REPORT OF THE
DIVISION OF
LEGISLATIVE SERVICES ON

Post Majority Child Support and Occupational License Withholding for Failure to Pay Child Support

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 30

COMMONWEALTH OF VIRGINIA
RICHMOND
1994

This report resulted from a study assigned to the Division of Legislative Services by the 1993 General Assembly as part of a pilot project. Division staff presented the findings to the Joint Rules Committee on November 17, 1993, and the completed report is now presented to the 1994 General Assembly.

INTRODUCTION

"...[H]olding parents responsible for the children they bring into the world is one of the issues that just about everyone can agree on."
Lt. Gov. Donald S. Beyer, Chairman of the Poverty Commission

AUTHORITY The 1993 General Assembly called upon the Division of Legislative Services to study two issues involving child support enforcement. Delegate Jean M. Cunningham patroned House Joint Resolution No. 615, which directed the Division to study the feasibility of denying state-issued licenses or license renewal to self-employed individuals who are delinquent in their child support obligations. Delegate Joyce M. Crouch sponsored House Joint Resolution No. 485 directing the Division to study whether child support should continue beyond the age of majority and, if so, under what circumstances. See ***Appendix A***

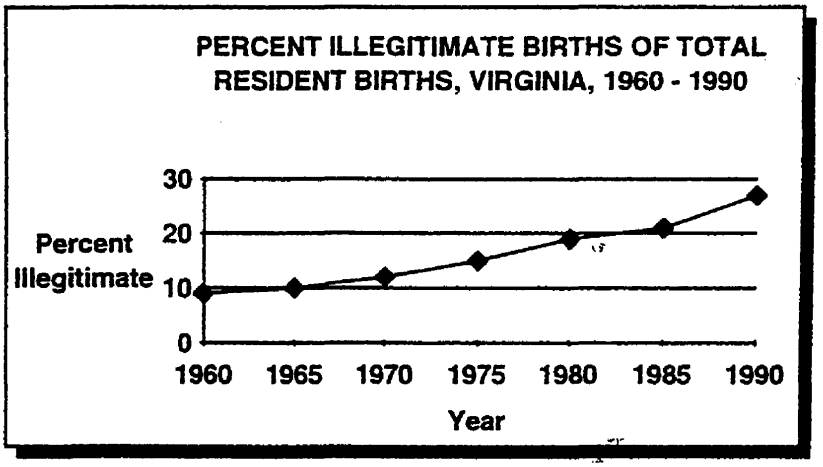
STATUS OF VIRGINIA'S FAMILIES AND CHILDREN

BACKGROUND Children are the most valuable resource of society. In recent times the obligation to secure adequate emotional, physical and financial support for children has fallen with increasing frequency upon governments. The government has historically met its responsibility through the federal AFDC system. About 25 years ago, however, the increasing numbers of children and escalating costs necessitated a reevaluation of the program. The focus shifted to efforts to enhance parental responsibility. By the 1980s Congress was annually enacting legislation requiring the states to improve efforts to secure parental support for children.[1] The Virginia General Assembly and the Department of Social Services responded with dramatic changes. The child support enforcement system was centralized in the State Department of Social Services, and changes in the procedures for establishing paternity, determining a support obligation and enforcing the obligation were implemented. A history of child support initiatives in Virginia taken from a recent report of the Department of Social Services is found at ***Appendix B.*** Against the background of the current child support system, this report will analyze proposals to withhold professional licenses from self-employed individuals as a means of securing child support payments and to extend the duty to support beyond the age of majority to allow for postsecondary education and other basic needs. The issues are unrelated other than their broad connection to

[1] A concise history of enforcement efforts is found in *Collecting Child Support from Delinquent Parents: A Constitutional Analysis of an Arizona Enforcement Mechanism, 34 Ariz. Law Review 163 at 165.*

the statutory obligation of a parent to provide support to a child [2] and therefore will be dealt with separately in this report.

STATISTICS The reasons for governmental involvement in child support enforcement are many and varied. In 1964 only six percent of all births nationally were to single mothers. The percentage increased to 17% by 1979. In Virginia, less than 10% of all live births in 1960 were to unwed mothers, but by 1990 the rate increased to more than 25%. Both the number of illegitimate births and the illegitimate birth rate were the highest ever in 1990, with 25,813 illegitimate births out of 98,752 live births.[3]



Source: Virginia Vital Statistics, 1990 Annual Report

The implications of these statistics on the well-being of children are amplified when the high number of children bearing children is considered. In 1990 almost 20,000 girls 19 and under became pregnant in Virginia and gave birth to 11,544 of the 25,813 illegitimate children born.[4] Approximately 93 percent of those 17 and under were unmarried at the time.[5] While the total number of teenage pregnancies has declined from just over 22,500 in 1980 to just over 18,000 in 1991, [6] the pregnancy rates for girls ages 10 through 19 have stayed almost the same.[7] The pregnancy rate for ages 10 through 14 declined from a rate of 3 pregnancies per 1,000 females in 1980 to 2.8 per 1,000 in 1990 after reaching a high

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[2] See § 20-61 Code of Virginia : **Any . . . parent who deserts or willfully neglects or refuses or fails to provide for the support and maintenance of his or her child under the age of eighteen years of age, or child of whatever age who is crippled or otherwise incapacitated from earning a living, the spouse, child or children being then and there in necessitous circumstances, shall be guilty of a misdemeanor.**

[3] Virginia Vital Statistics 1990 Annual Report, at pages 14 and 15.

[4] Virginia Vital Statistics, Teenage Pregnancies (Live Births, Induced abortions and Natural Fetal Deaths), 1990, Center for Health Statistics, Virginia Department of Health, at page 3, Table 1.

[5] Id. at page 7, Chart 9.

[6] Virginia Vital Statistics, Teenage Pregnancies, (1991) at page 2, Chart 1.

[7] Teenage Pregnancies (1990) at pages 4 and 5, Charts 3 and 5.

of 3.5 in 1986. During that same period the rate for girls ages 15 through 19 remained near 90 per 1,000, following a slight decline in the mid-1980s.

In addition to the high illegitimate birth rate, the divorce rate nationally and in Virginia has increased dramatically. In 1960, 37,542 marriages were performed in Virginia and 7,328 divorces were granted. The divorce rate in Virginia was 1.8 per 1,000 population. By 1990 the divorce rate had increased to 4.4.[8] The median duration of a marriage ended in Virginia in 1990 was 5.6 years,[9] a figure which has remained virtually constant for the last 10 years. At least 21,000 children were directly affected by a divorce in Virginia in 1991.[10] Although almost half of the marriages ending in divorce in 1990 involved no minor children, 43 percent involved one or two minor children.[11]

Parents, particularly single parents, find it increasingly difficult to provide financially and emotionally for their children. Voluntary or court-ordered foster care placement is an alternative to parental care. Children enter foster care for a variety of reasons including intra-family abuse or neglect and inadequate family resources. Since 1987, the total number of children in foster care has increased slightly. For the vast majority a return home is the preferred available final placement.

Category	1987	1988	1989	1990	1991
Foster Care	5773	5863	5922	6217	6277
Adoption**	1002	1064	1181	1222	1281
Total	6775	6927	7173	7439	7585

* ** Based on children available for adoption.

Source: A Legislators Guide to Social Services in Virginia

More and more children are being raised in an environment which does not include both parents and with increasing frequency includes a child as parent. Yet each parent has a moral and statutory duty to contribute to the financial support of the child. When that support is not given voluntarily, the state steps in. As noted, this is a costly proposition. The Department reported handling 280,388 cases during federal fiscal year 1992. In FY 1991-92, the Division of Child Support Enforcement (The Division) collected $161,699,000, established paternity in 17,098 cases, established a support obligation in 24,746 cases and located absent parents owing support, or their assets, 89,257 times.[12]

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[8] See cover letter of Robert V. Stroube, M.D.,M.P.H. to Governor Wilder, accompanying 1990 Vital Statistics, Annual Report.

[9] Vital Statistics, Annual Report (1990) at p. 46.

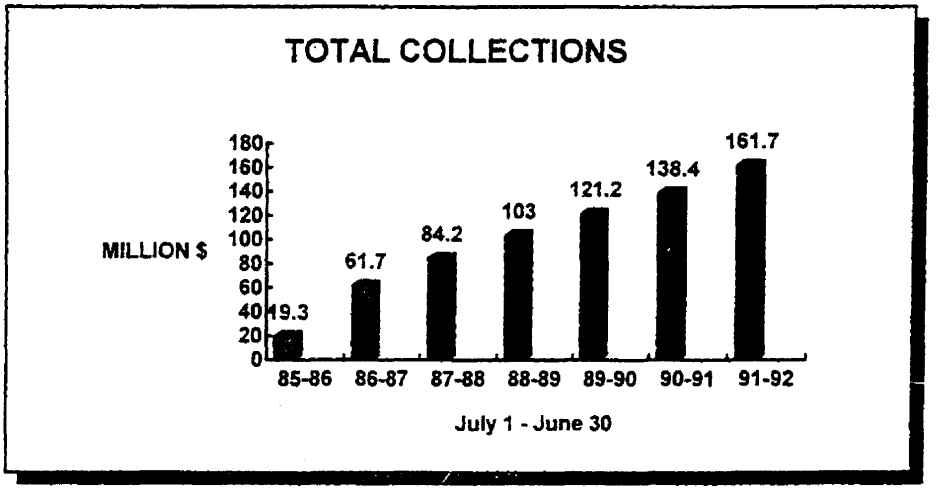
[10] Id. at p. 45.

[11] Id.

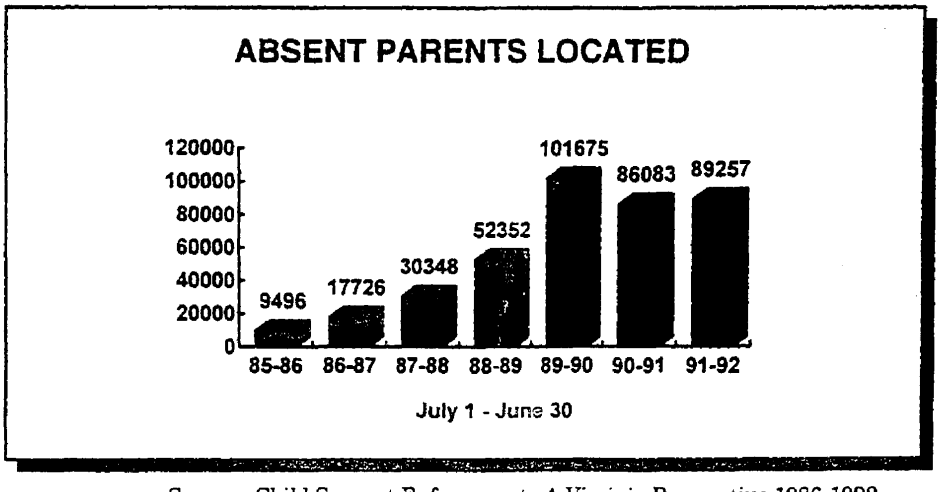
[12] *Child Support Enforcement: A Virginia Perspective 1986-1992*, Department of Social Services).

New programs have been implemented to enhance the Divisions enforcement efforts. The Seize Assets for Enforcement (SAFE) Program, established in 1992, authorizes the seizure of assets of obligors who are at least three months in arrears and owe at least $2,000. The program targets the self employed and in the first six months collected almost $300,000 from delinquent obligors. The Division's "Ten Most Wanted List" program located 60 delinquent obligors in its' first three years . Addtionally, the Department of Motor Vehicles and the Virginia Employment Commission now share an on-line computer link with the Division which helps to local absent parents.

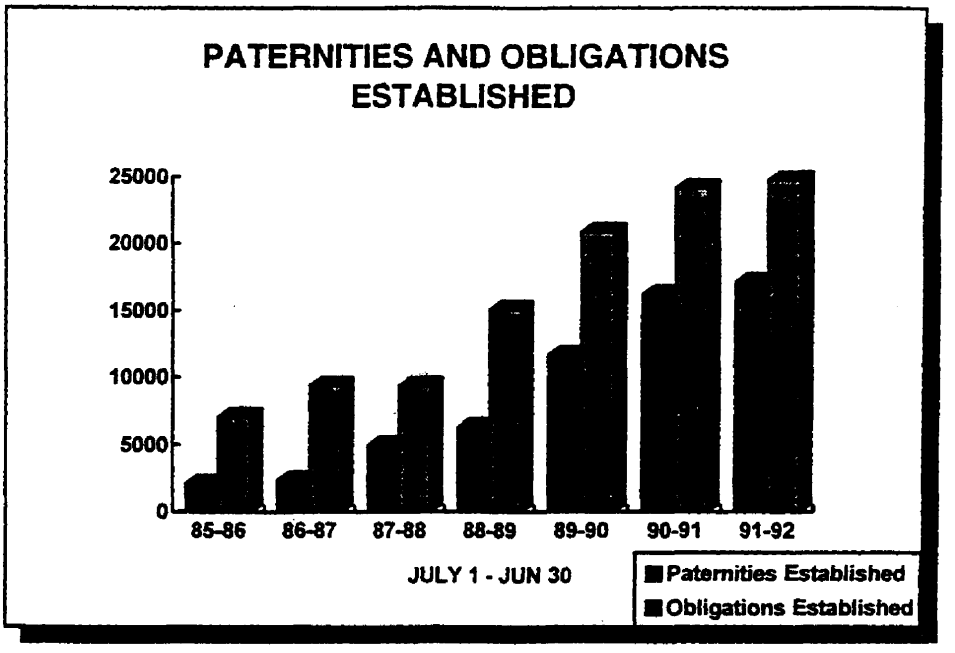
The dramatic changes resulting from increasing participation of the Division in child support enforcement is illustrated in the following charts.



Source - Child Support Enforcement: A Virginia Perspective 1986-1992



Source - Child Support Enforcement: A Virginia Perspective 1986-1992



Source - Child Support Enforcement: A Virginia Perspective 1986-1992

Many believe that with new tools, even more can be done. Occupational license withholding would arguably deter absent parents who are not otherwise subject to wage withholding from failing to meet their support obligations. Authorizing support to be paid beyond the age of majority could be used by the courts to minimize the trauma of divorce by allowing young people to obtain a higher education, providing health care coverage and securing other basic needs, thereby helping them to become productive members of society.

OCCUPATIONAL LICENSE WITHHOLDING

> *Approximately 85% of Americans filing tax returns report receiving some or all of their personal income from a salary or wage source. It is not surprising then that income withholding is the centerpiece of collecting support, accounting for 44% of collections in IV-D cases in fiscal year 1990.*
> *Supporting Our Children: A Blueprint for Reform:*
> Report of the U.S. Interstate Child Support Commission

Direct wage withholding has become the most effective support enforcement tool. In 1992, wage withholding accounted for 54.8 percent of the total amount of child support collected by the Department of Social Services.[13] Immediate wage withholding was authorized by the General Assembly in 1988, as mandated by the federal Family Support Act. Wage withholding ensures payment from salaried individuals owing a support debt, but not from self-employed obligors. In recommending that all states enact occupational license withholding programs, the U.S. Commission on Interstate Child Support noted that

> [m]any self-employed obligors are engaged in trades or professions that require training and expertise. To ensure that the public receives quality services from these specialists, government agencies issue licenses. These licenses certify that the holder has met certain minimum requirements in order to lawfully perform a service. One requirement should be that the license applicant is not in violation of a court or administrative order, particularly an order relating to support of the applicant's children. It is ironic, and inefficient, for one arm of the government to license a person to earn money while another arm of the government is seeking money from that same person as a result of failing to honor an order.

The Commission report states that one of every five workers nationally is self-employed.[14]

States are beginning to look more closely at license withholding programs as a means to collect a variety of state-owed debts.[15] The underlying theory of these programs is that any state-issued license is a privilege in return for which the licensee should fulfill obligations to the state. License denial or revocation, however, is generally used not as a punitive tool but as a last resort, in recognition of the importance of the license to an individual's ability to earn a living.

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[13] *The Voice*, October 6-12, 1993, page 1.

[14] U.S. Commission Report at p. 158.

[15] See discussion of 1988 Report of the Department on Planning and Budget, *Feasibility of Implementing a Licensing Setoff Program in Virginia,* infra. at p. 15.

Typically a computer tape of licensees is run against an obligor tape from the agency owed the debt to identify any matches between the two tapes. A unique identifier such as the licensee's social security number may be used to search for the match. If a match is found, the obligor is notified that his license may be denied or revoked if some effort to satisfy the debt is not made within a specified time. A process to challenge the validity of the debt prior to actual denial or revocation is included.

OTHER STATES' PROGRAMS

VERMONT In 1990, Vermont became the first state to enact legislation targeting occupational licenses for child support enforcement. Vermont's is actually a support delinquency disclosure program.[16]

The statute requires every applicant for an original or renewal of a governmentally issued license, certification or registration authorizing the conduct of a trade or business to submit a signed statement reflecting the fact that the applicant (i) is not subject to a support order or (ii) is in "good standing" or full compliance with respect to an existing support order. An applicant is in good standing if he or she is (i) less than one month delinquent in support payments, (ii) legally contesting liability for support or (iii) complying with an agreement for payments subsequently reached with either the support enforcement agency or the other parent.

Upon receipt of a statement indicating that an applicant is subject to a support order, the licensing agency refers the matter to the State Office of Child Support. It is then up to the licensing agency to determine what to do next. Typically, the license is issued or renewed, but the person is closely monitored by the licensing agency to ensure that he remains in good standing.[17]

The statute specifically gives the licensing agency the authority to determine that the person is in good standing upon finding that "requiring immediate payment of support due and payable would impose an unreasonable hardship." There is no specific statutory mechanism for challenging actions of the licensing agency.

The Vermont program is not automated, perhaps because very few licensing agencies in Vermont keep records of social security numbers. Without a unique identifier such as a social security number, it is difficult, if not impossible, to determine the accuracy of a computer-generated match of two agencies' files. Under

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[16] § 795 of Subchapter 7, Chapter 11 of Title 15 of Vermont Statutes Annotated.

[17] Information on how the Vermont program actually operates was provided by Charles Twoumbey of the State Office of Child Support.

this type of program it is virtually impossible to verify the accuracy of an affidavit of compliance submitted to a licensing agency.

No cost effectiveness evaluations have been done. Nonetheless, representatives of the Office Child Support believe that the program is effective in reaching self-employed individuals who would not otherwise be found. On the other hand, a report of the Texas Attorney General's Office on state license withholding programs indicated that only a "handful" of delinquent noncustodial parents had been discovered through Vermont's program as of November 1992. Moreover, according to a 1992 memo prepared by the Statewide Receivables Coordinator for the State of Washington, the Secretary of State for Vermont is working to repeal the statute because there has been "little gain and extensive legal expenses." Of particular concern is the fact that the licensing agencies make the determination of hardship.[18] Finally, a practicing attorney in Vermont suggested that the law has little or no effect because (i) there are relatively few licensed professions and (ii) Vermont has a small percentage of delinquent obligors.[19]

ARIZONA[20] In June of 1990, Arizona enacted what has become the model for occupational license withholding legislation. This program requires judicial action prior to any licensing agency action.[21]

Upon hearing a petition to enforce a previously issued child support order, the court is authorized to refer the matter to a licensing agency for suspension proceedings. In Arizona, as in Virginia, either the obligee or the State IV-D agency may bring an action to enforce the order. Frequently it is the attorney for the Arizona Child Support Enforcement Administration who brings the enforcement action seeking license revocation. The State Child Support Enforcement Agency does the preparatory work, running their delinquents' tape against the licensee tapes of the licensing agencies before the petition to enforce the court order is filed with the court. We were not able to determine whether social security numbers are used to determine a match. The referral by the court may occur only upon finding that the obligor is at least one month in arrears and is or may be licensed as a "professional."[22] Upon receipt of a referral from the court, the licensing agency is

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[18] From Memorandum dated July 24, 1992, regarding a "Survey of Laws that Allow State Agencies to Act Against Occupational License Certifications/Registrations for Non-Payment of State Obligations".

[19] David Polow, Esquire.

[20] Information on how the Arizona program works was provided by Kris Bauer, Policy Unit Supervisor, Arizona Child Support Enforcement Administration.

[21] §§ 25-320 and 32-3501, Arizona Revised Statutes.

[22] The licensed professionals and businesses covered include CPA's, collection agencies, barbers, social workers, chiropractors, contractors, cosmetologists, manicurists and nail technicians, dentists, dental hygienists, funeral directors, medical doctors and surgeons, naturopathic physicians, nurses, dispensing opticians, optometrists, osteopathic physicians and surgeons, pharmacists, physical therapists, podiatrists, psychologists, real estate brokers, pest control businesses, architects, assayers, engineers, geologists, surveyors, veterinarians, veterinary technicians; feed, fruit and vegetable dealers and brokers; liquor manufacturers, sellers or dealers; animal racing licensees;

required to both notify the obligor and hold a hearing within 30 days. The hearing is limited to a determination of two issues: (i) whether the obligor is a licensee and (ii) whether the arrearages have been paid. No evidence questioning the court order or concerning the obligor's ability to comply with the order is allowed. If a licensed obligor does not present evidence of full payment of all arrearages found by the court, the licensing board is required to suspend the license. The suspension continues until the licensee shows the board that he has made all back payments. However, if the board finds that the suspension would pose an undue hardship to either the licensee or to persons served by the licensee, the board may place the licensee on probation for no more than two years. During probation, the licensee may continue to practice so long as he provides the board with evidence of his full compliance with the court order. If he fails to do so, his license is automatically revoked.

The statute recognizes that support orders are subject to modification. If the licensee establishes that a petition for modification has been filed during the time he is on probation, the board may, without a hearing, defer the suspension, i.e., he may continue to practice without providing the board with evidence of his compliance with the original court order--at least for so long as the modification proceeding is pending.

The program is working well according to the State's Child Support Enforcement Administration. When first enacted, the law did not cover all state-issued licenses, which created some problems. A psychologist unsuccessfully challenged the prior scheme, alleging it was unconstitutionally discriminatory.[23] To date this is the only legal challenge to the program, and the only case which resulted in actual revocation.

The program's utility lies in its deterrent effect. Once notified of the potential for license loss, most obligors will pay up; they do not want to even appear before the licensing agency. Unfortunately, because the program is so new, no program evaluations have been conducted.

MINNESOTA[24] Like Arizona, Minnesota's statute requires a court order to initiate licensing agency action. A 30 day arrearage triggers the court order. Upon receipt of the court order, the licensing board has 30 days within which to give notice and hold a hearing to determine whether the person is a licensee and is in

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lottery agents; bingo conductors; boxing licensees; bankers, escrow agents and financial institutions; child welfare agencies; foster homes; teachers and guidance counselors; insurance agents, brokers and sales representatives; EMTs, midwives, nursing administrators and child care owners; and manufactured housing salesmen, dealers, installers and manufacturers. Information provided by Kris Bauer, Policy Writer, Arizona Department of Economic Security, Division of Child Support Enforcement, letter dated July 2, 1993.

[23] Flores v. Board of Psychologist Examiners, No. CV 90, 33689 (Ariz. Super. Ct., Apr. 1991).

[24] Information on how the Minnesota program works was provided by Ann Martineau of the State's Office of Child Support Enforcement.

arrears. The Minnesota statute also provides for up to two years' probation in lieu of license withholding upon a showing of "extreme hardship" to either the licensee or persons served by the licensee.

As of August of 1993, the program covers all occupational licenses. It is hoped by the State Enforcement Agency that this will close the only then-known loophole in the program. While no efficiency or cost evaluations have been done, the program appears to work reasonably well. To date, only two licenses have been suspended, although payment schedules have been worked out on "many more." However, it was suggested that the program would be more efficient if a court order was not required to initiate action by the licensing agency. However, this difference could require significant and costly changes for all the agencies involved since currently there is no automation in the program. All the preliminary work done by the support enforcement agency to determine the delinquency and potential licensee status before the matter is referred to the court is done by hand.

In 1993 the legislature expanded the program to authorize license suspension for a delinquency in payment of spousal support.[25] The lack of organized opposition to this expansion surprised many local attorneys, including the lobbyist for the State Bar Association.[26] An organization representing members of second families called "Our Kids" was the only organization on record as opposed to the bill. The Bar Association was supportive. The bill passed without one negative vote in the House or the Senate.

CALIFORNIA[27] California's license withholding program became effective November 1, 1992, but is subject to a January 1, 1997, sunset clause. All state agency- or board-issued licenses to engage in a business, occupation or profession, including commercial drivers' licenses, are subject to the program. As expected, California's is a procedurally comprehensive statute. Potential due process problems and concerns of the licensing boards over excess work and costs resulted in many of these issues being addressed in the statute.

The California program was originally suggested and drafted by the state district attorneys who have been charged with enforcing outstanding support orders. The 58 district attorneys are required under the new program to maintain a list of all delinquent IV-D cases and to send a list of delinquent obligors to the State Department of Social Services on a monthly basis. Within 30 days of its receipt of the lists, the Department forwards a complete list to each regulatory board or agency.

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[25] Ch. 322, Laws of Minnesota for 1993.

[26] Michael Flannigan, Esquire.

[27] Information on how the California program works was provided by Gary Padilla, Associate Analyst, California Child Support Management Bureau.

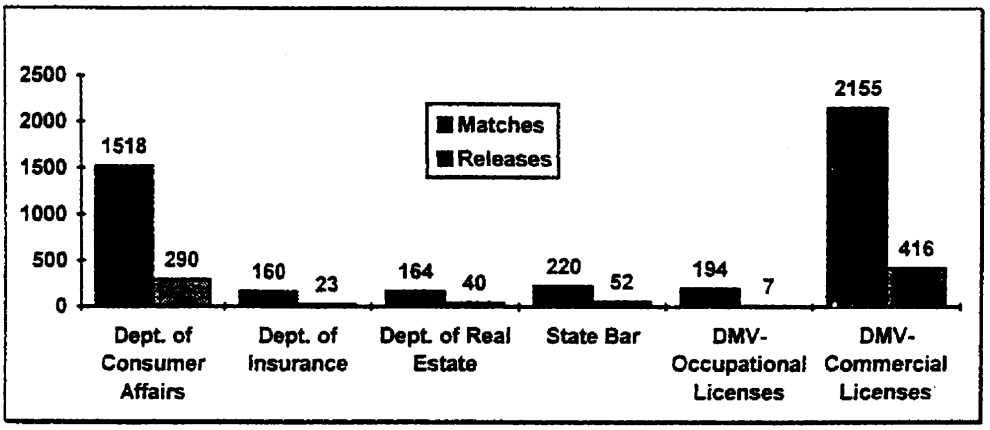
The licensing boards will take no action during a current licensing period, but check the lists at the time of initial issuance or renewal. If a match is found, the board mails or delivers a notice of intent to withhold the license to the obligor and issues a temporary license for a maximum of 150 days. The notice includes the name of the district attorney who submitted the obligor's name. The district attorney is authorized to remove the restrictions on the obligor's license upon review of the case. An immediate release of the restrictions is required if (i) the licensee is found by the district attorney to be in compliance or negotiates a payment schedule, (ii) through no fault of the licensee, the district attorney is unable to complete a requested review in time to allow for judicial review or judicial review cannot be completed within the 150-day temporary license period, or (iii) a court finds that the licensee is no more than 30 days in arrears or that equitable estoppel precludes enforcement of the order.

If a release is not granted, the licensee may seek judicial review or a modification of the order. An evidentiary hearing must be held by the court within 20 days of the licensee's request. The court's determination is limited to whether there is an outstanding order and whether the licensee is covered by and in compliance with the order.

The California statute includes a provision specifically prohibiting a licensing board from disclosing any information in response to an inquiry concerning an individual's license status, other than that the license was denied or a temporary license was issued pursuant to the program.

The only unanticipated problem in the program was that each licensing board uses a different process for determining matches between licensees and delinquent obligors. Other anticipated problems have not materialized. There has been no effect on the supply of licensed professionals as had been argued in opposition to the legislation. Arguably, all the possible due process objections are adequately addressed by the procedural safeguards included in the legislation. There are no reported cases challenging the statute. A primary source of opposition was the licensing agencies who feared additional workload and costs. These concerns were alleviated by the Governor's support for the measure and a little creativity. The licensing boards are authorized by the legislation to increase their fees to cover the cost of implementing and administering the program. Also, under an agreement worked out prior to passage of the legislation, the federal government will provide 66 percent of a licensing board's on-going costs of participation in the program. Start-up costs must be borne solely by the state.

Six licensing boards are currently participating. Teachers and sales and use tax permittees will be added soon along with six additional agencies. Because a statutorily required report on the program by the State Department of Social Services is not due until November 1995 and the program is relatively new, it is not possible to determine whether anyone has yet been denied a license under the program. However, the following interim information was provided:



A domestic relations lawyer[28] reported that there was opposition within the Bar to the statute on policy grounds, but most felt that it was not politically feasible to publicly argue against a " mom and apple pie" issue such as arguably enhanced child support enforcement. The majority believed that the program itself should do no harm but also would attain little good. The concerns focused more on future expansion of the program to other debts, such as spousal support. Many believe it is being used infrequently, is merely a legitimate means of harassment and is not collecting as much money as the proponents had hoped.

OTHERS In 1992, Massachusetts enacted legislation requiring all state and local agencies issuing professional, trade or business licenses to provide the state's IV-D agency with a list of all such licenses or certificates issued during the previous quarter. If a licensee on the list is in arrears, the IV-D agency issues a notice to the person and asks the licensing agency to conduct a hearing. The only issue for the agency is whether an outstanding judicially determined support obligation has been met. If not, the license is revoked.

Although enacted, the program was never implemented. Amendments to the legislation are pending. The amendments provide much more detail on the procedural aspects of the program.

Occupational license withholding was very popular during 1993 legislative sessions. Nineteen states considered legislation. Legislation was enacted in eight states, failed in six states[29] and remains pending in five states[30]. The recently enacted programs are in various stages of implementation. None, however, are fully implemented and, therefore, detailed information is more difficult to obtain. The following chart[31] provides basic information on these new programs.

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[28] Ira Lurvey, Esquire. Mr. Lurvey is chairman of the Family Law Section of the American Bar Association.

[29] Idaho, Kansas, New York, North Dakota, Texas and West Virginia.

[30] Indiana, Massachusetts, Michigan, New Jersey and Wisconsin.

[31] Originally prepared by the U.S. Department of Health and Human Services, but revised for this report.

NEW STATE LICENSING RESTRICTIONS/REVOCATIONS
(July 22, 1993)

STATE	LEGISLATIVE STATUS	LICENSES AFFECTED	"TRIGGER" CRITERIA	"MATCH" PROCESS	INTERSTATE CASES	INTERIM PENALTY PROVISIONS
Arkansas	Enacted 4/20/93. Not yet implemented.	Commercial drivers, occupational, professional, and business licenses	6 months' delinquency	Procedures being written	Not specified	60-day temporary license until made arrangements to pay.
Florida	Enacted; effective 7/1/93. Not yet implemented	Drivers licenses, vehicle registration, teachers, professional, business, and trade licenses	Upon court order	Procedures being written	Yes	If noncustodial parent fails to reach agreement to pay, court may order suspension.
Maine	Enacted and effective 7/1/93. Beginning implementation	Drivers, professional, business, trade, and sporting licenses	90 days in arrears, not complying with an agreement to pay on arrears, or failure to comply with an order to pay health insurance	Professional licensing authorities will submit a list of licensees annually to IV-D. IV-D will match with motor vehicle dept. when an action is initiated against a delinquent obligor.	Yes	After a warning notice and 20 days to appeal, the license will be revoked or its renewal denied.
Montana	Enacted; effective 10/1-93. Implementation planning is in process.	Drivers licenses, vehicle registration, professional, business, and trade licenses. Sporting licenses may also be included, but their inclusion is currently in dispute. ("any privilege").	An amount equal to at least a 6-month arrearage	IV-D agency will issue an order to suspend the license & to refrain from the activity. This order is manually sent to the licensing authority to implement the suspension. Automated tape matches are being explored.	Yes	Allows 60-day grace period to appeal or make satisfactory arrangements for payment. After hearing, IV-D may issue a stay for significant hardship to the individual, his or her employees, dependents, etc.

STATE	LEGISLATIVE STATUS	LICENSES AFFECTED	"TRIGGER" CRITERIA	"MATCH" PROCESS	INTERSTATE CASES	INTERIM PENALTY PROVISIONS
Nevada	Enacted 7/1/93; effective 10/1/93. Manual implementation spring 1994 and automated implementation 10/95	Occupational and professional licenses and permits	1 month's arrears. Action against licensees is at the discretion of the licensing authorities.	IV-D can request lists of license holders from licensing authorities.	Yes	Not yet determined
Oklahoma	Enacted 6/1/93. Not yet implemented.	Professional & trade licenses	3 months in arrears	Procedures being written, but statute requires court or administrative order referring matter to licensing agency	Not specified	Maximum 3-year probation for extreme hardship
Pennsylvania	Enacted 7/2/93. Requirements shall take effect in 60 days.	Professional & trade licenses	3 months in arrears	Court order to licensing authority	Will request that the Supreme Court Rules Committee determine the effect of this on foreign orders.	Not applicable
South Dakota	Enacted. Effective and scheduled for implementation 7/93.	Drivers, professional, and specified occupational/ trade licenses	Accumulated arrearage of $1,000 or more	Monthly automated matches will be completed between the Department of Commerce and Regulation and the state IV-D agency computer systems.	Yes, if the initiating state requests the restriction as part of a URESA action and the noncustodial parent resides in SD and is licensed by the state.	A 180-day extension of driving privileges is provided and the license is subsequently restricted unless payment arrangements have been made. Temporary license may be provided if (i) necessary to work and (ii) good faith effort to pay is made.

Several of these new statutes[32] authorize not only denial or nonrenewal, but, like Arizona and Minnesota, immediate, interim suspension or revocation of the license. It could be assumed that implementation of this type of program would be more costly for the licensing agencies, but no data is yet available.

The Pennsylvania process is driven entirely by the court. The court determines the delinquency and issues the order to suspend or deny. In Oklahoma and Montana, either the court or the IV-D agency may determine the delinquency and require the licensing board to suspend or deny. In Maine, the state's Department of Human Services triggers the process by serving notice of revocation or denial on the obligor and, if requested, conducting a hearing.

State licensing agencies in those states where a program has been implemented have informally expressed a belief that all review hearings on the propriety of the license denial should be conducted by the state's IV-D agency or the courts.

FEDERAL INITIATIVES

The report of the U.S. Commission on Interstate Child Support recommends federal legislation with a funding loss risk provision for the state's IV-D agencies, requiring states to implement occupational licensing programs. The Commission reasons that "using governmental licensing as a check on bad faith or delinquent obligors not only makes good social policy but also good collection policy. In general, licensed, self-employed, uncooperative obligors are difficult persons from whom to collect support. The license may be a lifeline to income, without which the obligor could not lawfully perform his or her service. If obligors know they risk losing their chosen livelihood if they are not current or paying in good faith on arrearages, then presumably most will comply with their support orders."[33]

The Commission's goal is not to take the license, but to ensure that a state's child support order is obeyed by one of its citizens, and that one who does not obey a state's order or who makes no attempt to meet its terms may not conduct business as usual with the government's blessing.

Legislation introduced in Congress (House of Representatives)[34] in 1992 would have mandated occupational license withholding for an obligor whose arrears exceeded $1,000. H.R. 915 (Schroeder) and S. 689 (Bradley) were introduced in 1993 and are currently pending before the Congress. Representative Schroeder's bill, the Child Support Economic Security Act, includes several provisions to improve the collection of child support, such as reporting of delinquent obligors to credit agencies, elimination of all state statutes of limitation on enforcement of

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[32] Maine, Montana, Oklahoma and Pennsylvania.

[33] Commission Report at p. 171.

[34] Representative Pat Schroeder.

support, and mandating the use of social security numbers on marriage licenses and in all support orders etc. The bill also would require the states to refuse to issue or renew any license issued by the state or a political subdivision if a child support arrearage exceeds $1,000 until a good faith effort is made to (i) pay one month's obligation and (ii) arrange for periodic payment of the arrearage. The bill covers all state-issued licenses, including marriage licenses, fishing licenses, and hunting licenses. The $1,000 trigger would apply without regard to the amount of the underlying monthly obligation.

Senator Bradley's bill incorporates the recommendations of the U.S. Commission and is intended to facilitate interstate enforcement of child support and parentage orders. With respect to license withholding, this bill is more limited than Representative Schroeder's and would require denial or nonrenewal only of state-issued occupational licenses. A noncustodial parent who is subject to an outstanding warrant or capias for failure to appear at a child support proceeding or who is delinquent in even one installment, regardless of the dollar amount, would be denied a license unless (i) a temporary license is given pending an expedited (maximum 60-day) review or (ii) a court or other enforcing authority removes the hold on the obligor's license.

H.R. 915 would take effect upon enactment. S. 689 would not become effective until January 1, 1996. No action has been taken on either bill since referral to committee. H.R. 915 is pending in the Subcommittee on Human Resources; S. 689 is pending in the Senate Finance Committee.

Individuals involved in child support enforcement efforts for the states with whom we spoke believe that a federal mandate is forthcoming. Given the lack of action on these recent proposals, however, it is impossible to predict what the mandate might be or what it would mean to Virginia in federal dollars.

The Board of Governors of the Family Law Section of the Virginia state Bar opposes license withholding. See **Appendix E.** Stated grounds for the opposition include a desire to wait to see what type of program, if any, is actually mandated and a concern that other mandated enforcement provisions will eliminate the necessity for and efficacy of a license withholding program.

A PROGRAM FOR VIRGINIA

The General Assembly in 1988 directed the Secretary of Finance to "study the feasibility of implementing a licensing setoff program to maximize recoveries to the Commonwealth" with respect to tax delinquencies.[35] The Department of Planning and Budget report,[36] , includes several findings relevant to this report.

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[35] Item 345. 1988 Appropriation Act.

[36] *The Feasibility of Implementing A Licensing Setoff Program in Virginia,* (December 1988)

The Department of Planning and Budget was able to run a test involving seven licensing agencies representing 457,650 licensees, of which 49 percent (or 222,958) had social security numbers available. Of these 222,958 licensees, 3,983 (1.8%) were found to owe the state $2.6 million in delinquent taxes and another 3,246 (1.5%) owed $6.6 million in other debts to state and local governments. These "other debts" included outstanding child support obligations within the jurisdiction of the Department of Social Services although the exact amount is unknown. These match rates are consistent with a 2 percent match between licensees and delinquent non-custodial parents found in a test run of the California program[37].

Appendix C provides data on occupations licensed by the Department of Professional and Occupational Regulation (formerly the Department of Commerce), the Department of Health Professions, the Virginia State Bar, the Department of Motor Vehicles, the State Corporation Commission and the Alcoholic Beverage Control Board. These agencies alone license over 656,000 individuals in the occupations listed. Assuming a 1.5 percent match rate, over 9,800 delinquent obligors could be targeted, with the potential of collecting $9.8 million in delinquent support.[38]

The Department of Social Services is currently unable to provide comprehensive data on the occupations of obligors. The "Ten Most Wanted Lists" for November and August of 1989 were provided however and include the last-known occupation of the obligors. The list of 18 major delinquents (two obligors appeared on both lists) included 3 truck drivers, 6 construction workers/laborers, 1 subcontractor, 1 painter, 1 landscaper, 1 carpet layer, 1 pediatrician, 1 machinist, 1 chemical analyst, 1 flight instructor, and 1 "boat transporter." The vast majority were in licensed occupations. However, half did not reside in Virginia, and would not be subject to Virginia's licensing requirements. The Virginia residents owed $215,984 out of the $571,436 total owed by the 10 most wanted obligors.

The current program, which grew out of DPB's recommendations, monitors licenses issued by the Department of Alcoholic Beverage Control to collect delinquent taxes administered by the state Department of Taxation and the Virginia Employment Commission. The DPB study team concluded that although a "...licensing setoff program would be a cost-effective method of collecting delinquent debts owed to the Commonwealth...several unresolved public policy issues...required greater consideration."[39] Current employees of the Tax Department believe that a broader program which would have allowed setoff against all state-issued licenses was not recommended because (i) licensing agencies and licensees opposed the program because of concerns over the costs of implementing the program and fears that the program unconstitutionally infringed on an individual's right to work and (ii) the fact that most licensees are not required

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[37] Report of the Office of the Attorney General for the State of Texas, December 1, 1992.

[38] Gary Padilla of California estimated an average of $1,000 per arrearage. That figure is used here.

[39] Report of the Office of the Attorney General for the State of Texas, supra.

to provide the licensing agency with a social security number makes accurate, automated implementation difficult. Similar objections to a license withholding program for child support will likely be raised.

COST Much of the opposition in other states came from the licensing agencies and grew out of concerns over increased workload and insufficient financial backing. An effective, broad-based licensing program would need to address these concerns. The California program provides one method. To the extent that the agencies would experience a cost increase in running the program, federal money may be available. The California Department of Social Services informally approached the regional office of the U.S. Department of Health and Human Resources to request financial assistance. Funding to cover 66 percent of the on-going costs to the licensing agencies was offered. No funding was made available to cover start-up costs. It is not certain that any funds will be provided to other states. The decision is made on a state-by-state, program-by-program basis. However, this is an important source to consider. Also, California's statute specifically includes authority for the state licensing boards to increase fees to cover added costs. Because Virginia's licensing agencies are self-funded, fees would have to be increased.

At this point it is impossible to estimate the start-up costs and manpower needs for Virginia licensing agencies. The cost would necessarily depend on the type of program to be implemented.[40] Among the issues to be assessed are whether the courts, the licensing agencies or DSS would initiate the process; the extent of automation available and the degree of automation needed; availability of a unique identifier to reduce the likelihood of an erroneous match; and whether licensees will be subject to suspension during on-going license periods, as well as the nature and extent of any appeal rights to be granted. Representatives of the Department of Social Services believe that computer matching will not be a problem, i.e., there will be little increased costs to the Department and licensing agencies to initiate an automated matching system.

If the program merely required licensing agencies to provide licensee information to DSS and give notice to licensees identified by DSS as delinquent, the on-going costs to the agencies would be minimal. Start-up costs could be significant, however, if application forms have to be revised and new computer programs devised.

DSS would also incur additional costs. In 1988, DPB reported that the Tax Department and VEC estimated their one-time only start-up cost for implementing a license setoff program limited to 51,000 business licensees would include a one-time expenditure of $8,100 for computer programming and program development and other administrative expenses. Additionally, annual operating costs, including

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[40] The Department of Social Services has draft legislation under consideration for introduction in the 1994 Legislative Session.

costs to these two agencies of conducting appeal hearings, were estimated at $77,650. Each agency anticipated two new FTEs to implement the more limited setoff program.[41] Costs to DSS in 1994 for a program involving 13 times as many licensees and many more agencies will necessarily be significantly higher.

NEED Many persons question the need and efficacy of a license revocation program. There is currently no federal mandate, nor is one likely in the next two years. In the meantime, reports on the success of programs implemented in other states will become available.

In assessing the need for a program, it must also be noted that no one knows how many of the estimated 9,800 delinquent obligors targeted for license withholding would be self-employed individuals who could not be subjected to more traditional support enforcement techniques, such as wage withholding and tax refund intercepts.

PRIVACY With regard to the use of unique identifiers, one must keep in mind the sensitivity shown towards expanded uses of social security numbers (SSNs). As recently noted by the U.S. Court of Appeals for the Fourth Circuit, the harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous.[42]

Appendix B indicates that few license applicants are currently required to provide a SSN. However, most do. The Fourth Circuit in Greidinger recognized that the state could have a compelling interest necessitating use of a SSN but held that further disclosure and/or use of the SSN must be "narrowly tailored" to fulfill the state's interest. Efficient child support enforcement would likely constitute a compelling state interest. However, in 1988, the Office of the Attorney General advised DPB that "licensing agencies could not require licensees to provide SSNs" in conjunction with a tax delinquency license setoff program.[43] If it were determined that SSNs could be required for a support delinquency program upon implementation of a license withholding program using SSNs to establish a match, licensing agencies would need to adopt procedures limiting public access to files containing that information. This could also add to the costs.

PUBLIC REACTION There is no organized constituency in Virginia which supports or encourages parents who are delinquent in paying child support. Many people are concerned about occupational license withholding, however, on policy grounds. **Appendix C** includes letters received from the Virginia Society of Professional Engineers and the Children's Rights Coalition of Virginia, as well as a resolution of the Board of Governors of the Family Law Section of the Virginia State Bar. All of these organizations oppose license withholding. The stated grounds for

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[41] DPB Report, at vii.

[42] Greidinger v. Davis, (4th C.A., 1933) 988 F.2d 1344 at 1354.

[43] DPB Report, at vii.

the opposition generally include the following: (i) lack of a rational linkage between the ability to practice a trade or profession as a basis for licensing and the ability to pay an outstanding child support obligation, (ii) the program unjustifiably discriminates against delinquent obligors who need a state-issued license, (iii) it is a punitive step being taken without an adequate demonstration of need or effect, and (iv) license withholding interferes with the ability to earn a living and consequently the ability to pay the obligation.

POLICY CONSIDERATIONS

PROS

- Ensures compliance with support orders by obligors who are otherwise difficult to locate, such as the self-employed who may represent as much as 20 percent of the total work force. (Possibly one in five workers are self-employed.)

- Creates only minimal on-going costs once program implemented.

- Allows state to legitimately tie a privilege (license) to compliance with its mandates (support order).

CONS

- Implements a harsh collection tool in absence of demonstrated need and efficacy.

- No rational connection between occupational license and child support.

- Interferes unreasonably with individual's ability to support current family, thereby potentially violating substantive due process rights (family relationships).

- Involves procedural due process requirements that will add significant costs to the program, thereby reducing the overall benefit to the state.

- Discriminates against those who require a license but are unable to pay.

POST-MAJORITY SUPPORT

> *There are indicators that post-secondary child support leads to greater educational attainment. Efforts to lessen the educational disadvantage of one-parent households compared to children of intact families not only benefit the targeted child, but society benefits from a better educated work force as well.*
>
> *Supporting Our Children: A Blueprint for Reform: Report of the U.S. Interstate Child Support Commission*

Under the common law a parent was responsible for providing necessaries to a minor child. This doctrine is well established in every state. Nonetheless, two issues are addressed differently by states statutes and judicial opinions: Who is a child? What constitutes necessary support?

WHO IS A CHILD?

The Twenty-sixth Amendment to the Constitution of the United States reduced the minimum voting age from 21 to 18 in 1971. Following this change, many state legislatures reduced the age of majority, thereby giving 18 year-olds other rights and obligations of adulthood. The Virginia General Assembly enacted § 1-13.42 in 1972, to define minor as a person under 18 years of age.[44]

In several states, the legal duty of a parent to provide support extends only to minor children. Thus, a corollary, and some may argue unintended result of the reduction in the age of majority was to reduce the duration of a parent's legal duty to support by three years. In Virginia the duty to support is not tied to the age of majority. In fact, prior to 1970 the statutory duty to provide support found in § 20-61 extended only to those under the age of 17.[45] This age limitation has not changed since 1970 and currently stands at 18. In other states where a duty of support extends to "children," in the absence of an express statutory mandate,

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[44] § 1-13.42. Age of majority.
(a) Unless a different meaning appears from the context:
(1) The words "infant," "child," "minor," "juvenile" or any combination thereof shall be construed to mean a person under eighteen years of age.
(2) When used to mean or include disability because of age, the term "person under disability" shall be construed to mean or include a person under eighteen years of age.
(3) The word "adult" shall be construed to mean a person eighteen years of age or over.
(4) The word "infancy" shall be construed to mean the state of being under eighteen years of age.
(b) For the purposes of all laws of the Commonwealth including common law, case law and statutory law, unless an exception is specifically provided in this Code, a person shall be an adult, shall be of full age and shall reach the age of majority when he becomes eighteen years of age.

[45] See Chapter 284, 1970 Acts of Assembly.

courts have found implied jurisdiction to order support for adult children, if needed. Virginia's duty of support, codified in § 20-61, applies to children "...under the age of eighteen." A statutory change would be required if the Virginia courts were to extend the duty to support to children who have attained the age of majority.

WHAT CONSTITUTES NECESSARY SUPPORT?

The other issues for the General Assembly would be for what purposes; in what form and for how long post majority support could be ordered.

The available literature indicates that most states which have addressed the issue have done so in the area of post-secondary education, and for that reason much of this report will relate to post-majority support for higher education. Another reason for that focus is the prevalent argument that higher education is the best means to attaining other basic life needs such as employment and health care.

Support for Higher Education American jurisprudence determined early on that the parental obligation to provide necessaries did not extend to expenses for higher education. In the leading case, the court held

> [A] good common school education, at the least, is now fully recognized as one of the necessaries for an infant.
>
> But it is obvious that the more extensive attainments in literature and science must be viewed in a light somewhat different. Though they tend greatly to elevate and adorn personal character they are far from being necessary in a legal sense. **The mass of our citizens pass through life without them** (emphasis added). Middlebury College v. Chandler, 16 Vt. 679 (1844).

This latter statement by the court is much less true today. One hundred and forty-five years later, 27.6 percent of all persons within the Commonwealth between the ages of 18 and 24 were enrolled in college.[46] By 1991, 257,154 Virginians were enrolled in a public institution of higher education in Virginia.[47] Data for 1990 shows that just over 300,000 students were enrolled in public and private institutions at the undergraduate level, 5.9 percent (48,029) for the first time.[48] If we assume that the vast majority of first-time enrollees were entering freshman and that Virginians accounted for at least 73 percent of the new enrollees[49], the total number of Virginians entering college in Virginia in 1990 for

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[46] Southern Regional Education Board (SREB), Fact Book on Higher Education, 1992, at p. 36, Table 13.

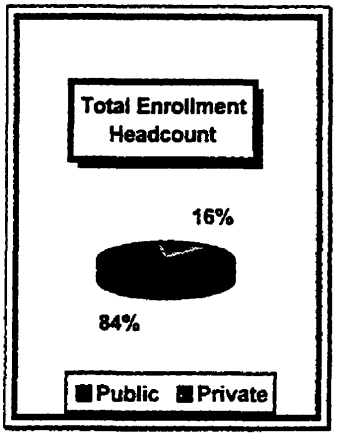
[47] Total enrollment for the Fall 1991 was 353,901. Higher Education in Virginia 1992-93, Fact Book, p. 31.

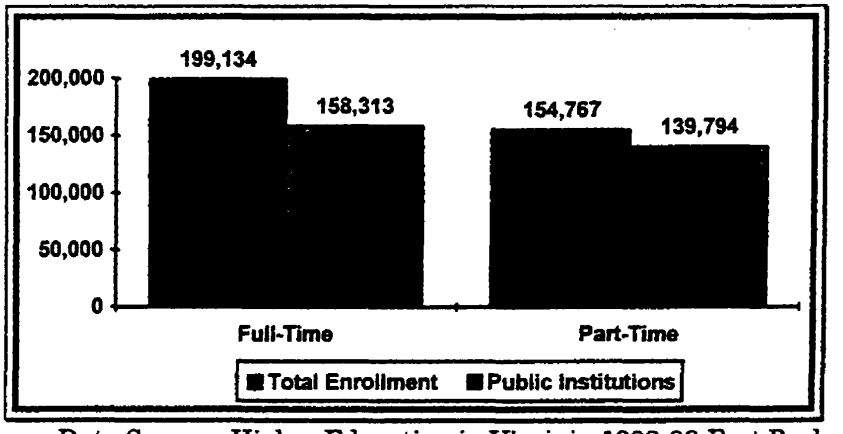
[48] SREB, Fact Book on Higher Education 1992, at p. 42, Table 19.

[49] A very low number derived using 1991 data: 257,154 Virginians in public institutions, out of a total of 353,901 undergraduate enrollees in **all** institutions of higher education (73%).

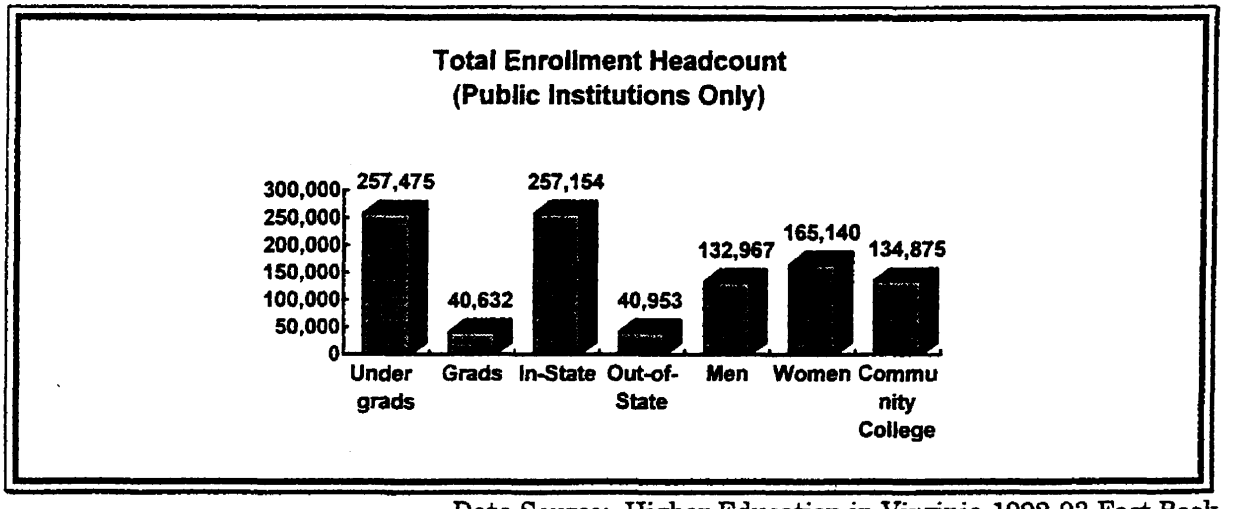
the first time would bewell over 35,000. This represents 57 percent of the 61,268 students who graduated from high school that year.[50] Although 57 percent may have gone to college, the *Richmond Times-Dispatch* recently reported that 71 percent had planned to go.[51] Many may have had financial difficulties which prevented enrollment.

STATISTICAL OVERVIEW
Enrollment Headcount (Fall 1991)





Data Source: Higher Education in Virginia 1992-93 Fact Book



Data Source: Higher Education in Virginia 1992-93 Fact Book

Although a college education was once considered a luxury to be enjoyed by a privileged few, it is increasingly viewed as a necessity. This view was taken by the Supreme Court of Washington as early as 1926 when the court found

> [t]hat it is the public policy of the state that a college education should be had, if possible, by all its citizens, is made manifest by the

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[50] Virginia Statistical Abstract, 1992-93, at p. 156, Table 59.
[51] Richmond Times-Dispatch, September 12, 1993, A-18.

> fact that the state maintains so many institutions of higher learning at public expense. It cannot be doubted that the minor who is unable to secure a college education is generally handicapped in pursuing most of the trades or professions of life, for most of those with whom he is required to compete will be possessed of that greater skill and ability which comes from such an education. Esteb v. Esteb, 138 Wash. 174, 244 P. 264, 267 (1926).

Although a college education is arguably necessary, its cost continues to escalate beyond the financial means of many. According to a series of articles published in the *Richmond Times-Dispatch* September 12 through September 16, 1993, Virginia ranks eighth in the country in tuition and fees charged at the major state-supported institutions. The costs at these institutions have increased 44 percent since 1990. As evidenced by the articles, cutting the "fat" in higher education costs is receiving a great deal of attention. Until the cost of higher education comes down, however, it will remain virtually impossible for a student, whether or not his parents are married, to get through without some outside financial assistance. Assuming that a higher education is a necessity, are there alternatives to an extension of the parental duty to provide support?

Financial Aid As An Alternative To Support The current system for financing higher education presumes that the child and his or her parents are primarily responsible. The needs analysis formula used in Virginia is based upon the Central Processing System used by the U.S. Department of Education. While consistency with the federal system is not mandated, it does save money and is used in Virginia.[52] If an aid applicant is dependent on his or her parents, the income of the parents will be used to determine expected family contribution. A nondependent child is one who is either 24 or older, a veteran, a graduate or professional student, a ward of the court or orphan or a parent with dependent children.

Amounts received by a custodial parent as child support are included in that parent's income in determining expected family contribution. In the absence of an agreement between the parties, though, child support will terminate on the later of the child's eighteenth birthday or high school graduation. The marital status of the applicant's parents is requested. If the parents are divorced, financial information is required only from the parent the child lived with "the most" over the previous 12 months or, if the child lived with each for equal periods of time, the parent who provided the most financial assistance. Since joint and shared custody arrangements are the exception for students currently entering college, primary financial responsibility for the education is placed upon the custodial parent. Curiously, if the custodial parent has remarried, financial data on the stepparent must be included. HJR 485 states that "federal aid programs are based on the

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[52] James Alessio, Council of Higher Education.

premise that both student's natural and foster care parents have the primary responsibility for their child's education...." This statement is inaccurate. A foster parent is not considered a parent in the absence of a court order naming the foster parent as legal guardian and directing use of personal financial resources to support the child.[53]

For the 1991-92 academic year, 64,013 undergraduate dependent students, almost 25 percent of the total undergraduate enrollment, applied for federal financial aid and, of those, 30,098 enrolled in a public college or university and received aid.[54] Following is a breakdown of the marital status of the parents of each group.

Breakdown by Parental Marital Status

	Applicants	**Enrollers**
Single	5.2%	5.4%
Married	64.6%	61.9%
Separated	6.2%	6.9%
Divorced	17.6%	19.7%
Widowed	4.4%	4.8%
Unreported	2.0%	1.3%

A clear majority of the students come from families where the parents remain married. However, the chart above demonstrates that over one-third of the applicants and at least 37 percent (or 11,075) of the enrollers come from single parent homes. The data also suggests that students from single parent homes who enter college have a slightly better chance of receiving financial aid than do applicants whose parents remain married, particularly if their parents are divorced.

Proponents of post-majority support argue that higher education is a necessity from which satisfaction of other basic needs flows. No longer can 18 year-olds be fully productive members of our increasingly complex society. Children from single parent families are at a significant financial disadvantage concerning the ability to obtain the education needed to attain full productivity as an adult. Available data indicates that children of divorced parents tend to have lower college attainment rates.[55] Even where financial aid is being provided, however, one must consider that the student emerges from college with a degree and very likely a significant debt since loans are replacing grants as the major form of financial aid.

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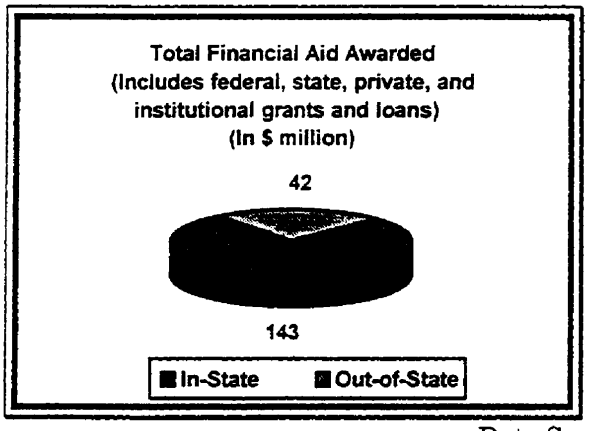
[53] All data supplied by Zita M. Barree, Assistant Coordinator, Financial Aid Programs, Council of Higher Education.

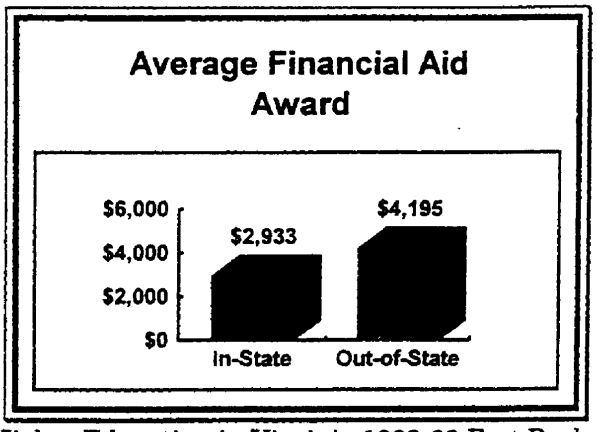
[54] Data provided by Zita M. Barree.

[55] For example, a 1986 study of 52 families in northern California established that only 67% of the children of divorced parents entered college, while 85% of their peers from two-parent families did *Father and Child Relationships After Divorce: Child Support and Educational Opportunity*, Family Law Quarterly, Summer 1986.

In the early 1970s the bulk of financial aid was provided in the form of grants. Nationally, by 1990, half of all financial aid was provided by loan.[56] In Virginia, between 1985 and 1990, the number of Stafford Loan Recipients increased by 121.1 percent, the number of PLUS recipients by 460 percent and the number of SLS recipients, a new program, by 2,425 percent.[57] The dollar amounts loaned under these programs increased as well by 152.6 percent, 586 percent and 2,411 percent, respectively.[58] The number of grant recipients decreased during the same time period by 16.9 percent for work study programs and 23.9 percent for Perkins (Direct Student Aid) loans, while Supplementary Educational Opportunity Grants increased by only 5.8 percent.[59]

FINANCIAL AID (1989-90)





Data Source: Higher Education in Virginia 1992-93 Fact Book

STATES' LAWS

The courts in New Jersey[60] and South Carolina[61] created the authority to order post-majority support in the absence of specific legislation. This is the exception, however, and most courts that have addressed the issue have refused to recognize such a right or duty to support beyond minority in the absence of a statutory mandate.

There are generally accepted exceptions to the minority support only rule for extraordinary cases where, for example, the child is mentally, physically or otherwise incapable of providing for himself. Another increasingly popular exception continues the support obligation for a limited period of time to allow the post-majority child to complete high school. Virginia[62] and 12 other states currently

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56 SREB Fact Book, p. 82.
57 Id., at p. 91, Table 53.
58 Id., at p. 90, Table 52.
59 Id., at p. 89, Table 51.
60 Wanner v. Litvak, 179 N.J. Super. 607 (1981).
61 West v. West, WL 127578 (1992).
62 Chapter 887, 1988 Acts of Assembly.

allow support to continue for a limited time beyond majority, while the child attends high school.

The age of majority in Mississippi is 21 and 19 in Wyoming. The duty of support continues until majority in those states. New York state and the District of Columbia have a separate age of majority of 21 for child support purposes only. The courts in Colorado, Massachusetts, Michigan, New Jersey,[63] South Carolina[64], Utah and Washington have discretionary authority to order post-majority support for nonparticularized purposes. The general rule in these states is that some "exceptional circumstance," "necessity" or "dependency" must exist before the court will exercise its discretion. The specific authority to order post-majority support for post-secondary education exists for the courts in Alabama, California, Colorado, Illinois, Indiana, Iowa, Massachusetts, Missouri, New Jersey, New York, Oregon, Pennsylvania, South Carolina and Washington.

POST-MAJORITY SUPPORT

	Higher Age of Majority	High School Only	Higher Education Only	Any Purpose	Age of Majority
Alabama			YES		19
Alaska					18
rizona					18
Arkansas					18
California			YES		18
Colorado				YES	18
Connecticut					18
D.C.	21, support only				*18 but 21 for child support
Delaware		YES			18
Florida #					18
Georgia		YES			18
Hawaii				YES	18
Idaho		YES			18
Illinois			YES		18
Indiana			YES		18
Iowa			YES		18

[63] In Wanner v. Litvak, 179 N.J. Super. 607 (1981) the court held that there is no age fixed in law when a child becomes emancipated.

[64] West v. West, W.L. 127578 (1992, S.C. App.) held that family court jurisdiction over children 18 and older is warranted in "exceptional circumstances."

	Higher Age of Majority	High School Only	Higher Education Only	Any Purpose	Age of Majority
Kansas #°					18
Kentucky #°					18
Louisiana					18
Maine		YES			18
Maryland #°					18
Massachusetts				YES	18
Michigan #°				YES, til 19 1/2	18
Minnesota #		YES			18
Mississippi #	21				21
Missouri			YES		18
Montana #					18
Nebraska					19
Nevada #		YES			
New Hampshire		YES			18
New Jersey					18
New Mexico					18
New York #°	21, for support				18 but 21 for child support
North Carolina		YES			18
North Dakota #					18
Ohio #°					18
Oklahoma #		YES			18
Oregon			YES		
Pennsylvania			YES		18
Rhode Island		YES			18
South Carolina				YES	18
South Dakota		YES			18
Tennessee		YES			18
Texas#		YES			18
Utah					18
Vermont		YES			18
Virginia #		**YES**			**18**
Washington				YES	
West Virginia					18
Wisconsin					18
Wyoming	19				19
TOTALS	**4**	**15**	**8**	**8**	

Parent-Child Relationship

Courts which exercise their discretionary authority to award post-majority support will do so after considering a variety of factors. In determining whether post-majority support for education is appropriate, reported cases show that the courts attempt to ascertain whether the noncustodial parent would have contributed had the parents not divorced. The greater the time frame between the divorce and the child's entry into college, the more difficult it is to predict. The court must look at the nature and quality of the parent-child relationship over the years. One court has held that where a child had not seen the father for six or seven years and was "extremely hostile," the child was not "worthy" of the effort and burden it would cost the father. Hambrick v. Priestwood, 382 So. 2d 474 (Miss. 1980). One child's hostility may be another's normal anger and fear. There is no doubt that proper judicial review in these cases requires in-depth review of very personal and unique relationships. A frequently heard criticism of judicially imposed post-majority support only in cases of divorce is that parents in an intact family would continue to be allowed to arbitrarily say no to a child's request for financial assistance, but a noncustodial parent could be ordered to provide assistance although his refusal could be for the same reason. The few times this criticism was couched in terms of an equal protection violation, it has been dismissed by the courts.[65]

Some argue that allowing post-majority support is a disincentive to a non-custodial parent to continue a relationship with a child.[66] For example, in Virginia, where the average length of a marriage terminated by divorce is under six years, presumably a significant number of the children of those marriages would be under age six. A parent may choose to distance himself from a child rather than incur potential liability for significant future unknown expenses, particularly if a second family is involved.

Reasonableness of Expectation of Support

In addition to the parent-child relationship, the court also evaluates the child's need for and the parent's ability to provide financial assistance. The South Carolina Court of Appeals determined that to assess the child's need for higher education it must find evidence that (i) the characteristics of the child indicate that he or she will benefit from college, (ii) the child demonstrates the ability to do well, or at least make satisfactory grades, (iii) the child would not otherwise be able to go and (iv) the parent is financially able to pay. West v. West, supra. The Iowa courts consider the child's age, his ability to perform college work and whether the child is

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[65] "The irremediable disadvantages to children whose parents have divorced are great enough. To minimize them, when possible, is certainly a legitimate governmental interest." Childers v. Childers, 89 Wash. 592 (1978).

[66] See Appendix C, letter from Richard E. Crouch, Esq.

self-sustaining. In re Marriage of Baker, 485 N.W. 2d 860 (Iowa App. 1992). The New Jersey courts look to the background, values and goals of the parent and then assess the reasonableness of the child's wish to attend college. Newburgh v. Arrigo, 88 N.J. 529 (1982). Most courts use variations of these factors to make findings that the child can and will succeed in college and needs financial assistance.

The courts will look to the financial resources of both parents when determining need,[67] and equitably assess any support ordered based upon ability to pay. Some courts have also looked to a step-parent's resources. For example, in In re Lindberg, 462 N.W. 2d, 698 (Iowa Ct. App. 1990), the court found that because the stepfather's income reduced her living expenses, it was relevant to determining the custodial mother's ability to contribute. Also, the courts have consistently looked to the child's income and earning capacity and the reasonableness of expenses. Typically, in other areas of child support, a child's financial situation is not relevant to an award of support. In addition to income, the courts also look to the reasonableness of the child's efforts to obtain financial aid. In at least one case, the court considered the child's failure to seek financial aid in denying support. Kelly v. Kelly, 423 S.E. 2d 153 (S.C., 1992). As a condition of receiving financial aid in New York State, a student must apply for IV-.D. services and pursue his parents for support, even where the family remains intact.[68]

Perhaps a more difficult determination for the courts is assessing the child's aptitude for college. As with the other factors, this will be a continuing assessment. In one case, after the child spent seven semesters in a four-semester program, the court found that based upon frequent failures and withdrawals and a GPA of 1.75, the child's "academic record attests to an inability, if not an unwillingness to successfully complete his educational ventures." Marino v. Marino, 411 Pa. Super. 424 (1992). Marino appears to be the exception. Most of the reported cases evidence a willingness on the part of the courts to find that a child will eventually succeed, even in the face of minimal past academic achievement.[69]

After considering all the factors and determining that post-majority support would be appropriate in a given case, the courts must then determine the form and amount of the award.

FORM AND AMOUNT OF AWARD

The court's order will typically require a parent to pay a reasonable portion of the child's expenses, either directly to the school or to the child. The payments may be made in a lump sum or over time while the child is enrolled. In one case, however, the noncustodial parent was ordered to pay not only the new educational expenses, but, so long as the child lived at home, to continue making child support

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[67] See e.g., In re Olson, 223 Ill. App. 3d 636 (1992).

[68] Information provided by Bob Owen, Virginia Department of Social Services, by memorandum dated June 3, 1993.

[69] Kerr v. Kerr, 278 S.C. 191 (1982).

payments to the custodial parent. This, the court reasoned, constituted his "fair share" for room and board. In re Richards, 439 N.W. 2d 876 (Iowa Ct. App. 1989). In Colorado, "extraordinary" education expenses are added to the basic child support obligation.[70]

The award usually covers tuition, room, board and books. As noted above, room and board may be required even when the child has no out-of-pocket expenses but continues to live at home. The amount of educational support may be further limited. The Iowa Court of Appeals has held that where the "parties are of limited financial means there is no need to obligate parents for college expenses beyond those of attending a state supported university in the state of the student's residence."[71]

There is conflicting authority on the effect of the child support guidelines or the amount of the award. In Oregon, the court held that post-majority educational expenses may justify a deviation from the guidelines-determined amount. But, the support obligation nonetheless remains subject to the statutory maximum amount contained in the guidelines.[72] In Alabama, the guidelines were held not to even apply to a post-majority award for college expenses.[73]

There have also been cases where the courts provided for payment of extraordinary expenses in addition to educational expenses presumably on the theory that these amounts were necessarily incurred and there was no other means available to pay for them. In Risinger v. Risinger,[74] direct payment of medical expenses was required. A paying parent has also been required to obtain and maintain adequate insurance.[75]

TERMINATION OF AWARD

The duration of a post-majority award is tied to the purpose for which it was granted. The State of Washington imposes a parental duty to support a dependent child until the child is emancipated.[76] The court, in construing the term "dependent, unemancipated child," determined that attainment of a certain age does not constitute emancipation. The court looks to the child's needs, prospects, desires, aptitudes, abilities and disabilities.[77] In Florida the duty of support is keyed to "actual dependency." Simply attending college does not constitute

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70 Colorado Code Ann. §§ 14-10-115 and 14-19-122.
71 In re. Marriage of Richards, 439 N.W. 2d 876 at 879 (1989).
72 In the Matter of the Marriage of Wiebe, 833 P. 2d 333 (Or. App. Ct. 1992).
73 Thrasher v. Wilburn, 574 So. 2d 839 (Ala. Civ. App. 1990).
74 273 S.C. 36 (1979).
75 Schueneman v. Schueneman, 591 N.E. 2d 603 (Inc. Ct. App. 1992).
76 Wash. Rev. Code Ann. §§ 26.09.100 and 26.09.170 (1976).
77 Childers v. Childers, supra.

dependence.[78] However, if attendance were a factor in determining dependence, dropping out could be a grounds for termination.

Many states have statutory maximum ages beyond which support cannot be required.[79] In other states, termination of the award is tied to an occurrence, such as withdrawal from school or graduation.[80]

PUBLIC REACTION

The public response we received to the proposal was negative. See **Appendix C**, letters from Cynthia L. Lewis, Children's Rights Coalition; Kenneth H. Skilling; Richard E. Crouch, Esq.; Frank W. Morrison, Esq., Chair, Virginia State Bar, Family Law Section. The Family Law Section of the Virginia State Bar, while not necessarily opposed, would prefer further study and exploration of alternatives for equalizing the economic playing field for all children, whether or not their parents are divorced.

POLICY CONSIDERATIONS

PROS

- Allows courts to fulfill familial expectations.
- Minimizes the long-term financial and emotional disadvantages brought upon children by divorce.
- Recognizes that emancipation comes not with age, but with self-sufficiency.
- Could reduce the expenditure of funds for student financial aid.

CONS

- Creates a dual standard of parental responsibility based upon marital status.
- Permits unwarranted judicial intrusion into issues of parental control and parent/child relationships.
- Potentially increases costs to the judicial system by expanding courts' jurisdictions.
- Creates an artificial dichotomy of rights for children based upon parental marital status rather than focusing on the needs of all children and alternative

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[78] Slayton v. Slayton, 428 So. 2d 347 (1983).
[79] See e.g., Iowa, Massachusetts, Missouri, New York, Oregon, etc.
[80] See e.g., Colorado, Missouri, South Carolina, etc.

means of ensuring their future productivity (e.g., change formula for determining need for purposes of financial aid eligibility).

CONCLUSION

New means of providing adequate child support will continue to be sought. Many states are looking to occupational license withholding to identify delinquent self-employed obligor parents. The newness of these programs precludes an in-depth analysis of their efficacy in achieving this goal. The variety of the statutes and programs, coupled with incomplete implementation, make valid cost assessments of these programs impossible.

Post-majority support has been in place in some jurisdictions for many years. The full impact of the existence of the discretionary authority in the courts on the well being of children and young adults is difficult to assess. There is evidence that states which allow for post-majority support have higher college attainment rates. Legal challenges based upon equal protection, privacy and vagueness issues have thus far been unsuccessful.

The Division of Legislative Services is grateful for all of the assistance received from many individuals and groups in preparing this report. Special thanks to:

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Cynthia Clayton, Department of Social Services
Robert Owen, Department of Social Services
James Alessio, Council on Higher Education
Zita Barree, Council on Higher Education

Respectfully submitted,

Mary P. Devine
Jessica F. Bolecek
Mary K. Geisen

GENERAL ASSEMBLY OF VIRGINIA--1993 SESSION

HOUSE JOINT RESOLUTION NO. 485

Directing the Division of Legislative Services to study child support after the age of majority.

Agreed to by the House of Delegates, February 18, 1993
Agreed to by the Senate, February 16, 1993

WHEREAS, the rising divorce rate and the increasing number of dysfunctional families, coupled with the termination of child support at age 18, is creating financial problems for many young people, many of whom must be placed in foster care; and

WHEREAS, aside from an agreement between the parties to a divorce, current Virginia law does not allow court-ordered support for children once they reach the age of majority (18), thereby leaving these children without sufficient resources to secure a college education, health insurance, and other basic life needs; and

WHEREAS, the one exception to this rule only covers children who are physically or mentally incapacitated when they reach the age of majority; and

WHEREAS, many of these young people, including those who may be in foster care, hope to attend college but federal aid programs are based on the premise that both student's natural or foster care parents have the primary responsibility for their child's education and, therefore, most colleges and universities use the salaries of both parents in determining eligibility for financial assistance; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Division of Legislative Services be directed to study child support after the age of majority. The Division shall compile and review existing laws on the issue, including those of other states; identify and analyze constitutional and jurisdictional issues, and public policy considerations; determine the number of children who potentially would be affected over the next four years; and review any other related issues necessary for a complete consideration of the concept.

The Departments of Social Services and Youth and Family Services, the State Corporation Commission's Bureau of Insurance, the Commission on Youth, and the State Council of Higher Education shall provide such technical assistance upon request in the manner deemed appropriate by the Division. All other agencies of the Commonwealth shall provide such assistance as may be necessary upon request by the Division.

The Division of Legislative Services shall submit its findings and conclusions to the Joint Committee on Rules and shall submit its report as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to the subsequent approval and certification by the Joint Committee on Rules. The committee may withhold expenditures or delay the period for the conduct of the study.

GENERAL ASSEMBLY OF VIRGINIA--1993 SESSION

HOUSE JOINT RESOLUTION NO. 615

Directing the Division of Legislative Services to study the feasibility of denying licensure or the renewal of a license to certain self-employed professionals who are delinquent in child support payments.

Agreed to by the House of Delegates, February 26, 1993
Agreed to by the Senate, February 26, 1993

WHEREAS, a 1984 federal Advisory Panel on Child Support Guidelines found that, after divorce, the custodial parent's standard of living declines an average of 73 percent, while the noncustodial parent's standard of living rises 42 percent; and

WHEREAS, citing adequate child support as a national concern, Congress passed legislation in 1975 requiring every state to create an agency to be responsible for the child support program; and

WHEREAS, the Commonwealth placed its child support program under the auspices of the Department of Social Services' Division of Child Support Enforcement; and

WHEREAS, although not yet successful in every case, the Division of Child Support Enforcement, since 1985, has tripled the number of obligations established, increased by more than 700 percent the amount of support collected and distributed, and saved the state three dollars in public assistance and other state support for every one dollar spent enforcing parental obligations; and

WHEREAS, the Division has particular problems in collecting child support obligations from certain self-employed professionals, including, but not limited to, real estate agents, lawyers, doctors, contractors, and barbers; and

WHEREAS, several states have adopted statutes withholding licensure and annual relicensure for these professionals pending collection of such obligations; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Division of Legislative Services be directed to study the feasibility of denying licensure or the renewal of a license to self-employed professionals pending the payment of all delinquent child support obligations. The Division shall determine whether similar legislation has been enacted in other states; assess the immediate and long-term impact of this concept on the supply of licensed professionals and its state and local revenues; indicate the advantages and disadvantages of the concept; and examine this approach relative to state and federal laws and regulations, as well as other initiatives to ensure compliance with child support orders.

The Division of Child Support Enforcement of the Department of Social Services, the Virginia Commonwealth Attorneys' Service Council, and the Departments of Commerce, Health Professions, and Taxation, along with all other agencies of the Commonwealth, shall, upon request of the Division of Legislative Services, assist the Division in its study.

The Division of Legislative Services shall complete its work in time to submit its findings and conclusions to the Joint Rules Committee, and thereafter, apprise the Commission on Overcoming Poverty of the findings and conclusions to assist it in its work. The Division shall submit its report to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to the subsequent approval and certification of the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

VIRGINIA CHILD SUPPORT ENFORCEMENT INITIATIVES: 1987-1991

1987

* A pilot project for information exchange with two local social services agencies

A process was established whereby extensive interviews were conducted with ADC applicants regarding the absent parent. The resulting information was transmitted directly to assigned workers in the corresponding district child support offices for appropriate case actions.

* On-line computer access to other state agencies

Computer links were established between the Department of Motor Vehicles and the Virginia Employment Commission and Division field offices to allow staff to access these agencies' databases to assist in locating absent parents.

* Reconciliation of fiscal records

The Division hired college students to work in each field office to review and adjust as necessary over 64,000 accounts. This project helped to ensure accurate records prior to tax intercept submission. During the year after this project, tax intercept collections increased by 25%.

* Private process servers

A private process server was contracted with to serve documents on absent parents. He was paid only for those documents successfully served.

* Expanded services

The Division worked with a representative of OCSE to develop and implement a model office plan for operation of the field offices. This concept was designed to standardize operations and procedures across the state by specializing key activities within functional areas in the office.

* Child support conference

The first conference in six years was held in November, and provided a forum for information - sharing and training. It was attended by over 350 people, and has been scheduled annually since then.

* IV-A / IV-D cooperation

The Commissioner and the Division Director met with local social services directors statewide to discuss child support and encourage interaction between the agencies. Child support activities were enhanced by the resulting stronger working relationships.

* Credit card project

The Division entered into an agreement with a local bank to allow absent parents to pay child support by credit card.

* **Training**

The Division contracted with a state university to provide training to all levels of staff in the Division. This contract was funded by a federal grant and lasted for three years. The university provided faculty and resources to conduct the training, which was implemented after a needs assessment was done by the Division's training staff.

1988

* **Initial proclamation of Child Support Month**

Governor Gerald Baliles proclaimed August Child Support Month in Virginia. A press conference was held in which an update of the program was provided, including statistics on program performance.

* **Volunteer services**

A volunteer services coordinator was named to bring volunteers to the Division. The coordinator developed job descriptions for volunteers, assessed field offices' readiness to include volunteers, recruited volunteers to work both in offices and offsite (for example, organizing a bulk mailing), and keeping a statistical record of the program.

* **Social security number identification project**

The Division contracted with Equifax Corporation to obtain and verify social security numbers for absent parents.

* **Public Awareness**

The Division began publishing a monthly newsletter which included information about the program, staff, achievements and statistics. It is distributed to Division employees, local social service agencies, selected Department of Social Services staff, clerks of court, judges, sheriffs, other states' IV-D directors, and other figures involved in child support enforcement.

Articles have been submitted to state newspapers; public service announcements have been sent to radio stations; graphics have been developed for use on posters and grocery bags; and a child support handbook has been developed.

Other public relations ideas being considered are the use of television PSAs, billboards and bumper stickers.

* **Paternity brochures**

Frequently mothers in putative father situations do not understand the benefits of establishing paternity. The Division developed brochures to explain the paternity process to both mothers and putative fathers.

* **Legislation**

During the 1988 General Assembly session, a number of legislative changes were made to strengthen the child support program, including expanded parentage legislation, streamlined appeal procedures, and immediate wage withholding. This legislation is some of the most progressive in the country and provides the Division with the tools necessary to establish and enforce obligations more quickly than before.

* **IRS 1099 project**

A project was initiated in cooperation with the IRS whereby unearned income information from IRAs, Keoghs, and brokerage accounts could be provided to the Division to assist in collection efforts.

* **Increased staffing**

The Virginia Department of Planning and Budget released the results of a comprehensive staffing study of the Division. As a result, the Division's staffing structure was reorganized to improve program efficiency, and the maximum full-time employment level increased from 435 to 925, an action that enabled the Division to eliminate more than 350 temporary positions.

1989

* **Child Support Month**

The Governor signed a proclamation designating August as Child Support Month. Activities included a news conference giving an update on program performance, booklets outlining responsibility for child support were distributed to guidance counselors in Virginia schools, posters were distributed to enhance public awareness of teen fatherhood, video PSAs borrowed from Illinois' "Parents Too Soon" were distributed to cable channels, and the Division announced a new Teen Father Outreach Program including use of radio PSAs by former San Francisco 49er, Anthony Leonard.

* **Teenage Paternity Committee**

Legislation enacted in 1988 permitted the establishment of paternity and the enforcement of obligations for males between the ages of 14 and 18. The Division formed a committee to develop programs to promote teen pregnancy prevention, including distribution of posters and pamphlets for teens and radio and television PSAs.

* **Genetic Testing**

The Division requested proposals from vendors to provide DNA testing as a supplement to the existing HLA blood testing contract.

* **Lockbox project**

The Division identified obligors who were consistent payors to participate in a lockbox project. These payors were instructed to send payments directly to a bank box. The bank then processes and deposits the checks and sends the payors' identifying information to the Division. The process allows money to be deposited on a more timely basis and eliminates the need for manual processing by the Division.

* **10 Most Wanted List**

The Division issued its first list of 10 delinquent obligors in August, 1989. This list was made up of absent parents identified by field offices as being among their hardest cases to enforce. Another list was generated in November, 1989, and the third list in August, 1990. Press releases were done to announce these lists, and received widespread publicity. A number of the absent parents have been located, some of whom have paid arrears in full. Extradition has been pursued in some cases, while other parents have been placed under wage withholding.

1990

* **Data services**

The Division has requested proposals for the development of a new automated child support enforcement system. Bids have been received and are in the process of being reviewed.

* **Paternity establishment project**

A project was begun in two Virginia hospitals whereby the Division initiated the establishment of paternity while the mother is in the hospital after giving birth. The Division is paying hospital staff for any paternity acknowledgments obtained from putative fathers.

* **Expansion of field offices**

The Division continued to expand by adding two field offices the serve its population, bringing the total number of field offices to 17.

1991

* **Data Services**

The Division reviewed requests for proposals for a new computer system from four vendors. A Northern Virginia company, Evaluation Research Corporation (ERC), was selected and negotiations are in the final stages prior to signing a contract for the development and installation of a new computer system.

* **Paternity Establishment Project**

The Division is in the process of negotiations with nine additional hospitals to expand the Paternity Establishment Project (PEP) into the northern, central and western areas of Virginia. PEP allows unwed mothers and fathers to voluntarily acknowledge paternity of a child immediately after the child's birth. PEP currently is in Sentara Norfolk General Hospital and Virginia Baptist Hospital in Lynchburg.

* **National Most Wanted List**

Virginia spearheaded the development and distribution of a national most wanted list of delinquent payors. Articles have appeared in USA Today and other newspapers with large circulation. Twenty-three states participated in this initiative.

* **Virginia's 10 Most Wanted List**

The Division published another 10 most wanted list of delinquent payors. This highly successful program will be repeated again in June 1991.

* **Consolidation of Regional Offices**

The number of Division regional offices has been reduced from five to four as part of the Department of Social Services' need to reduce costs and streamline operations.

1992

* **Paternity Establishment Project**

The Division expanded the PEP program to include a total of 16 hospitals. PEP programs are operating in Sentara Norfolk General, Virginia Baptist in Lynchburg, Loudoun Hospital Center in Leesburg, Reston Hospital Center in Reston, Potomac Hospital in Woodbridge, Prince William in Manassas, Fairfax Hospital in Falls Church, Fair Oaks in Fairfax, and Medical College of Virginia and Chippenham Hospital in Richmond. Plans were made to enroll a total of 27 hospitals in the program by early 1993.

* **Virginia's "10 Most Wanted" List**

The Division published its sixth "10 Most Wanted" list in August 1992. As of August, 31 of the 60 responsible parents from all of the lists have been located.

Virginia again spearheaded the development and distribution of a second "National Most Wanted" list of delinquent payors. Twenty-nine states participated in this initiative.

* **SAFE (Seize Assets for Enforcement)**

This non-traditional means of enforcing child support obligations involves the filing of a lien on the absent parent's personal property and the subsequent request to the courts to levy on the lien. The sheriff tags the items to be levied upon and sold at auction should the absent parent not agree to pay. At the end of the first six months of SAFE, collections totalled $287,000.

* **KIND (Kids in Need of Dads)**

This paternity establishment project targets unwed parents who bring their children to public health clinics and will also involve the distribution of information regarding paternity establishment to pregnant women.

VIRGINIA CHILD SUPPORT LEGISLATION: 1988 - 1992

CODE SECTION		1988 GENERAL ASSEMBLY
20-108.2	1.	Support Guidelines for use by courts and DCSE. . Advisory for Courts - Binding on DCSE . Periodic Reviews of the guidelines. . Tracking orders and submitting annual reports to the Governor and General Assembly. . Guidelines from $0 - $6650/Month.
20-61.3	2.	Allows courts to proceed with paternity hearing even if the alleged father doesn't show, if he was personally served.
20-88.2 20-88.3	3.	Specifies that in the URESA cases, the initiating state pays for blood testing in paternity cases. Also, the central registry is the contact point for receiving information on incoming cases.
20-49.1 thru 20-49.7	4.	New version of the Uniform Parentage Act to determine parentage of a child. Repealed old parentage sections of the Code.
20-61.1	5.	Allows a court to proceed with paternity hearings and support obligations on males ages 14 to 18 when a guardian ad litem represents their interests in court.
20.61.3	6.	Courts can require a man who is before the court for other issues, and who voluntarily admits to paternity of a child under oath, to sign an acknowledgment of paternity form and file it with DCSE.
63.1-250.1	7.	Allows the Commissioner or the Director of the Division of Child Support Enforcement to subpoena financial records of absent responsible persons to verify information received on the 1099 report.
3.1-250.2	8.	Reduces the application fee for non-public assistance clients from a sliding fee scale up to $25.00 to a flat $1.00 fee, which the Department of Social Services will pay on behalf of the applicants.
63.1-250.3 63.1-256 63.1-267.1	9.	Permits the Department to continue collecting support payments during the pendency of any appeal, other than the original Administrative Support Order.
63.1-250.4 63.1-256	10.	Limits the basis for appeals in all cases, except initial entry of an Administrative Support Order, to a mistake of fact.
63.1-252.1 63.1-254 63.1-256	11.	Allows an absent responsible person to waive the service of process when handed the Administrative Support Order or enforcement notice by the Division 63.1-267.1 of Child Support Enforcement.

63.1-252.1 63.1-258 20-79.2	12.	Creates the new collection/enforcement remedy of immediate income withholding on all new administrative and court orders. (Mandatory for administrative orders and allowable for court orders).
63.1-252.1 16.1-279	13.	States that any determination of a support obligation creates a judgment subject to full faith and credit in any state or jurisdiction.
63.1-255	14.	Permits the Department to advise credit bureaus and credit reporting agencies when liens have been filed for a child support delinquency.
63.1-266 63.1-256 63.1-68.1 20-79.1	15.	Reduces the appeal timeframes from 20 or 21 days to 10 days.
63.1-260	16.	Allows service of an order to withhold and deliver on the main headquarters of a financial institution to be effective on all accounts of the responsible person regardless of the branch in which the assets may have been deposited.
63.1-267.1	17.	Authorizes the hearing officer to give the decision at the conclusion of the hearing.
63.1-270	18.	Eliminates the six year statute of limitations that prevents the Department from taking involuntary enforcement action against any delinquency which occurred six or more years ago.
63.1-285	19.	Requires both the custodial and non-custodial non-ADC parents to complete a financial statement.
63.1-259 16.1-241 16.1-279	20.	Adds new sections that state that an Administrative Support Order has the same force and effect as a court order and adding wording to court sections of the Code.
20-60.3	21.	Amends the statute on the contents of support orders, that indicates that the Department can take administrative enforcement action on a court order without giving the responsible person any additional notice.
20-79.1	22.	Revises the Code related to the court mandatory payroll deduction to: a) specify that an appeal decision must be rendered within 45 days of the receipt of notice; b) eliminate a new court action prior to implementing the mandatory payroll deduction; c) clarify the definition of mistake of fact; d) modify the procedures for prorating multiple orders that a single responsible person has; e) clarify when direct payments from the employer to the payee may occur; and, f) specify further when an order may be terminated.
63.1-53	23.	Deletes the requirement that only named responsible persons with arrearage of at least $1,000 can have their names submitted to consumer credit agencies.

CODE SECTION	1989 GENERAL ASSEMBLY	
20-108.1	1.	Support guidelines are changed to rebuttable presumptions (from advisory on the courts). Also, the support scale is increased from $0-$6650 to $0-$10,000 per month.

20-49.3	2.	Requires the court to order the parties in a paternity case to submit to blood testing at the request of either party or on its own motion.
20-103	3.	Allows support payments to continue for high school students under age nineteen who are full time high school students, when ordered by a court.

CODE SECTION	1990 GENERAL ASSEMBLY	
20.49.1	1.	Allows voluntary acknowledgments of paternity to have the same force and effect as a court order. Allows blood test results of 98% or greater to determine paternity and to have the same legal effect as a court order.
20.60.5	2.	Allows DCSE to change the payee on a court order by serving notice of the change on the payor.
20-79.2	3.	Requires courts to implement immediate wage withholding on all cases unless good cause exists not to do so.
32.1-26.1	4.	Requires the Health Department to obtain the Social Security numbers of both legal parents at the time of a child's birth.
63.1-250.1	5.	Requires the department to develop procedures for the review and modification of support orders.
63.1-274.6	6.	Allows the department to disclose information to authorized persons regarding parental kidnapping.
	7.	Rescinds the sunset clause for Commonwealth's Attorneys to represent DCSE in civil support cases.
6.1-125.3	8.	Requires a joint account holder to be notified prior to DCSE taking action on an order to withhold, if joint interest is present. The general district court or circuit court will determine the extent of ownership.
20-79.3	9.	Combines employers' rights and responsibilities regarding all types of wage withholding into one new section.
20-49.8	10.	Allows alleged fathers to be assigned a portion of the mother's medical expenses for pregnancy-related costs from the date the alleged father becomes the legal father.

CODE SECTION	1991 GENERAL ASSEMBLY	
20-60.5	1.	Allows child support cases transferred from the courts to the Division to be deemed as having applied for child support services by operation of law.
20-79.3 63.1-250	2.	Mandates the enrollment of health care coverage by an employer for the dependents of an absent responsible parent obligated to pay child support and clarified the definition of "reasonable cost" of such health insurance.
20-108.2	3.	Revises the use of child support guidelines to: o combine all factors affecting the obligation and ability of each party to provide child support into one section.

- o add the cost of health insurance premiums in determining the child support obligation.
- o detail the method of determining the child support obligation in cases involving split custody.
- o eliminate the requirement for the guidelines reporting and tracking system for courts and the Division.
- o delete the requirement for a "sworn" financial statement but have the responsible party certify its correctness under penalty of perjury.
- o allow the Department to promulgate regulations concerning the sharing of information with both parties.

63.1-258.1	4.	Provides that administrative child support orders do not have to provide for immediate withholding of earnings if the obligor and the Department of Social Services, on behalf of the obligee, agree to an alternate arrangement or if good cause is shown.
20-87.1	5.	Gives the Department enhanced capability to locate absent parents by authorizing access to records of departments, boards, bureaus and other agencies of the Commonwealth. The Department is authorized to access all customer records of public service corporations and companies.
63.1-274.10	6.	Allows the Department to assess and recover the actual costs of attorney's fees, blood testing fees and intercept programs for federal and state tax refunds from the absent parent in child support cases. All administrative enforcement remedies can be used to collect these fees.
20-88.14 20-88.26:1 63.1-268.1	7.	Modifies the Uniform Reciprocal Enforcement of Support Act to give the Department specific authority to use its administrative remedies in lieu of judicial enforcement proceedings under the Act upon request of a nonresident obligee. It extends protections similar to those under URESA to out of state obligees so they do not have to travel to Virginia for paternity or other hearings, but they submit depositions instead.

CODE SECTION		1992 GENERAL ASSEMBLY
20-108.1 20-108.2	1.	Requires judges who deviate from the child support guidelines to include in their written findings:

- * the amount of support that would have been required under the guideline.
- * a justification for the variance between the order and the guideline.

20-108.2	2.	Mandates the use of established percentage groupings determining a child support obligation when combined gross monthly incomes exceed $10,000.
16.1-278.15 20-107.2	3.	Requires a provision in court orders for child support to be paid to children up to age 19 who are still in high school.
63.1-250.1	4.	Allows the Commissioner, the DCSE Director, or their designees to summons parties to appear at the division's offices and to subpoena essential financial records.
63.1-250.1	5.	Allows establishment and enforcement actions to be initiated on absent parents living outside of Virginia.

63.1-256	6.	Clarifies that a support lien is not required prior to filing an order to withhold property in court ordered cases.
20-108.2 63.1-251	7.	Excludes Supplemental Security Income (SSI) from the definition of gross income and disallows the establishment of an administrative child support obligation for absent parents who receive SSI.
34-34 51.1-102 51.1-802	8.	Allows the attachment of Virginia Retirement System benefits, state police retirement benefits and local government pensions as they are paid out to absent parents who are delinquent in their child support payment.
63.1-270	9.	Allows the discharge of uncollectible debts from department records.
20-60.3 63.1-251.2	10.	Allows the proration of payments among all custodial parents to whom an individual absent parent owes an obligation.
20-49.8	11.	Requires the Division of Vital Records to prepare a new birth certificate upon agreement to submit to voluntary genetic-testing for the purpose of paternity determination along with the blood test results which affirm at least a 98 percent probability of paternity.
20-108.2 63.1-264.2	12.	Clarifies that the 16 factors considered by the court in deviating from child support guidelines do not apply to the department, and provides that the department shall consider only support for other children in the household or other children for whom an administrative or court order exists.
53.1-223	13.	Deletes the requirement for an appointed committee when establishing paternity or an obligation for an incarcerated absent parent or putative father.
20-49.1 20-49.3 20-49.4	14.	Clarifies that paternity suits may be decided based on HLA and DNA testing by replacing the language "blood grouping tests" with "scientifically reliable genetic tests".
20-108.1 20-108.2	15.	Defines shared custody and prescribes procedures for netting the support obligation of each parent.
16.1-260 63.1-250.2	16.	Prohibits any requirement to obtain support services from the department prior to filing a petition seeking support for a child or commencing a judicial proceeding to modify, enforce, or collect a child support obligation.
8.01-328.1	17.	Deletes the requirement of personal or substitute service on a non-resident obligor, thereby allowing service through the secretary of the Commonwealth at the person's last known address.

Appendix C

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

	Type of License	*Number of Licenses*	*Occupation*	*Business*	*Type of License*	*Social Security #*	*Comments*
Board of Accountancy	CPAs (Individual)	5,421	X		1 year	optional	
	CPAs (Firms)	292		X	"	"	
	Certificate Holders	4,510	X		"	"	
TOTAL		**10,223**	**9,931**	**292**			
APELSLA Board (Architects,	Architects	4,831	X		2 years	optional	
Engineers, Surveyors,	Business Entities	1,365		X	"	"	
Landscape, Interior)	Corporations	414		X	"	"	
	Landscape Architects	362	X		"	"	
	Land Surveyors 3A	869	X		"	"	
	Land Surveyors 3B	194	X		"	"	
	Professional Engineers	16,608	X		"	"	
TOTAL		**24,643**	**22,864**	**1,779**			
Asbestos Contractors and	Contractors (Bus)	216		X	1 year	optional	
Workers Board	Inspectors	575	X		"	"	
	Management Planners	427	X		"	"	
	Project Designers	245	X		"	"	
	Project Monitors	346	X		"	"	
	R.F.S. Contractors (Bus)	327		X	"	"	
	Supervisors	1,639	X		"	"	
	Workers	2,536	X		"	"	
TOTAL		**6,021**	**5,768**	**253**			
Athletic Board	Boxing and Wrestling	**375**	**375**		1 year	required	
Auctioneers	Auctioneer (Bus)	256		X	2 years	required	
	Auctioneers (Ind. Lic)	1,283	X		"	"	
	Auctioneers (Ind. Reg.)	1,736	X		"	"	
TOTAL		**3,275**	**3,019**	**256**			
Barber's Board	Barber (Ind.)	3,545	X		2 years	optional	
	Barber (Teaching)	73	X		"	"	
	Barber Shops	1,092		X	"	"	
TOTAL		**4,710**	**3,618**	**1,092**			
Board of Branch Pilots	Harbor Pilots	**41**	**41**		1 year	required	
Contractor's Board	Class A and B	**40,000**	**40,000**		2 years	required	

	Type of License	*Number of Licenses*	*Occupation*	*Business*	*Type of License*	*Social Security #*	*Comments*
Board of Cosmotology	Beauty Salons	5,331		X	2 years	optional	
	Beauty Schools	84		X	"	"	
	Cosmotologists	35,356	X		"	"	
	Nail Salons	180		X	"	"	
	Nail Schools	16		X	"	"	
	Nail Technicians	1,191	X		"	"	
	Nail Tech. Teachers	31	X		"	"	
	Teachers	1,023	X		"	"	
TOTAL		43,212	37,601	5,611			
Employment Agencies Board	Employment Agencies	49		49			Could not get information.
Geology Board	Geologists	687	687		2 years	optional	Opt. certification credential, nor required.
Board for Hearing Aid Specialists	Dealers	377		377	2 years	optional	
Board for Opticians	Opticians	1,598	1,598		2 years	optional	
Polygraph Examiner's Board	Examiner	201	201		1 year	optional	
Private Security Services Board	Compliance Agents	326	X		1 or 2 years	required	staggered licensing
	Private Security (Firms)	331		X	"	none	
	Private Security (Ind.)	8,078	X		"	required	
TOTAL		8,735	8,404	331			
Real Estate Board	Associate Brokers	5,013		X	2 years	optional	
	Firms	3,123		X	"	"	
	Inactive Broker	1,261		X	"	"	
	Inactive Salesperson	18,664	X		"	"	
	Principal Brokers	3,181		X	"	"	
	Salespersons	35,168	X		"	"	
	Sole Proprietors	2,662	X		"	"	
TOTAL		69,072	56,494	12,578			
Real Estate Appraiser Board	R.E. App. (Bus.)	890		X	2 years	optional	
	R.E. App. (Ind.)	2,251	X		"	"	
TOTAL		3,141	2,251	890			
Board for Soil Scientist	Soil Scientist	50	50		2 years	optional	
Board for Waterworks, Wastewater and Works	Operators	4,537	4,537		2 years	required	
GRAND TOTAL		220,947	157,439	63,508			

Note: Those that say optional for social security number said there is a spot on the application for it and 99% of the people supply it.

DEPARTMENT OF HEALTH PROFESSIONS

	Type of License	*Licensed VA Residents*	*Total Licenses*	*Term of License*	*Social Security #*	*Comments*
Board of Audiology and	Audiologists	208	274	1 year	optional	
Speech-Language Pathology	Speech Pathologists	1,022	1,163	"	"	
TOTAL		1,230	1,437			
Board of Dentistry	Dentists	3,588	4,738	1 year	optional	
	Dental Hygienists	1,997	2,666	"	"	
	Dental Teachers	8	9	"	"	
	Dental Hygienists Teachers	6	7	"	"	
	Dental Faculty	17	17	"	"	
TOTAL		5,616	7,437			
Board of Funeral Directors	Funeral Service Provider	1,121	1,265	1 year	optional	
and Embalmers	Funeral Directors	250	258	"	"	
	Embalmers	12	14	"	"	
	Funeral Service Trainers	127	128	"	"	
TOTAL		1,510	1,665			
Board of Medicine	Medicine and Surgery	13,428	22,079	2 years	optional	
	Osteopathy	246	448	"	"	
	Podiatry	249	442	"	"	
	Chiropractic	496	844	"	"	
	Physical Therapist	1,852	2,326	"	"	
	Physical Therapist Asst.	480	564	"	"	
	Clinical Psychology	988	1,208	"	"	
	Naturopath	0	1	"	"	
	University LTD. Lic.	45	45	"	"	
	Physicians Assistant	199	203	"	"	
	Phys. Asst. (corrections)	107	107	"	"	
	Interns and Residents	1,576	1,881	1 year	"	
	Respiratory Therapist	1,188	1,272	2 years	"	
	Occupational Therapist	782	873	"	"	
TOTAL		21,636	32,293			
Board of Nursing	Registered Nurse	53,064	65,520	2 years	optional	
	Practical Nurse	21,387	24,263	"	"	
	Nurse Aide	26,908	28,683	"	"	
TOTAL		101,359	118,466			
Board of Nursing Administrators	Administrators	571	704	1 year	optional	
Board of Optometry	Optometrists	637	1,143	1 year	optional	
Board of Pharmacy	Pharmacists	4,541	6,387	1 year	optional	
Board of Professional Counselors	Professional Counselors	1,338	1,487	1 year	optional	
	Trainees	369	375	"	"	
	Substance Abuse Counselor	551	597	"	"	
TOTAL		2,258	2,459			
Board of Psychology	Psychologists	443	537	1 year	optional	
	School Psychologist	63	68	"	"	
TOTAL		506	605			
Board of Social Work	Registered Social Worker	162	193	2 years	optional	
	Associate Social Worker	11	14	"	"	
	Licensed Social Worker	234	260	"	"	
	Licensed Clinical Soc. Worker	1,750	2,052	"	"	
TOTAL		2,157	2,519			
Board of Veterinary Medicine	Veterinarians	1,378	2,431	1 year	optional	
	Veterinary Technicians	450	520	"	"	
TOTAL		1,828	2,951			
GRAND TOTAL		143,849	178,063			

Notes: ***All ask for social security number on license application, but none require it.***
It is mainly used for identification purposes.

SCC - DIVISION OF SECURITIES AND RETAIL FRANCHISING

Type of Registrants/License	*Number of Reg/Licenses*	*Individual*	*Business*	*Term of License*	*SSN*	*Comments*
Broker (Dealers)	1,298		X	1 year	optional	
Broker (Dealer-Agents)	54,216	X		"	required	
Issuer Agents	259	X		"	required	
Investment Advisors	892	X		"	optional	
Investment Adv. Reps.	1,298	X		"	required	
Franchisors	630		X	"	optional	
Securities Registered	23,507	X		No term	"	
Exemptions	7,658	X		"	"	
TOTAL	59,775	57,847	1,928			

ABC BOARD

Type of License	*Number of Licenses*	*Term of License*	*Do they have social social security number?*	*All business comments*
Wine and Beer On & Off	6,152	1 year	Yes, for records check	A lot of these could be same place.
Mixed Beverages	2,833	"	"	
Wine and Beer Off	6,723	"	"	
Retail Druggists	0	"	"	Sales upon prescription
Wholesale Beer	89	"	"	A lot of these could be same place.
Wholesale Wine	68	"	"	
Brewery	6	"	"	
Winery	47	"	"	Farm Winery - 44 Limited 1/Unlimited 1 Farm 1
Distillery	3	"	"	
Fruit Distiller	1	"	"	
Beer Importer	80	"	"	
Wine Importer	172	"	"	
Banquet Facility	22	"	yes	
TOTAL	**16,196**			

DEPARTMENT OF HEALTH PROFESSIONS

	Type of License	*Licensed VA Residents*	*Total Licenses*	*Term of License*	*Social Security #*	*Comments*
Board of Audiology and	Audiologists	208	274	1 year	optional	
Speech-Language Pathology	Speech Pathologists	1,022	1,163	"	"	
TOTAL		**1,230**	**1,437**			
Board of Dentistry	Dentists	3,588	4,738	1 year	optional	
	Dental Hygienists	1,997	2,666	"	"	
	Dental Teachers	8	9	"	"	
	Dental Hygienists Teachers	6	7	"	"	
	Dental Faculty	17	17	"	"	
TOTAL		**5,616**	**7,437**			
Board of Funeral Directors	Funeral Service Provider	1,121	1,265	1 year	optional	
and Embalmers	Funeral Directors	250	258	"	"	
	Embalmers	12	14	"	"	
	Funeral Service Trainers	127	128	"	"	
TOTAL		**1,510**	**1,665**			
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	Osteopathy	246	448	"	"	
	Podiatry	249	442	"	"	
	Chiropractic	496	844	"	"	
	Physical Therapist	1,852	2,326	"	"	
	Physical Therapist Asst.	480	564	"	"	
	Clinical Psychology	988	1,208	"	"	
	Naturopath	0	1	"	"	
	University LTD. Lic.	45	45	"	"	
	Physicians Assistant	199	203	"	"	
	Phys. Asst. (corrections)	107	107	"	"	
	Interns and Residents	1,576	1,881	1 year	"	
	Respiratory Therapist	1,188	1,272	2 years	"	
	Occupational Therapist	782	873	"	"	
TOTAL		**21,636**	**32,293**			
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	Practical Nurse	21,387	24,263	"	"	
	Nurse Aide	26,908	28,683	"	"	
TOTAL		**101,359**	**118,466**			
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	Trainees	369	375	"	"	
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TOTAL		**2,258**	**2,459**			
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TOTAL		**506**	**605**			
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	Associate Social Worker	11	14	"	"	
	Licensed Social Worker	234	260	"	"	
	Licensed Clinical Soc. Worker	1,750	2,052	"	"	
TOTAL		**2,157**	**2,519**			
Board of Veterinary Medicine	Veterinarians	1,378	2,431	1 year	optional	
	Veterinary Technicians	450	520	"	"	
TOTAL		**1,828**	**2,951**			
GRAND TOTAL		**143,849**	**178,063**			

Notes: ***All ask for social security number on license application, but none require it.***
It is mainly used for identification purposes.

VIRGINIA STATE BAR

Classification	*Number of Licenses*	*Term of License*	*Social Security #*	*Comments*
Active	18,956	Dues due yearly	optional	
Associates	5,809	"	"	
Retired and Disabled	934	"	"	
Judicial Membership	732	"	"	
TOTAL	26,431			

Notes: Dues are due every year to renew license.

DEPARTMENT OF MOTOR VEHICLES

Type of License	*Number of Licenses*	*Occupation*	*Business*	*Term of License*	*Social Security #*	*Comments*
Commercial Driver License	159,027	X		5 years	Required	
Commercial Driver Training Instructor	313	X		1 or 2 years	"	
Commercial Driver Training School	110		X	1 year	"	License Issued to Comm. Driver School
Motor Vehicle Dealer License	6,075		X	1 or 2 years	No	Taxpayer Identification Number required.
Motor Vehicle Salesperson Lic.	23,296	X		"	Required	
TOTAL	**188,821**	**182,636**	**6,185**			

Appendix D

JUL 0 2 1993

LAWRENCE D. DIEHL
ATTORNEY AT LAW

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of Matrimonial Lawyers

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P.O. Box 1320
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(804) 458-1300
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Fax: (804) 458-6460

July 1, 1993

Joseph S. Crane, Assistant Director
Program Development and Administration
Division of Child Support Enforcement
Theater Row Building
730 East Broad Street
Richmond, VA 23219-1849

Re: Proposed Child Support Enforcement Legislation

Dear Mr. Crane:

I am in receipt of the letters regarding proposed 1994 legislation relating to child support dated June 22, 1993. At the outset, let me state that they were not received until June 29th and your deadline of July 5th really provides little opportunity for dissemination and comment by our Section. Notwithstanding the limits that you have imposed on responses, let me address some of the issues in response to your letter.

First, as far as the Family Law Section Board of Governors is concerned, we have adopted a resolution on June 18, 1993, which opposes any restrictions whatsoever on driver's licenses or professional occupational licenses relating to any child support arrearage under any circumstances. Thus, we would adamantly oppose any legislation that would make such restrictions that you have referred to, specifically dealing with any amendments to §46.2-608, 8.9-302 and 46.2-640, and Title 54.1-104.1. I have personally written letters to your division on numerous occasions in the past few years totally opposing these and have extensively set forth the policy and legal arguments against the adoption of such legislation. Please refer to these previous comments for your review, but let me again summarize my opposition.

First, cutting off the only source of income from an individual professional by license restriction only aggravates the issue of any arrearages. Second, licensing should be based on the qualifications of a person to perform such occupation and should not be restricted due to extrinsic and other reasons, especially where, in my almost twenty (20) years of experience, there are often administrative or clerical errors in determining arrearage, legal defenses and other material issues which apparently are not raised in your letter.

Third, I have strong reservations as to whether the restriction for occupational licenses as a class of persons would be unconstitutional in denying equal protection since it would not apply in the occupational jobs of those that are not licensed. Fourth, a delinquency of $1,000.00 could be only one month's arrearage and I am shocked to see such a total used as a threshold. Fifth, there appears to be absolutely no procedural safeguards set forth in the proposal, that is, it appears it would just be an administrative determination and then, zap, the person is out of work. Even the federal proposal of Senator Bradley, which our Section has opposed, has a requirement of either a capias or contempt or some procedural status that would have fully litigated the issue of arrearage prior to the restriction of licensing. And who would determine the adequacy of making "arrangements" for such purposes? Certainly, I hope, not the administrative agents who have a hard enough time making accurate computations of arrearage, much less becoming judges and making such determinations.

In fact, the entire area is so outrageous, and in accordance with the same letters I have written in the past, that this is to advise you that unless written confirmation is received by me no later than July 15th that all such proposals will be withdrawn, I will personally write to each and every member of the Courts of Justice committees of both the House and Senate about such outrageous proposals, immediately and will do everything in my powers to make sure that these items are not passed for the reasons set forth above and the other policy reasons that I previously expressed in correspondence to the division. Similar arguments would apply to the drivers licensing restrictions, since, again, the use of an automobile is essential to one's occupation and ability to earn money, which in the long run only helps in the ability to pay for child support.

Let me make one thing clear. As an attorney whose practice is solely limited to Family Law, I want child support paid and I want it collected properly and timely. I am all in favor of reasonable approaches to increase the methods used for such collection. Many of the proposals both federally and on the state level that have been passed over the past few years and that are now proposed are excellent ideas, but the restrictions of licenses for driving privileges or occupational licenses is beyond reason. Thus, please send me your written confirmation, otherwise you will be in receipt of copies of my letters to each and every General Assembly member that will fully set forth the reasons why such legislation should not even be considered. Please do not waste your time in introducing the legislation since I do not believe it has any chance to pass whatsoever.

Regarding other items that you have sent to me, let me again share with you my personal views on these issues and note that these are not the position of the Family Law Section of the Virginia State Bar at this time.

First, I am adamantly against the authority of the Department to administratively modify child support ordered by the Court based on a change of circumstances. The change of circumstances is a legal determination that I, in my opinion, believe only a Court can make and should not be administratively done.

There are many nuances, such as new children and other family members, the effect of job changes and imputed income, that are complicated for attorneys, much less administrative non-attorneys. I would adamantly oppose such changes to §20-60.3 and 63.1-252.1 as you have proposed.

On the other hand, I would support the amendment that would increase the data base for locating parents and believe this is a positive proposal. I would further support the requirement that the absent parent keep a IV-D agency informed of their current employer and whether the absent parent has access to health insurance at a reasonable cost, etc..

Regarding the proposed enactment of UIFSA, I have strong reservations about this act at this time. I am a member of the Legislative Committee of The American Academy of Matrimonial Lawyers which is a nationally recognized group of Family Law experts. Our legislative committee has previously taken a position that there are constitutional issues that seriously question the constitutionality of this act. Specifically, the theory of child based jurisdiction concerns me and would contradict the Supreme Court ruling in the well known Kulko case. I also have problems in the rational that such jurisdiction would not be prejudicial to the non-resident due to the use of fax and telephone hearings. This denies the ability of a client to be in the presence of a Court and to be familiar with local Court rules and is totally inadequate, in my trial experience of almost twenty (20) years, in protecting a client's interests. I would suggest that we wait until there is a federal mandate to pass the UIFSA since I am aware that it is tied into Senator Bradley's bills and others that are now pending in Congress. However, I do not believe that the final word on the jurisdictional issues has been made since the American Academy and other organizations have expressed reservations about this. There is also an extensive article in a recent edition of the Family Law Quarterly that discusses the conflict among constitutional scholars as to the jurisdictional aspects of this proposal. In my opinion, it is premature to pass this at this time, especially since federal level amendments may be made to the statute if it is ever required to be enacted.

Concerning the extension of administrative orders to children up to age 19 or in high school, I have no problems with such legislation.

Concerning the paternity determination by authorized hearing officers, I would like to see the specific language of this statute and what extenuating circumstances would be available, although I am certainly aware that with the current level of scientific testing and with proper authentication by such testing agency, that this probably would reduce the burden on the Courts to have such tests done through the Courts. I would reserve final judgment on this proposal until I see what rights a client would have to contest paternity on appeal to the Juvenile Court.

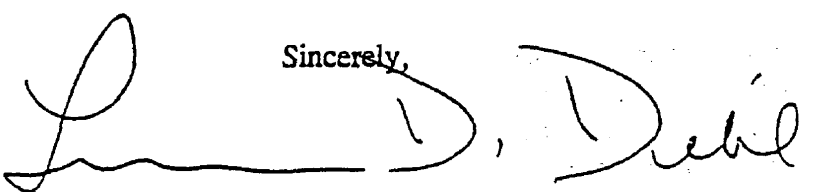
Regarding the posting of a bond prior to the seizure of property necessary to satisfy child support debt, I would certainly oppose this if this was done prior to any judgment being made or Court determination that the debt, is in fact, owed. I do not believe our society should get to the point where administrative hearing officers are seizing property of parties without due process of law. I assume we are not throwing due process out the window, but I would want to see the language on this before a final determination of my opinion is made.

Finally, concerning mandatory wage withholding, I am aware that federal law probably requires this and that this is a matter of mere compliance with the federal mandates, whether we like this or not. Thus, based on my knowledge that this is required, I would have no opposition to this bill.

By copy of this letter I am sending my comments on the legislation and the legislation itself to Delegate Almand, Chairman of the Courts of Justice Committee, Delegate Cranwell and Delegate Cohen, and to Senator E. M. Holland, Chairman of the Senate Courts of Justice Committee, and Senator Gartlan. I am also sending a copy of these comments to Delegate Jay DeBoer who has assisted our Family Law Section from time to time on legislative matters, as well as my own Delegate, William K. Barlow.

Please contact me should you have any further questions on the above and I will look forward to confirmation that you will not be going forward on the specific items of professional occupation restrictions, license restrictions and the drivers license restrictions.

Sincerely,



Lawrence D. Diehl

/57
Enclosures
cc: Delegate James F. Almand
Delegate C. Richard Cranwell
Delegate Bernard S. Cohen
Senator Edward M. Holland
Senator Joseph V. Gartlan, Jr.
Delegate Jay W. DeBoer
Delegate William K. Barlow
Board of Governors
Betty Thompson
Cindy Clayton
Mary P. Devine

CYNTHIA L. LEWIS
Virginia State Coordinator
(804) 543-1960

CHILDREN'S RIGHTS COALITION of VA.
P.O. Box 13465
Chesapeake, Virginia 23325-0465

AUG 05 1993

July 31, 1993

Ms. Mary Devine
Commonwealth of Virginia
Division of Legislative Services
General Assembly Building
Second Floor
910 Capitol Street
Richmond, Virginia 23219

Dear Mary:

This letter is a follow up to our telephone conversation about the studies that you and your staff are conducting pursuant to SJR 485 and SJR 615. I apologize for not getting these comments to you sooner.

First, I would like to address SJR 615, which directs the Division of Legislative Services to study the feasibility of denying licensure or the renewal of a license to certain self-employed professionals who are delinquent in child support payments.

Denying licensure or the renewal of licensure which enables a person to pursue his/her occupation not only would infringe on fundamental rights, but would also have the opposite effect of what I believe to be the intended result of such proposed legislation - child support collections. The questions arise: If a person is barred from working, how is that person going to pay child support arrearages? What happens if a person loses his/her job due to layoff, strike, disability, long-term illness, or if that person is underemployed or unemployed because of current economic conditions?

There is a fundamental issue of effectiveness and fairness. This is such an extreme measure that, in our view, several questions of principle arise. First, is this step to be taken without any showing in advance that it will be effective? The experience has been that punitive measures adopted in the past have, overall, been ineffective. We would like to emphasize that our federal and state governments have spent billions of dollars each year over the past two decades creating an intricate web of harsh child support enforcement measures. Despite this, there has been less than a 2 percent increase in the child support compliance rate in America since 1973, the year that the federal CSE system was initiated. We believe that the onus of proving the effectiveness of <u>new</u> punitive measures, such as withholding of various licenses, must rest on those who propose these measures.

Another fundamental issue is that of DUE PROCESS. We have serious concerns about whether those who would be the target of such extreme enforcement measures would have an adequate opportunity to present their side of the case to an impartial person. At present, child support enforcement measures treat non-custodial parents as simply a source of funds, without consideration that they, like all other citizens, are subject to some uncontrollable circumstances to which I previously referenced, such as layoffs, strikes, disabilities, long-term illnesses or underemployment or unemployment due to current economic conditions.

Any such enforcement measures could undermine a person's ability to make a living. That person could then be jailed for debt in violation of the state and Federal constitution. If the government denies professional licenses, it infringes on one of the most fundamental rights - ***The Right to Work.***

Further, we seriously doubt the argument that the deterrant effect of this <u>new</u> punitive measure is such that it would never be used. These measures must be examined in terms of how <u>their use</u> would help to solve the problems at which they are directed. You have mentioned that this measure is to target self-employed individuals who are and will be unaffected by wage withholding (which becomes universal at the beginning of 1994). There is a vast difference, however, between withholding of wages and the withholding of licensures. The withholding of wages assures that monies available are secured and transferred for the benefit of the child. On the contrary, the withholding of licenses can seriously impair and interfere with the ability to earn and consequently, the availability of financial support for the child. This could, therefore, in effect be a punitive measure against the child.

Second, I would like to address SJR 485, directing the Division of Legislative Services to study child support after the age of majority. This can be an extremely complicated issue which raises a lot of questions and concerns. Equal treatment is a major issue to consider in your study. Constitutional issues arise when there is a different treatment of classes of citizens. We believe that if such is considered it would need to be considered an entitlement of all children: children of intact families; children of divorced, separated and unwed parents; children of foster care; and children of families on welfare, etc.

There is also the need to look at the contradiction of treating a person who becomes 18 years of age as an adult for virtually all purposes with the exception of financially responsibility. The argument may be raised that a person reaching the age of majority has the rights of an adult and therefore, should have the corresponding responsibility to support themselves. The concern raised by some has been that parents could be forced to provide financial support and funding for college without consideration for the financial where-with-all to provide for such support or college funding and without consideration of the child's scholastic aptitude or efforts.

As part of the feedback I received from members of our Coalition on this proposal, arguments were made that although parents should be encouraged to assist their children through college, parents should be able to deal with adult (18 years or older) offspring on an adult-to-adult basis to work through arrangements for college and support. Going hand in hand with this is the consideration as to whether or not the children have behaved in such a way towards their parents to have repudiated any obligation that a parent might otherwise have had towards them. This provision would just bring additional governmental interference into families' private lives and could open up a Pandora's Box of problems.

If such a law would exist to mandate post-majority support and/or college funding, the issue arises as to the manner in which such funds for college and financial support would be transferred. We would take the position that any such funds should be paid directly to the adult child, rather than funneled through one or both parents, whichever the case may be. A person of the age of majority should be expected to be responsible enough to handle these funds. There should also be an accountability of such funds as well as a reporting requirement by the student to the parents evidencing the grades maintained in college. There should be a minimum level of scholastic achievement attained to justify deserving any contribution or funding for their college education.

Our coalition supports the concept that parents should promote and support their children's higher education. However, the government's attempt to mandate college funding from parents can create inequitable treatment among classes of citizens (parents and children) and vague and poorly defined laws and guidelines can create great opportunity for abuse of such laws.

To promote the well-being of children of divorced, separated and unwed parents, our Coalition believes that the state needs to look at improving the manner in which these children and their parents are treated within the system. A more humanizing and balanced approach is needed to encourage shared parenting even though the parents are not living together. There needs to be a recognition of the importance of <u>both</u> parents in terms of emotional, mental and physical support as well as financial support.

Mary, thank you for the invitation and opportunity to provide input on these two topics of studies. I think that, above all, prudency and logic must be applied when considering legislation and its affect on the people. That is what I have attempted to do in providing you with these comments. If you have any questions about any of the above, please do not hesitate to contact me. My telephone number is (804) 543-1960.

Sincerely,

Cynthia L. Lewis
State Coordinator

/cl

AUG 09 1

7221 Stover Drive
Alexandria, Va. 22306
August 6, 1993

Ms. Mary Devine
Commonwealth of Virginia
Division of Legislative Services
General Assembly Building
Second Floor
910 Capitol Street
Richmond, Va. 23219

Dear Ms. Devine:

I have been interested in House Joint Resolution No. 485. I understand that you are collecting comments on it, and evaluating its proposals. I am writing to you to present some comments on the proposed action.

On the substance of the issue, I am not entirely clear what would happen. However, my understanding, from the references to divorce and to child support, is that divorced parents would be required to continue to support adult children if they attend college. I presume also that any legislative change would, as a practical matter, primarily involve new obligations being laid on non-custodial parents.

I am extremely puzzled about the justification for such a change. I do not know how, when the age of majority is 18, parents <u>can</u> be made legally responsible to their adult children. However, setting that aside, I would like to address the desirability of this change as a matter of policy.

There are clearly two types of unfair discrimination involved. First, if there is a case for extending this responsibility to divorced parents, then the case applies equally to married parents. Why should adult children from intact families be discriminated against by not being given the same protection as adult children from divorced families? If adult children from intact families do not <u>need</u> the protection, then a law giving them a legal right to post-majority support from their parents will never be called into effect, and no harm will result from their having the protection in law.

Secondly, this proposal is self-evidently discriminatory against divorced parents in general, and against non-custodial parents in particular. It opens the possibility of custodial parents and adult children making

their own decisions about college education, then sending the bill to the non-custodial parent, who unlike all other parents, ultimately would have to go to court if he was unhappy with decisions made by others about his child's college education. As experience elsewhere indicates, it would drag the courts into all kinds of family situations, such as what is the academic capability of the adult child, is it necessary for him or her to go to such an expensive college, and so on.

I have seen the argument made in other states that adult children of divorced parents need special protection, so additional obligations can justifiably be laid on divorced parents. This argument is spurious. So far as I am aware, no one suggests applying it to minor children in intact families, and saying that their parents should have no duty to support them, or that only divorced parents must be legally obliged to support minor children.

Those are the issues of principle and legality, in my view leading inescapably to the conclusion that this proposal cannot be justified. However, the political realities are also relevant. Past experience of how child support issues have been handled clearly indicates that frequently there is a deplorable willingness to go after non-custodial parents as the easiest target in sight. Obligations are laid on them that never would be laid on custodial or married parents. They have become a convenient scapegoat for all the problems of divorce and of single parent families. I hope this practice will not be followed once again in regard to support of adult children.

Of course, both married and divorced parents have obligations towards their adult children, and most are glad to accept those obligations. However, obligations towards adult children are of a different nature from obligations towards minor children. Parents must be free to decide themselves how they want to act. It is entirely inappropriate for the law to intervene in such personal situations.

I have one final point. It is my understanding from lawyers I have consulted that it is far from clear that state law makes both divorced parents responsible for parental support of adult handicapped children. It may well be that whichever parent has custody of a disabled child at the time of majority becomes solely liable for many years of adult support, possibly for the rest of the parent's life if the disabled child never becomes independent. This seems to me a much more urgent problem to tackle.

In short, I think the proposal to lay additional obligations on divorced parents has no justification in principle, and is a violation of legal principles requiring equal treatment. A much more serious problem, that of support of disabled adult children, deserves higher priority.

Sincerely,

Kenneth H. Skilling

Kenneth H. Skilling

Richard E. Crouch
Attorney at Law
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Arlington, Virginia 22201

(703) JA 8-6700

August 10, 1993

Brett R. Turner, Esquire
Senior Attorney
National Legal Research Group
2421 Ivy Road
P.O. Box 7187
Charlottesville, Virginia 22906-7187

Re: Child support for adults, amongst the educable classes.

Dear Brett:

Thank you for your thick package of materials to the College Support Subcommittee, your hard work in researching this issue nationwide, and your very impressively reasoned letter on the subject. I appreciate particularly the candor and elegance of your substantive arguments, even though I fail to buy them. I am grateful that you appreciate that it is major social policy that we are engineering here.

Let me make clear exactly where my reasoning parts company with yours, and why. You state, as I do that complete public support would be the ideal answer to the arguable injustice of making divorced persons pay for something you could never make parents in an intact family pay for. But, you say, since that is not practically feasible, our only options therefore are either to tolerate reduced college attendance from divorced families or start letting the courts order child support for these adults. "Because college is so essential to modern society," you say, mandatory college support is the better option. But, your argument makes a great big unspoken assumption, which I would turn into a question. Is, quick, cheap, and widespread divorce "so essential in modern society?"

Yes, I suppose that that very assumption is part of what you are condensing into the term "modern society." Yet, I wish somebody would at least give some thought to the anti-family impact of the statutes we keep on passing. Your proposal makes divorce the quick, easy and obvious answer when there are any inter-family disagreements about whether there should be college education, which college it should be, and whether, and how, to finance it. When I attended college, and even when my children did, it was considered socially permissible, and it was lawful, for a parent to say that it would be the responsibility of this particular adult offspring to finance his or her own education by working his way through. However, your proposed legislation would change all that, because, as we know, there is virtually no social incentive whatever for any married person nowadays to hesitate to convert, by unilateral action, an intact family into a divorced family.

I hope you and all the Committee members will also appreciate how directly this new measure not only encourages the further disintegration of marriages, but also discourages separated people who are getting a divorce from trying to work things out.

Every time you remove one of the benefits people can get by a negotiated separation agreement, and add it to the list of things they can get in court, you further discourage the negotiation process. Removing one more benefit from the realm of private ordering and adding it to the menu of delectable goodies you can get by paying a lawyer to persuade a court to take it from one person and give to the other, you also increase the desire for litigation and the workload and business of the courts.

Beyond that, I of course applaud your caution and conscientiousness in urging the limitations used by some other states, such as maximum contribution by the child and custodial parent, workable parent-child relationship satisfactory academic progress. I particularly appreciate your bringing out for our consideration the New Jersey case law making the "would have provided" finding a threshold issue. All of these sound like very desirable principles to build into the law as we hasten to be the 13th state to scramble aboard that 12-state bandwagon.

Sincerely,

Richard E. Crouch

REC:mhm
cc: Legislative Committee

Virginia Society of Professional Engineers

A state society of the National Society of Professional Engineers

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1001 E. Main Street
Suite 625
Richmond, VA 23219-3536
Phone (804) 780-2491
FAX (804) 648-7109

September 20, 1993

Leigh M. Dicks
Executive Director

SEP 2 1 1993

Ms. Mary Devine
Dept. of Legislative Services
General Assembly Building
Capitol Square
Richmond, VA 23219

RE: HJR 615 - Denying Licensure or Renewal to Those Who Are Delinquent in Child Support

Dear Mary:

I am writing to you at this time to let you know that the Virginia Society of Professional Engineers is against any efforts to deny a professional engineer from becoming licensed (or renewing his/her license) when that individual is delinquent in making child support payments.

If this should go forward, it would place the discretion and authority to determine the practice qualifications of engineers outside the authority of the state licensing board. This will distract the state licensing board from their primary responsibility--ensuring professionals are practicing in the public interest. Secondly, such criteria restrains the right of citizens to practice a profession by creating an unrelated and arbitrary standard by which one's fitness to practice a profession is judged. It is also applied selectively only to those individuals required to hold a license to practice a profession, thus discriminating against those individuals.

I understand that Legislative Services will be making a report to the Joint Rules Committee this Fall and would appreciate our opposition to the proposed measure be made known. Should legislation be introduced in the General Assembly, this Society will adamently oppose the measure.

If you have any questions, please feel free to call.

Sincerely,

Leigh Dicks

Leigh M. Dicks
Executive Director

/lmd

cc: Cindy Clayton, VDSS, Div. of Child Spt Enforcement
Willie Fobbs, Asst Director, APELSLA Board
Ken Stepka, P.E., President, VSPE
Bruce Hulcher, P.E., Legislative Chairman, VSPE
Consulting Engineers Council of Virginia

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October 6, 1993

Mary P. Devine, Esq.
Division of Legislative Services
General Assembly Building
910 Capitol Street, 2nd Floor
Richmond, Virginia 23219

Re: **Post Majority College Education Support**

Dear Mary:

As I informed you on the phone a few weeks ago, the Legislative Subcommittee of the Virginia State Bar, Family Law Section, Board of Governors, after much research and study recommended to our Board that any legislation relating to post-majority college education support be studied for an additional year and not be introduced at the next legislative session.

This recommendation along with the reasons therefor was thoroughly reviewed by our Board of Governors at its October 7 and 8, 1993, board meeting in Richmond, and the Board concurred with the recommendations of the Legislative Subcommittee on this matter.

As we discussed in our telephone conference, we believe that the question of the projected judicial costs and resources necessary to take on the added jurisdiction of post-majority college education support is a very serious matter. It would be a mistake at this time to greatly expand the Court's workload with this new jurisdiction, given that during the next legislative session, the legislature will be working very hard to find ways to fund and provide adequate judicial and other resources for the proposed Family Court. During the course of the next year, our Subcommittee will attempt to gather data from jurisdictions which have authority to award post-majority college education support as to their experience concerning the expanded workload resulting from such jurisdiction.

Our Legislative Subcommittee also would like more time to gather statistical data to determine whether there is a substantial statistical difference between children of intact families and children of divorce in terms of their attending

college and we also intend to study any effects on financial aid that any post-majority college education support legislation might have.

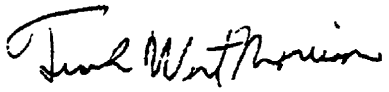
The fact that our Board and Legislative Subcommittee is very interested in this matter and would like to continue to study the same should in no way be taken as an indication that either our Legislative Subcommittee or our Board as a whole is in favor of any legislation at all in the area of post-majority college education support, and we would reserve judgment concerning such legislation until after our study is complete. At this time, however, we are opposed to any such legislation being passed at the next legislative session for the reasons stated above.

Our Subcommittee is also struggling with the philosophical question as to whether college education should be considered a "right" for all children who have the aptitude and aspirations to go to college, and if this is the case, what implication does this have, not only on parents of divorced children but also on parents of intact families and even on the State of Virginia itself.

After you have reviewed this letter, please give me a call so that we may discuss the same. I would appreciate your continuing to share with me and our Subcommittee all information which you continue to receive concerning this subject matter.

We look forward to continuing to work with you concerning this matter in the future. With kindest personal regards, I am

Yours very truly,



Frank West Morrison, Chair
Board of Governors
Virginia State Bar
Family Law Section

FWM/hjh

NOV 15 1993

COMMONWEALTH of VIRGINIA

Department of Health Professions

Bernard L. Henderson, Jr.
Director

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November 9, 1993

Mary P. Devine
Senior Attorney
Division of Legislative Services
General Assembly Building
910 Capitol Street, 2nd Floor
Richmond, Virginia 23219

Dear Mary:

I have personally reviewed the draft of the report you sent me on child support issues. I find it to be a well written explanation, especially the portion that pertains to the feasibility of denying state-issued licenses or renewals, which is the part that is relevant to this Department.

There are serious legal and policy ramifications associated with this kind of scheme and I hope the report's readers will find adequate cautionary information in it to prevent the improvident adoption of any plan that will remove the ability of a person to earn money to pay a financial obligation because he or she has not met that financial obligation.

Thank you for this opportunity to comment on this draft.

Very truly yours,

Bernie

Bernard L. Henderson, Jr.

BLHjr/lbb

Again, my compliments for a wonderful effort and I hope that the Rules Committee will consider my comments and those of the Board of Governors of the Virginia State Bar Family Law Section as it relates to this issue.

Sincerely,

Lawrence D. Diehl

LDD:smr

cc: Frank W. Morrison
Carol B. Gravitt

NOV 12 1993

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November 10, 1993

Mary P. Devine, Senior Attorney
Commonwealth of Virginia
Division of Legislative Svcs.
General Assembly Bldg.
910 Capital Street, 2nd Floor
Richmond, VA 23219

Re: HJR 485 and HJR 615

Dear Mary:

Let me compliment you on the draft of the report specifically prepared as to HJR 485 and the Occupational Licensing Issue. It was certainly interesting to review the experience of these statutes in other states.

I am requesting that my Opinion be further amplified at the Joint Rules Committee on November 17 that I understand will review the draft. Based on the limited data as to the success of these programs, and the appearance that some of the programs are not as effective as initially thought, as well as the multiple potential actions now pending in Congress, it would be of my opinion that the enactment of any statute in this area would be premature at this time. Once experience and data comes in and the best models can be reviewed, or in the alternative, Congressional action mandates the imposition of some type of occupational license restrictions from a federal level, at that time I believe that an appropriate study group should be formed through an appropriate study committee of the General Assembly to enact an appropriate statute.

Of course, this assumes that some form of legislation will be mandated by the Federal Government's pending legislation. If not, for the policy reasons that our Family Law Section Board of Governors has previously expressed to you and which has been included in your draft report, I would restate that I am against the enactment of any legislation on the policy issues stated previously.

NOV 22 1993

COMMONWEALTH of VIRGINIA

BONNIE S. SALZMAN
DIRECTOR

Department of Professional and Occupational Regulation
3600 WEST BROAD STREET, RICHMOND, VIRGINIA 23230-4917

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M E M O R A N D U M

TO: Mary P. Devine
Senior Attorney

FROM: Peggy McCrerey PSM
Deputy Director
Regulatory Programs

DATE: November 16, 1993

RE: Comments Regarding HJR 485 and HJR 615

Our greatest concern is the use of social security numbers. In light of recent case decisions, our Agency is taking great measures to avoid any procedure which requires a social security number. The Agency will not be developing future information systems which use a social security number as an identifier. We believe the Agency can not require a social security number without legislative authority.

Further, the Agency will need to allocate a substantial amount of money to adapt our current computer system to "match" individuals who may apply for a license. At this time the Agency is not in a position to remit the necessary start-up costs to implement the program. Resources will need to be allocated from the general fund to finance necessary programming changes and staff.

Also more specific detail is needed to size the scope of the necessary programming requirements: 1) how long will the stop code remain on an individual's record, 2) can a daily tape be available from DCSE which would be run as part of our daily production thus eliminating the need for on-line access 3) what are the match criteria 4) how do we relay any information regarding a match to DCSE and 5) how does DCSE inform the Agency that an individual has paid in full and is eligible to receive their license?

Lastly, the Agency has concerns that a match would result in the denial of licensure. We recommend the method used in California where a temporary license is issued and an individual has a specific time period to pay their debt. Otherwise, the individual will have a right of appeal under the Administrative Process Act, further depleting Agency resources.

NOV 18 1993

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

LARRY D. JACKSON
COMMISSIONER

November 16, 1993

Ms. Mary P. Devine, Senior Attorney
Division of Legislative Services
General Assembly Building
910 Capitol Street, 2nd Floor
Richmond, Virginia 23219

Dear Mary:

Thank you very much for sharing the draft of the reports you prepared pursuant to HJR485 and HJR615. You have done a great job on subjects that are hard to gather clear information about, and I speak from personal experience.

Other staff in the department also reviewed the draft and were impressed by the thoroughness of the reports.

The one area where we have concerns is the Policy Considerations section on page 19. In listing the pros and cons, it seems that the report is unnecessarily negative about a licensing provision. I think what is missing in the pro section are two important points: first, potential withholding of licenses sends a forceful message that payment of child support is a priority in the Commonwealth. I don't think anyone's objective for this policy is to deny licenses. Second, in addition to ensuring compliance with support orders, we will also be able to assure more families that they will actually receive support that is owed to them. I think the numbers you reported in an earlier section validate this fact.

In the con section, I think the one that states, "discriminates against those who require a license but are unable to pay" is somewhat extreme. An individual who is unable to pay has the opportunity to contact the Division of Child Support Enforcement to modify the order. In addition, the notice provisions and due process will provide safeguards for the individual who is truly unable to meet the obligation.

VSSH
PEOPLE HELPING PEOPLE

I am enclosing some suggested language. Thank you for allowing us the opportunity to comment.

Sincerely,

Peggy

Peggy Friedenberg

MJF:dms

c: Mike Henry

Policy Considerations

Pros

* Promotes compliance with support orders by obligors who are otherwise difficult to reach, due to the inapplicability of income withholding and the ineffectiveness of traditional judicial enforcement mechanisms (possibly one in five workers is self-employed)

* Creates only minimal on-going costs once implemented

* Allows state to legitimately tie a privilege (license) to compliance with its mandate (support order)

* Sends a strong public message that support of children is a priority in Virginia

Cons

* Creates harsh effect on licensees and their families, especially those who are legitimately unable to pay

* Weak connection between occupational license and child support

* Due process safeguards could add significantly to operational costs

* Congress is considering new federal mandates relating to this topic -- enacting a state law now might be pre-mature