequently, these children are forced to rely on public assistance at the expense of the taxpayers.

Since at least part of the workers compensation is paid by the taxpayers, the taxpayer is in effect paying twice for the support of the same dependent child.

This bill will correct, or at least minimize, the double expense by permitting the state child support enforcement agencies to recover some if not all of the public assistance paid out of the compensation benefits.

I have other proponents and staff persons to answer questions.

by Michael C. Hubbard,
Andrew S. Goldstein and
Denis R. Burger

Probability of paternity: what

The use of serological testing in cases of disputed paternity has become a well recognized legal application of a medical procedure. The definition and application of new blood groups in the last two decades and, more recently, the development of HLA typing (tissue typing), have dramatically improved the ability of paternity testing to identify the falsely accused man.[1,2] In addition, when an alleged father is *not* excluded, useful information concerning the likelihood of paternity or the degree of inclusion has been provided through statistical analysis.

From a scientific standpoint, the methodology required to translate HLA and red blood cell (RBC) types into numerical probabilities is well documented.[3,4] All methods are based on sound scientific reasoning. However, such methods and the statistics they generate rely on more than a layman's knowledge of genetics, mathematics and probability statistics for proper interpretation.

How then might a legal professional or a lay jury properly interpret a paternal probability derived from HLA and RBC types? Also, the question of how much probative weight such statistics deserve must be answered.

Calculations accompanying paternity test results may have a variety of terms assigned to them, depending on the laboratory's statistical method. However, there are two commonly used inclusionary statistics which can be calculated from a comprehensive paternity test.[5] For the purposes of this article we will term them probability of exclusion (PE) and probability of paternity (PP). Each of these statistics can, in turn, be presented in two forms, a percentage and an odds ratio (also referred to as exclusion or paternity index). Probability of exclusion and probability of paternity are derived from the same raw data: the gene frequencies of the antigens identified by the paternity test. But they differ in the degree of calculating complexity.

Probability of exclusion

Probability of exclusion is the less highly calculated paternity testing statistic of the two. It looks only at the random population of the same race as the alleged father and answers the following question: Given the antigens identified in a paternity test, what percentage of the population would be excluded as the biological father? This is the PE percentage. Stated as the PE odds ratio, the above question would be presented as follows: What are the odds against selecting a man at random, from the same race as the putative father, who would qualify as the biological father of the child? Thus, we have two methods for answering the same question of probability, each providing a somewhat different perspective.

The method used to calculate probability of exclusion is uncomplicated. It begins by determining the percentage of the population which would qualify as the biological father. This figure is the product of the antigen frequencies in the population for each system measured by the paternity test and shared by the putative father and child.

As an example, consider a test where the ABO system of the red cell factors is used in conjunction with the HLA system of tissue typing. A paternity test determines that a child inherited blood type O and HLA factors A3 and B5 from the biological father. Probability of exclusion is the product of the percentage of the population possessing O (44 per cent), A3 (23 per cent) and B5 (10 per cent). Multiplying 0.44, 0.23 and 0.10 we get 0.01 or one per cent. Subtracting one per cent from 100 per cent we arrive at a PE percentage of 99 per cent. Dividing 100 by one we arrive at a PE odds ratio of 100 to one. The above questions are therefore answered by stating that, in this example, 99 per cent of the population would be excluded by a paternity test which measures ABO and HLA. Stated in terms of an odds ratio, the odds against selecting a compatible man are 100 to one.

The advantage of PE is that it makes a simple statement with a minimum of data reduction. Thus the questions answered by PE are uncom-

lo the numbers mean?

icated and not likely to lead the ader to a faulty conclusion.
The above calculation illustrates other important point. Only the 3O and HLA systems were used in e above example and yet, a fairly gh PE percentage of 99 per cent was otained. It should be clear that the ore genetic systems a laboratory easures in a paternity test, the gher will be the PE percentage. tional RBC systems such as Rh, NS, Kell and Duffy increase the ower of the paternity test to both clude and to provide more convinc- g inclusionary statistics. The single ost powerful system in the paternity st is HLA.

Probability of paternity

Unlike probability of exclusion, robability of paternity compares the kelihood that sperm produced by ie putative father could supply the ecessary genetic information to the hild as opposed to sperm from a andom man supplying such informa- on. The calculations required to roduce PP either as a percentage or n odds ratio (sometimes referred to s paternity index) are complex and eyond the scope of this discussion. t can be stated, however, that one of he advantages of PP is that it takes nto account more of the available enetic and mathematical data gener- ted by the paternity test, thereby viding a more sophisticated nalysis. But several points should be made to aid in the accurate interpretation of PP.

Stated as a percentage, PP indicates how often one would be correct in assuming that the putative father is, in fact, the biological father in any given paternity test. A PP of 95 per cent for the putative father does *not* imply that five per cent of the random, male population is compatible as the biological father.

Probability of paternity can also be stated as an odds ratio. This form of PP may help to avoid another misinterpretation of the PP percentage.

Consider the three PPs: 90 per cent, 99 per cent and 99.9 per cent. It might appear to some that a 90 per cent probability is only nine per cent less convincing than 99 per cent, or that 99 per cent is merely 0.9 per cent less convincing than 99.9 per cent. In fact, 99.9 per cent is 10 times more convincing than 99 per cent and 100 times more convincing than a statistic of 90 per cent.

Difficulty in grasping the magnitude of differences among certain closely spaced percentages might require one to ignore PP percentages in favor of the odds ratio. The PP odds ratios corresponding to each of the percentages listed above are as follows:

99.9 per cent — 1000 to one
99.0 per cent — 100 to one
90.0 per cent — 10 to one

The magnitude of difference among these statistics should now be clear.

When used as evidence in a paternity dispute, probability of paternity may be accorded excessive weight if the percentage of odds ratio is low. From a statistical point of view, a PP of 95 per cent or higher may be regarded as strong evidence of paternity, with 90-95 per cent marginally significant and under 9[illegible] per cent essentially non-informativ[illegible]

Scientific evidence is usually

continued on page 14

Probability of paternity	*Paternity index*	*Likelihood of paternity*
99.8 - 99.9 per cent	greater than 399 to one	practically proved
99.0 - 99.7 per cent	greater than 95 to one.	extremely likely
95.0 - 98.9 per cent	greater than 19 to one	very likely
90 - 94.9 per cent	greater than nine to one	likely
80 - 89.9 per cent	greater than four to one	certain hint
less than 80 per cent	less than four to one	not useful

Adapted from Paternity Testing, AABB, 1978.

viewed in this very manner an event (in this discussion, the discovery of a non-excludable putative father) is considered significant only if it could have been caused by random chance less than or equal to five per cent of the time. This cut-off for significance is arbitrary, but conservative. It demands that, in the case of a paternity test, probability of paternity be much more convincing than 50 per cent before being used in any decision making process.

Another way to view probability of paternity statistics is shown in the accompanying table, where verbal predicates have been assigned to the numbers, expressing varying degrees of certainty as to the likelihood of paternity. *See page 13.*

Despite a thorough explanation of statistics to a jury, many individuals may fail to assign the proper weight · interpretation to the numbers. What remains is some form of graphic analysis whereby the numbers are related to visual or "real-life" concepts. For example, the odds against selecting a random man who qualifies as a biological father might be equivalent to the odds against being dealt a full house in five-card poker.

The legal community expects and deserves responsible paternity testing and paternal probabilities are a vital part of the test when exclusion is not established. Clearly, the scientific community has the responsibility to present statistical evidence of paternity in a manner which will avoid misinterpretation and faulty reasoning by the attorney or the juror.

FOOTNOTES

1 Hubbard M and Goldstein A Paternity exclusion by HLA testing On file at most Oregon law libraries. Synopsis in *Oregon State Bar Bulletin*, March 1979

2 Terasaki P Resolution by HLA testing of 1000 paternity cases not excluded by ABO testing *Journal of Family Law* Univ of Louisville Vol 16 No 1 1978

3 C.L. Salmon evaluation of disputed [illegible] CLINICAL DIAGNOSIS BY LABORATORY METHODS Ed 16 Philadelphia W B Saunders

4 Walker R Probabilities in the analysis of paternity test results in *Paternity Testing* AABB Nov 1978

5 Ibid

HLA TISSUE TYPING LABORATORY
DEPARTMENT OF SURGERY
UNIVERSITY OF CALIFORNIA, LOS ANGELES

01/28/82

PT OF REVENUE
VESTIGATION DIVISION
SCO BLDG RM 406
01 SECOND AVE NORTH
EAT FALLS MT 59401

ar SIRS:

following are the results of the blood test performed on (putative father) [redacted] MARK, (mother) [redacted] JANET, and (child) [redacted] DUANE.

	HLA Phenotype	Red Cell Phenotypes
tative Father:	A3 Aw23 B8 BW22	A , ccddee, MNSs
ther:	A1 - B37 B17	O , CcDee , MNSs
ild:	A1 - BW50 B17	A , CcDee , MNSs

results of HLA tissue typing demonstrate that the father of [redacted] DUANE uld have groups - /BW50 or A1/BW50. Since [redacted] MARK does not have these oups, he can be excluded as the father of [redacted] DUANE.

I may be of further assistance in this case, please contact me at the oratory (213) 825-7651.

Sincerely,

PATERNITY EVALUATION
for Paul I. Terasaki, Ph.D.
Professor of Surgery

Exhibit I
1-30-85
H.B. 448

RESOLUTION BY HLA TESTING OF 1000 PATERNITY CASES NOT EXCLUDED BY ABO TESTING

by Paul I. Terasaki*

I. INTRODUCTION

A revolution in paternity testing is currently underway with the introduction of HLA testing. The HLA system of tissue types is so powerful in determining the probability of paternity that many of the older rules of evidence for blood tests in disputed paternity cases now require complete revision.

Generally, it has been assumed by American courts that blood testing is only valid for exclusion of paternity. This conclusion is based on the fact that when the putative father is not excluded by ABO testing, his chances of actually being the father are not usually high. Thus, for purposes of blood test evidence, any random male could have been the father almost as easily as the nonexcluded putative father. With HLA testing, the probability of a nonexcluded male being the actual father is usually over 90%.

This high degree of discrimination in either excluding or including, with a high probability, a given male is a result of the extreme diversity of HLA types in the population.

---

* B.A., 1950; M.A., 1952; Ph.D., 1956; University of California at Los Angeles, Professor of Surgery, School of Medicine, UCLA; member World Health Organization Nomenclature Committee for Leukocyte Antigens; member of editorial boards of several scientific journals including the *Journal of Immunogenetics*. The author is an internationally recognized authority on histocompatibility immunology and has written over 350 papers on HLA. He was the 1977 recipient of the Philip Levine Award of the American Society of Clinical Pathology for outstanding contributions to the field of blood grouping immunology.

The author wishes to acknowledge the critical aid in performing this work and in gathering the data received from Dr. Domenico Bernoco, Dr. M.R. Mickey, Mr. David Gjertson, Ms. Judy Bond, and Mrs. Sondra Perdue.

For the legal implications of HLA testing for paternity, *see* introductory material 16 J. FAM. L. 537 (1977-78) (in this issue).

Most people are "rare" types because only about one out of a thousand people will have a similar HLA type. Consequently, this relatively rare type can be looked for in the child of any given mating. If the child has the same rare type as the putative father, the man is likely to be the actual biological father. On the other hand, if the putative father is wrongly accused, he can usually be excluded because the child would have inherited a different rare type from the actual father.

Numerous recent reports have summarized the advancement of paternity testing since HLA testing has become possible. For example, the joint AMA-ABA guidelines for serologic testing in paternity cases[1] clearly states that the HLA test is by far the most powerful single paternity test for exclusion. Theoretical calculations which support this statement have been provided by European authorities.[2] The HLA system has now been used in Europe for five years,[3] and to a more limited extent in the United States.[4] The basic statistical formulas used in calculating the probability of paternity are predicated on Bayes' Theorem[5] as applied by Essen-Möller.[6]

In this report, we present data on the largest series of cases to date in which HLA typing was performed. Essentially all of these cases were referred to us because the ABO red cell tests were inconclusive. The remarkable power of the

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[1] Abbott, *Joint AMA-ABA Guidelines: Present Status of Serologic Testing*, 10 FAM. L. Q. 247 (1976).

[2] Speiser, *Chances of Paternity Exclusion in Tabular Form*, 143 Z. IMMUNITAETSFORSCH 203 (1972); Mayr, *The HL-A System in Paternity Testing - Das HL-A System in der Paternitatsserologie*, 75 Z. RECHTSMED. 81 (1974).

[3] *See* Jeannet, Hassig & Berhheim, *Use of the HL-A Antigen System in Disputed Paternity Cases*, 23 VOX SANG., 197, 197-200 (1972); Spielmann & Seidl, *The Application of the HL-A System in Cases of Disputed Paternity—Zur Anwendung des HL-A Systems in der Paternitatsserologie*, 74 Z. RECHTSMED. 121 (1974).

[4] Schacter, Hsu & Bias, *HLA and Other Genetic Markers in Disputed Paternity: A Report of 50 Cases*, 9 TRANSPLANT. PROC. 233 (1977).

[5] Beautyman, *Paternity Actions—A Matter of Opinion or a Trial of the Blood?*, 17 J. LEGAL MED. (1976); Salmon & Gremy, *Bayesian Process for Paternity Diagnosis*, 7 GROUPE DE RECHERCHE EN INFORMATIQUE MEDICALE, 291, 291-98 (1973).

[6] Essen-Möller, *Beweiskraft der Ahnlichkeit im Baterschaftshachweis; Theoretische Grundlagen*, 68 MITT ANTHROP GES (WEIN) 368 (1938).

HLA test to resolve these cases based on theoretic calculations can be fully substantiated in actual practice. The 1000 consecutive cases reported here are from February 1975, and no case has been omitted. The racial composition of the putative fathers was as follows: 59% Caucasians, 22% Mexican-Americans, 17% Negroes, and 1% others.

II. Basic Principles—Genetics of HLA

The HLA region is also called the major histocompatibility complex in man. The term refers to a genetic region on the chromosome that plays a dominant role in the survival of grafted tissue. The letter H stands for human, L for leukocyte (white blood cells), and A for antigen. An *antigen* is any substance which can stimulate antibody production when introduced into another individual. Antigens are produced under genetic control by genes. The position of a gene on the chromosome is called a *locus* (plural: loci). In this study, two loci of the HLA region, the A and B loci, were used to evaluate paternity. At each locus a person possesses two genetic expressions for antigens, or two *alleles*. An allele represents an alternative form of a gene occupying the same locus on paired chromosomes. Any test that detects antigens by using antisera (antibodies) is called a *serologic* test.

The summary of the identifiable antigens at the cell surface is the person's *phenotype*. The genetic basis for the phenotype is deduced from inheritance patterns among the offspring of a family, and is called the *genotype*. The *haplotype* is the combination of one A locus allele and one B locus allele occurring on the same chromosome, which is transmitted between generations as a packet. Two haplotypes, one from each parent, make up the genotype of the individual. The maximum number of HLA antigens that can be expressed on the cell, when only the A and B loci are considered, is four. The presence of two different antigens at a given locus automatically excludes the presence of all other alternative specificities or alleles and eliminates the possibility of a missing allele due to technical error. If the number of antigens is less than four, two possible explanations exist. First, the individual may be homozygous at a given locus;

that is, the individual has identical alleles (*e.g.*, A2, A2) at the particular locus on the paired chromosomes. Second, the individual may have an antigen which is as yet undetectable with the reagents available. The percentage of undetectable antigens ("blanks") at the A and B loci is very small (less than 2%).

To illustrate the basic principles of the analysis, a hypothetical case is shown in Figure 1 (page 547 *infra*). The mother and child both have the A1-B8 haplotype. The child, therefore, must have inherited the A1-B8 haplotype from his mother because, on the basis of family data, no human leukocyte antigens can be present in a child if absent in both parents (codominant expression). The remaining groups, A11-B12, constitute the paternal haplotype. Putative father A can be excluded as the father of the child because he does not have the paternal haplotype. Putative father B does have the paternal haplotype A11-B12 and cannot be excluded as the father. The probability that putative father B is the actual father is calculated by comparing the frequency with which the paternal haplotype occurs in the random population and the likelihood that the putative father's A and B loci antigens are paired such that he does have the true paternal haplotype. Formulas for calculating this probability have been published.[7] In this example the probability of paternity is 98.3%.

III. 1000 Paternity Cases Under HLA Testing

A. *Testing Method*

All tests were performed by the international standard microlymphocity cytotoxicity test as introduced originally by this laboratory.[8] The antigens that were tested for in this particular study for the A locus were as follows: A1, A2, A3, AW23, AW24, A25, A26, AW33, AW34, A11, A28, A29, AW30, AW31, and AW32. The antigens on the B locus were

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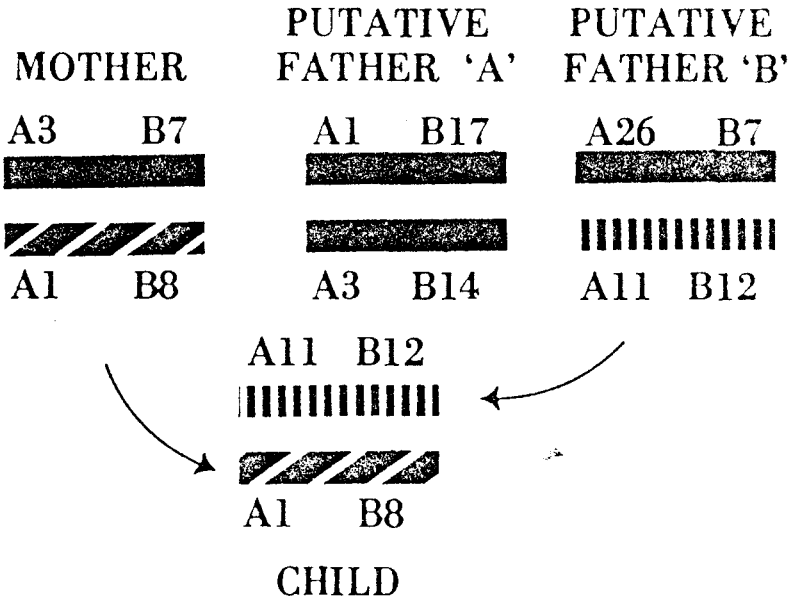
[7] *Id.*

[8] Terasaki & McClelland, *Microdroplet Assay of Human Serum Cytotoxins*, 204 Nature 998, 998-1000 (1964); Mittal, Mickey, Singal & Terasaki, *Serotyping for Homotransplantation, SVII, Refinement of Microdroplet Lymphocite Cytotoxicity Test*, 6 Transplantation 913, 913-927 (1968).

Figure I



The mother's phenotype was A1, A3, B7, B8. From the child's phenotype of A1, A11, B8, B12, it can be deduced that the A1-B8 combination or haplotype had been inherited from the mother. This means that the paternal haplotype for the child must be A11-B12. Putative father A does not have these antigens whereas putative father B does.

as follows: B5, B7, B8, B12, B13, B14, B15, BW38, BW39, B17, B18, BW21, BW22, B27, BW35, B37, and B40. A total of 180 independent antisera was used to determine the HLA profile of each individual. The tests were performed independently by two technicians and then evaluated by at least two experts in HLA analysis. As a further quality control, two separate preparations were made and analyzed from each blood sample.

B. Reliability of Tests

Although HLA testing was conceded by one authority to be the most discriminating test for paternity analysis, he has stated that HLA typing is reputed to have a high error rate and is consequently subject to misclassifications.[9] However, this criticism has been inaccurate since 1970 when extensive data on reproducibility of the microcytotoxicity test were published by this laboratory.[10] A more recent study of the technical improvements and attendant improvement in error rates has also been published by us.[11] The overall reaction error rate of 1.08% in 1971 was reduced to 0.35% by 1976. This rate was computed using 202,860 reactions in 882 pairs of replicate typing tests. It is important to note that even this low serologic error rate is too high an estimation of the rate of misclassification of antigens, since assignments of HLA specificities are made using more than one antiserum to define each HLA group. Thus, HLA typing can be considered highly reliable when performed under carefully controlled conditions by laboratories that perform quality control checks such as those herein described.

C. Statistical Considerations

In cases when paternity of the putative father is not excluded, it is useful to have some measure, based on serol-

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[9] Wiener & Socha, *Methods Available for Solving Medicolegal Problems of Disputed Parentage*, 21 J. FOR. SCI., 42, 42-64 (1976).

[10] Terasaki & Mickey, *Histocompatibility-Transplant Correlation, Reproducibility, and New Matching Methods*, 3 TRANSPLANT. PROC. 1057, 1057-1071 (1971).

[11] Perdue, Terasaki, Honig & Estrin, *Reduction of Error Rates in the Microlymphocitotoxicity Test*, 9 TISSUE ANTIGENS, 259, 259-266 (1977).

ogical testing, of the likelihood that he is the actual father of the child in question. In essence the child has provided an objective genetic description of its father. This premise poses two questions: how closely does the putative father fit that description and how discriminating is the description.

The probability that a mating of the known mother and a particular nonexcluded putative father would produce a child with the genetic markers in question can be calculated. Probabilities are assigned to the various possible genotypes using population statistics and then all possible combinations are considered in the calculation.[12] If a group of putative fathers was being considered, a computation of the probability of paternity for any among the group would be possible by direct application of Bayes' Theorem.[13]

Ordinarily, a comparison of the nonexcluded putative father with a hypothetical man who is assumed to be random with respect to serologic genotypes and unrelated to the putative father in question is desired. The probability that a mating of the known mother with a randomly chosen man would produce a child with the genetic markers in question can also be from the frequency of the markers in the general population. The *probability of paternity* for the putative father is then the ratio of his probability to the sum of the probabilities for both men, an application of the Essen-Möller version of Bayes' Theorem.[14] This paternity probability is a measure of likelihood based solely on serologic information *apart from any nongenetic evidence for or against paternity*. It should be noted that such analysis is not meaningful in distinguishing between two *related*, nonexcluded putative fathers. The most extreme example is identical twins, for whom all genetic markers are the same.

D. Exclusion

The simplest type of exclusion is shown by case #4, illus-

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[12] *See* note 6 *supra*.

[13] Salmon & Gremy, *Bayesian Process for Paternity Diagnosis*, 7 GROUPE DE RECHERCHE EN INFORMATIQUE MEDICALE, 291-98 (1973).

[14] *See* note 6 *supra*.

trated in Table 1 (page 556 *infra*). The mother's phenotype was A2, AW24, BW35. The child's phenotype was A2, AW30, B15 and BW35. By examining the mother and child for the common haplotype, it can be seen that the child has inherited the A2-BW35 haplotype from the mother. That is, these are the A- and the B-loci antigens that are in common between the mother and the child. From this first step we can see that the child must have inherited the other haplotype AW30-B15 from the father. The putative father in this particular case had the phenotype A2, B5, B12. This means that he could not be the father of this child since he did not have the AW30-B15 haplotype. This would be the clearest and simplest type of exclusion. Likewise, cases #197 and #216 (Table 1) are also simple cases of exclusion of paternity.

Another type of exclusion that is slightly more complicated is an instance in which the child could have inherited the antigens from the mother in two or more different possible genetic combinations. As demonstrated by case #6 (Table 1), the child could have inherited either the A2-B5 or the A1-B5 haplotype from the mother. Either of these two combinations could have been inherited since the child and the mother share three antigens. This means that the father could have been either A1-BW35 or A2-BW35 depending on which maternal haplotype had been inherited. In this instance, the putative father's phenotype was A2, B12 which does not fit either of the child's possible paternal haplotypes, thus excluding this putative father. In case #24, the blank (X) possibility in the A locus of the child causes the paternal haplotype to be either of two types: A2-BW21 or X-BW21. Again, the putative father did not have either of these two haplotypes and could be readily excluded. Case #102 is interesting in that the mother was deceased and could not be typed. However, the putative father in that case could still be excluded. There were four possible haplotypes that the true father could have had and none of these were found in the putative father. Exclusion, therefore, is possible in certain instances even if the mother cannot by typed.[15]

[15] Moreover, paternity has been excluded without testing a deceased man by

E. Nonexclusion

In case #206 (Table 2, page 557 *infra*) the putative father was found to have the paternal haplotype required on the basis of subtracting the maternal haplotype from the child's phenotype; that is, since the child inherited A1-B7 from the mother, the paternal haplotype must be A11-B27. This particular putative father has both the A11 and B27 antigens. By comparison with the random population of Caucasians, the probability of paternity for this putative father is calculated to be 99.2%. The probability of paternity is high because the A11-B27 haplotype is so rare that a randomly chosen male would be very unlikely to transmit it. If a particular putative father shares that rare haplotype with the child, the chances of him being the actual father are high.

In about a quarter of the nonexcluded cases, two possible paternal haplotypes for the child can be inferred. In case #10 (Table 2), the child could have two possible maternal haplotypes, AW33-B14 or AW32-B14. This means that the child could have had two different paternal haplotypes, AW32-B5 or AW33-B5. The putative father had AW32-B5, giving him a probability of paternity of 99.3%. Although two possible paternal haplotypes exist, the probability of paternity is still high due to the rarity of the haplotypes. Moreover, where the father's haplotype could be several different combinations and still fit the child's paternal haplotype, the probability of paternity can remain high (case #26, Table 2).

When the mother and child share as many as all four antigens (case #104, Table 2), it then becomes possible for the father to have four different haplotypes. The putative father had A29 and B12 antigens that fit one of the child's possible paternal haplotypes. The Bayes' Theorem calculations are particularly helpful in these instances in which several possible haplotype constructions exist. The percent probability is reduced in certain instances (case #238, Table

testing his relatives. *See* Speiser, *Exclusion of Paternity in the HL-A System Without Testing the Deceased Accused Man*, 27 VOX SANG. 379, 379-81 (1974).

2) because the antigens involved are relatively frequent antigens.

F. Summary of 1000 Cases

The results of 1000 disputed paternity cases tested by HLA are summarized in Figure 2 (page 553 *infra*) plotted by probabilities of paternity. Twenty-five percent of the cases were certain exclusions. Of the remaining nonexclusion cases, 67% had a probability of paternity of more than 95% and 86% were greater than 90% probability of paternity. As many as 16% of the cases tested had probabilities greater than 99% as shown in the far right column. Thus, when a given putative father is not excluded, the unique feature of HLA testing is that such nonexcluded males can be assigned a high probability of paternity. These high values would be almost impossible to obtain by conventional testing as well as by testing for a large series of the currently known genetic markers.

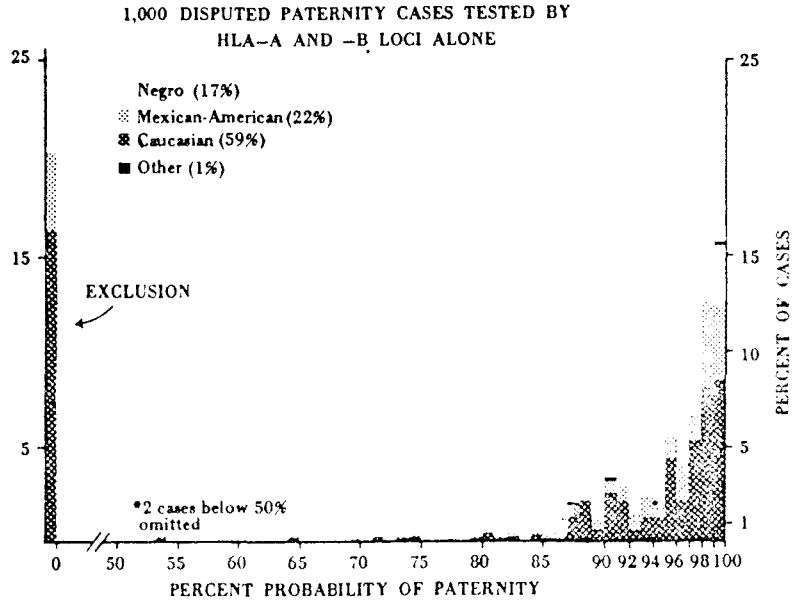
It should be noted that while minor variations can be seen among the three racial populations tested, remarkably similar results are obtained. In other words, the exclusion rates are for the most part similar and high probabilities of paternity are found in similar proportions. However, in making the probability calculations, differences in population haplotype frequencies for the three racial groups must be considered since the background frequencies are distinct within these populations.

Therefore, on the basis of these tests, 25% of the 1000 putative fathers were not the true fathers, 64% were the fathers (with 90% or greater probability), and 10% could be considered to be not resolvable by the HLA-A and -B loci tests.

IV. Considerations for the Future

The ideal paternity test would separate the putative fathers into two categories: exclusion and inclusion with 100% probability. The characteristic of this test would be the

Figure 2



Of the 1000 disputed cases of paternity, 25% of the putative fathers were excluded, as given in the left hand column. The remaining nonexcluded putative fathers generally had a high percentage of probability of being the actual father according to HLA testing. As many as 16% had a 99-100% chance as shown in the far right column, and 15% had a 98-99% probability of paternity. The results can be seen to be generally similar in the three ethnic groups tested.

use of determinants that are under strict genetic control, are easy to detect, and are so rare that no other random individual could possess them. The expression of these determinants must be codominant, in the sense that a given determinant present in a child must be expressed in one of the parents. The determinants must be fully expressed at birth,

remain unchanged throughout life, and be unaffected by any environmental effects. The HLA system at the present is the only blood test that approaches fulfilling all of these requirements. The HLA system is extremely polymorphic (diverse in numbers of antigens), reaches full expression long before birth, has been detected even in mummies,[16] and, as far as it is known, is unaltered by environmental effects, such as massive blood transfusions, drugs, and onset of disease. Furthermore, the detection techniques for HLA are readily performed and reliable. As shown in Figure 2, (page 553 *supra*) simply by HLA testing for the A- and B-loci antigens, a result which approaches the ideal can be obtained.

Attempts are now underway in our laboratory to test selectively only those cases with low percent probabilities for other genetic markers. In this way, by the summation of probabilities, it should be possible to achieve either exclusion or greater than 90% probability of paternity in most cases. With use of further loci of HLA such as the C and D loci, even higher values can be expected in the near future.

Theoretically it is possible to exclude all nonfathers by utilizing some 62 known genetic systems, and conversely the actual father could be detected with virtual certainty. However, the enormous cost of performing all of these tests along with the rarity of some reagents makes their use for routine testing in disputed paternity cases completely unrealistic. It will thus be impractical to insist on 100% inclusion of paternity. However, in contrast to the subjective evidence upon which paternity is now often determined, tests such as HLA typing which generally provide high probabilities of paternity should certainly be preferred by the courts.

V. Conclusion

In practical terms, the ABO red cell test is the simplest and least expensive test for exclusion of paternity, and should be the one to be used initially. Since this test excludes

[16] Stastny, *HL-A Antigens in Mummified Pre-Columbian Tissues*, 183 SCIENCE 864 (1974).

less than 10% of the putative fathers, most of the cases would still be disputed. This article has shown that in 1,000 such cases of nonexclusion by ABO, 90% of the cases can be resolved to the extent that they are classified either as excluded (25% of the putative fathers) or nonexcluded, together with a relatively high percent probability of paternity (90%). By selectively adding other tests to the HLA testing, it would be possible to increase the percent probability of paternity and to exclude some fraction of the males who fall in the nonexclusion category. However, as this article demonstrates, the HLA test provides, by itself, a very powerful, effective new tool in cases of disputed paternity.

TABLE 1: EXCLUSION

Representative examples of exclusion cases in which the putative father could be excluded because he did not possess the paternal haplotype inherited by the child.

Case No.	Race	Mother's phenotype	Child's phenotype	Child's maternal haplotype	Child's paternal haplotype	Excluded putative father's phenotype
4	MA	A2,AW24,BW35	A2,AW30,B15,BW35	A2-BW35	AW30-B15	A2,B5,B12
197	C	A11,AW24,B40	A3,A11,B7,B40	A11-B40	A3-B7	A1,A2,B7,B8
216	C	A1,AW31,B5,B17	A1,AW32,B15,B17	A1-B17	AW32-B15	A1,AW24,B8,BW35
6	MA	A1,A2,B5,B18	A1,A2,B5,BW35	A2-B5 A1-B5	A1-BW35 A2-BW35	A2,B12
24	C	A1,A2,B8	A2,B8,BW21	A2-B8 A2-B8	A2-BW21 X-BW21	AW24,A26,B27,BW35
102	C	Deceased	A2,AW31,BW21,BW35	A2-BW21 A2-BW35 AW31-BW21 AW31-BW35	AW31-BW35 AW31-BW21 A2-BW35 A2-BW21	A3,A29,B12,B15

Exhibit J
HB 448
1-30-85

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CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984: NEW TOOLS FOR ENFORCEMENT

by Diane Dodson and Robert M. Horowitz

Ms. Dodson and Mr. Horowitz are co-directors of the American Bar Association's Child Support Project, National Legal Resource Center for Child Advocacy and Protection, in Washington, D.C.

I. INTRODUCTION

In 1974 Congress enacted Title IV-D of the Social Security Act.[1] This title created a federal-state scheme for the establishment and enforcement of child support, under the auspices of the federal Office of Child Support Enforcement. States were required to establish child support enforcement plans administered by state IV-D agencies and partially funded by the federal government (originally at the 75% level). Congress' motive for entering the domestic relations field was a fiscal one. The costs to the Aid to Families with Dependent Children (AFDC) program, resulting from absent parents' failure to support their children, were staggering.

Title IV-D required states to establish child support enforcement programs which would use existing state laws and procedures to establish paternity and to establish and enforce support obligatons on behalf of minor children. Services were to be made available both to families receiving AFDC benefits and to others who asked for assistance, in hopes of helping them avoid the need for AFDC assistance.

While the improvements in child support collection in the decade since this Act have been significant, census bureau surveys continue to report that some 40 percent of families theoretically entitled to support orders do not have them, and that overall non-compliance with support orders is still at epidemic proportions.[2] Furthermore, due to the Federal funding scheme, collection on behalf of non-AFDC families received little attention over the past decade.

As a result, Congress reconsidered the basic premises of the program, and ten years after original passage of Title IV-D of the Social Security Act, passed the Child Support Enforcement Amendments of 1984, Public Law 98-378 [hereinafter referred to as the Act]. Unlike the 1974 law, these amendments mandate that states enact a number of specific remedies and procedures to improve their child support enforcement programs as a condition of continued state eligibility to participate in AFDC. It also seeks to equalize the treatment of AFDC and non-AFDC families. These new state laws and procedures should not only enhance the support collection practices of public agencies, but also provide private practitioners with important new support collection tools in many states.

This monograph will describe the new Act's requirements and will focus, where appropriate, on its implications and potential uses for the domestic relations practitioner.

II. MANDATORY STATE ENFORCEMENT PROCEDURES

At the heart of the Act are a set of mandatory procedures which states must provide to improve the collection of support.[3] In general, these procedures are based on successful support enforcement practices already employed in some states.[4] Where Congress had previously allowed states to provide support enforcement services under the IV-D program using existing state substantive law and procedures, this Act directs states to change their substantive family law to provide a specific set of enforcement remedies. In part this decision was based on the striking differences in the collection success rates of states that use the most stringent enforcement methods and those that do not.[5]

The Act's mandatory procedures must be used to enforce the support obligations owing to clients of the IV-D agency — whether AFDC recipients or not.[6] While by its terms the Act does not state that these remedies must be made available to private parties not the clients of IV-D agencies, most states will likely choose to make most of these remedies available to all parties, whether represented by the IV-D agency or by private counsel or appearing pro se. Arguably, it could constitute a denial of equal protection to provide these remedies only to those represented by the IV-D agency.

A. Income Withholding

The key mandated procedure is a requirement that states establish a system under which court- or agency-ordered support payments will be withheld from the wages or other income of obligors who are delinquent in making payments.[7] In requiring this procedure, Congress was attempting to establish a speedy and simple method for withholding of wages while protecting the due process rights of obligors. The concern Congress had for this

0148-7922/84/$00.50

HLA – A HIGHLY DISCRIMINANT TEST FOR PATERNITY

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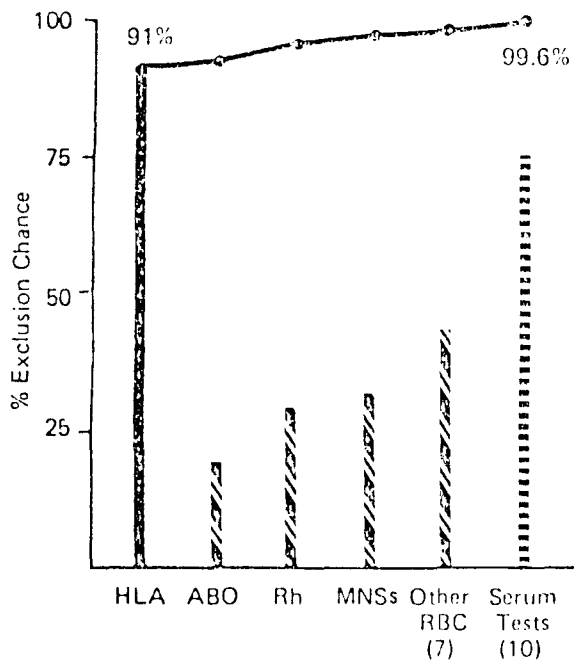
HLA, Human Leukocyte Antigens, are genetic markers found on the white blood cells. HLA tissue typing, was originally developed for use in organ transplantation. Because HLA groups are determined genetically, i.e., passed down from parent to child, HLA typing can be used to test for non-paternity. HLA testing has been used in paternity suits in Europe since 1960. Recently the test has been used in the United States for both in-court and out-of-court settlements. Because of the high reproducibility of results and the extreme diversity of the HLA system, the HLA tissue typing test is the single most discriminating test now available for paternity evaluation.

Figure 1



Hereditary Blood Systems (adapted from Mayr, 1974)

HLA testing provides a 95% exclusion rate when used in conjunction with ABO testing. This rate is a theoretical statistical measure of the power of the test and can be used to compare the overall usefulness of various test systems. As shown in figure 1, the HLA system ranks highest among all existing paternity tests in its ability to demonstrate an exclusion in the case of a falsely accused man.

Basic Genetics of HLA

HLA groups or antigens, are determined by one chromosome. Each person has four antigens. At the present time the UCLA Department of Surgery Tissue Typing Laboratory tests for 38 antigens. On the chromosome, HLA groups occur at two different sites, or loci, dividing the 38 antigens into two series – those existing only on the A locus and those only on the B locus. At the time of conception, one A-locus antigen and one B-locus antigen are inherited from each parent as a packet or haplotype. Each person has two haplotypes, one maternal and the other paternal. The two haplotypes together constitute a person's genotype.

Joint AMA-ABA Guidelines: Present Status of Serologic Testing in Problems of Disputed Parentage*

American Medical Association, Committee on Transfusion and Transplantation, Drs. Jack P. Abbott and Kenneth W. Sell, Chairmen, and American Bar Association, Section on Family Law, Committee on Standards for the Judicial Use of Scientific Evidence in the Ascertainment of Paternity, Harry D. Krause, Chairman, (Principal draftsmen: J. B. Miale, M.D., E. R. Jennings, M.D., W. A. H. Rettberg, M.D., K. W. Sell, M.D., and H. D. Krause).

Preface

In 1971, the American Bar Association's Section on Family Law approached the American Medical Association requesting that a joint committee be formed to study the implications of scientific advances in blood typing tests to determine (non)paternity and make appropriate recommendations.

This report brings to successful conclusion five years of close collaboration between members of the medical and legal professions.

It represents the first "official" statement concerning the science and art of blood typing in cases of disputed paternity since the

*Approved by the American Medical Association and by the Section on Family Law, American Bar Association. (In accordance with their policy against taking positions concerning technical reports involving non-legal subject matter, the House of Delegates of the American Bar Association has not taken a position on this report.)

Exhibit # L
1-30-85
H.B. 446

STATE STATUTES AND THE 1984 FEDERAL CHILD SUPPORT AMENDMENTS: A 54 Jurisdictional Analysis

The Child Support Enforcement Amendments of 1984, P.L. 98-378, were adopted unanimously by Congress on August 8, 1984. The amendments propose sweeping changes in state child support enforcement programs and law. It is the intention of the staff of the National Conference of State Legislatures (NCSL) Child Support Enforcement Project to keep state lawmakers abreast of these changes. This 54 jurisdictional analysis serves as an overview illustrating the effect of the new federal legislation on state child support law.

Each individual analysis begins by setting out existing state laws which contain many or all of the features contained in the Child Support Enforcement Amendments of 1984. The next two sections present areas of law that may be reviewed for statutory changes. The following paragraphs includes topics for legislative consideration. The appendix of this publication includes state statutory cites, a copy of the legislation, and a list of optional provisions for states' consideration.

Under the provisions of these amendments, state legislators may wish to make modifications to their state statutes. In some instances, laws are mandated. However, if the state has or can implement the procedure by judicial or administrative rulemaking, or if the implementation of the procedure will not improve the effectiveness and efficiency of the program, the state may apply to the Secretary of the Department of Health and Human Services for an exemption from these provisions.

Legislators may wish to note that these Amendments contain many provisions which are not addressed in this analysis. These other features, such as the use of the federal income tax refund intercept for non-AFDC cases, reporting requirements, and administrative procedures may be discussed with your state child support officials.

This report, current through the 1984 legislative year, is one of the continuing publications released by NCSL's Child Support Enforcement Project. The project is in its fifth year serving state lawmakers who wish to improve their state child support programs. The Child Support Enforcement Project welcomes requests for information and publications through our clearinghouse. The project provides on-site technical assistance. Technical assistance services are described on the next page.

MONTANA

The federal Child Support Amendments of 1984 mandate certain legislative modifications of the Montana Child Support program. The following provisions in Montana law contain many of the features contained in P.L. 98-378:

- o Section 40-5-301 et seq., the mandatory income withholding law;
- o Section 40-5-201-257, an administrative process statute;
- o Section 17-4-105, the state income tax refund intercept law;
- o Section 40-5-241 and Section 15-1-701, providing for the imposition of liens on real and personal property;
- o Section 40-5-203, which allows for equal access to child support services to AFDC and non-AFDC clients and for a fee chargeable for the non-AFDC services;
- o Section 40-5-214, guidelines to determine support award amount.

Modifications of Montana law to meet the Child Support Enforcement Amendments of 1984 would include:

- o Altering Section 40-5-301 et seq., the mandatory income withholding statute, to include:
  - --provision limiting obligor's defenses to mistakes of fact in contested withholding cases;
  - --designation by state of publicly accountable agency to administer the withholding system;
  - --simplification of the process by the state, such as allowing employer to send in withheld amount in one check;
  - --provision for withholding income in interstate cases;
  - --provision to terminate withholding;
  - --recognition of Consumer Credit Protecton Act limitations;
  - --provision in contested cases for state to notify obligor within 45 days whether withholding will occur;
  - --provision for a non-custodial parent to request withholding at an earlier date;
- o Expansion of Section 17-4-105, the state income tax refund intercept law, to allow access for non-AFDC clients, and to include a procedure for the sharing of information regarding an obligor's address and social security number between the revenue collection agency and the IV-D agency when the intercept is used.

The adoption of new provisions to Montana law would include:

- o Dissemination of information on the obligor's child support debt to any consumer credit bureau;
- o A statute which provides that a court require a parent to post a

bond or security to insure collection of child support obligations;
- Provision for withholding to be part of all support orders issued or modified after 10-1-85.

The following are areas not currently addressed by state statutes and may be implemented by statutory enactment, administrative plan, judicial procedure, or executive action:

- The enforcement of spousal support when it is part of the support order;
- Notification to AFDC recipients of the amount collected on their behalf in the past year;
- Inclusion of medical insurance in the support order;
- Continuation of medicaid benefits;
- Provision to expand services to all children receiving foster care through federal-state assistance programs;
- Publication of the availability of child support enforcement services through public service announcements;
- Provision for continuation of child support services when AFDC is terminated;
- Procedures for passing through incentives to locally administered programs.

Drafters of state law may wish to be aware of federal regulations affecting their state child support programs. Two pertinent examples are:

- Procedure for employer to notify the state or local withholding agency of the termination of the obligor's employment and of the obligor's last known address as well as the name and address of the new employer, if known;
- Procedure to implement the withholding no later than the first pay period that occurs after 14 days from the mailing date on the notice.

FOR MORE INFORMATION

For more information contact Deborah Dale or Charles Brackney, National Conference of State Legislatures, 1125 17th Street, Suite 1500, Denver, Colorado 80202, 303/292-6600.

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