

WR- Child Support Felony

Total Pages: 12

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

URGENT

Wednesday, March 12, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
B. Pelucci
FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT: Melinda D. Haskins
PHONE: (202)395-3923 FAX: (202)395-6148
SUBJECT: JUSTICE Proposed Draft Bill on Child Support Recovery Amendments Act of 1997
DEADLINE: 10 am Thursday, March 13, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The attached Department of Justice (DOJ) draft bill would amend the Child Support Recovery Act pursuant to the President's July 21, 1996, directive to DOJ to establish a felony offense for a person who willfully fails to pay child support for a child in another State. This draft bill is similar to a DOJ draft bill that was transmitted to the Congress on September 27, 1996.

X DOJ has requested that OMB clear this draft bill by tomorrow (Thursday, March 13th.) It plans to transmit its draft bill to the Congress tomorrow. X

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**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Melinda D. Haskins Phone: 395-3923 Fax: 395-6148
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____

FAX RETURN of _____ pages, attached to this response sheet



U.S. Department of Justice

Office of Legislative Affairs

DRAFT

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Newt Gingrich
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is a legislative proposal, the "Child Support Recovery Amendments Act of 1997," which strengthens federal criminal child support enforcement by establishing felony violations for aggravated cases of failing to pay legal child support obligations and other measures. A section-by-section analysis is also enclosed. We have forwarded an identical proposal to the President of the United States Senate.

This proposal results from the President's directive to the Attorney General of July 21, 1996. In that directive, the President said that, "[w]hile State and local agencies have and must have primary responsibility for child support enforcement, the Federal Government has a crucially important role to play," and asked that the Attorney General take several specific steps to strengthen child support enforcement efforts. One of these steps was "to draft legislation to amend the Child Support Recovery Act to establish a felony offense for a person who willfully fails to pay child support for a child in another State where there has been an egregious failure to meet child support obligations."

Current law makes it a federal offense willfully to fail to pay a child support obligation with respect to a child who lives in another State if the obligation has remained unpaid for longer than a year or is greater than \$5,000. A first offense is subject to a maximum of six months of imprisonment, and a second or subsequent offense to a maximum of two years.

The draft bill addresses the law enforcement and prosecutorial concern that the current statute does not adequately address more serious instances of nonpayment of support obligations. For such cases a maximum term of imprisonment of just six months does not meet the sentencing goals of punishment and deterrence. Aggravated offenses, such as those involving parents who move from State to State to evade child support payments, require more severe penalties.

The draft bill creates two new categories of felony offenses, subject to a two-year maximum prison term. These are: (1) traveling in interstate or foreign commerce with the intent to evade a support obligation if the obligation has remained unpaid for a period longer than one year or is greater than \$5,000; and (2) willfully failing to pay a support obligation regarding a child residing in another State if the obligation has remained unpaid for a period longer than two years or is greater than \$10,000. These offenses indicate a level of culpability greater than that reflected by the current six-month maximum prison term for a first offense. A maximum two-year prison term is appropriate for these offenses.

The current proposal is similar to one the Department submitted to the 104th Congress, but the current proposal includes several additional measures which clarify and strengthen federal child support enforcement provisions. First, we have considered the statute's application to child support orders issued by Indian tribal courts. The draft bill now includes within its definition section a reference to support obligations as determined under a court order or administrative process pursuant to the law of an Indian tribe. In addition, we have included a venue section which clarifies that prosecutions under the statute may be brought in any district in which the child resided or the obligor resided during a period of nonpayment. *

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this proposal and that its enactment would be in accord with the program of the President. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

DRAFT

Andrew Fois
Assistant Attorney General

Enclosure

To establish felony violations for the failure to pay legal child support obligations and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. SHORT TITLE.

This Act may be cited as the "Child Support Recovery Amendments Act of 1997."

SEC. 2. ESTABLISHMENT OF FELONY VIOLATIONS.

Section 228 of title 18, United States Code, is amended to read as follows:

"§228. Failure to pay legal child support obligations

"(a) Offense.--Any person who--

"(1) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than one year, or is greater than \$5000;

"(2) travels in interstate or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than one year, or is greater than \$5,000; or

"(3) willfully fails to pay a support obligation with respect to a child who resides in another State, if such obligation has remained unpaid for a period longer than two years, or is greater than \$10,000;

shall be punished as provided in subsection (c).

"(b) Presumption.--The existence of a support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

"(c) Punishment.--The punishment for an offense under this section is--

"(1) in the case of a first offense under subsection (a) (1), a fine under this title, imprisonment for not more than 6 months, or both; and

"(2) in the case of an offense under subsection (a) (2) or (a) (3), or a second or subsequent offense under subsection (a) (1), a fine under this title, imprisonment for not more than 2 years, or both.

"(d) Mandatory Restitution.--Upon a conviction under this section, the court shall order restitution under section 3663A in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

"(e) Definitions.--As used in this section--

"(1) the term 'support obligation' means any amount determined under a court order or an order of an administrative process pursuant to the law of a State or of an Indian tribe to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and

"(2) the term 'State' includes any State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

"(3) the term 'Indian tribe' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe pursuant to section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

"(f) Venue. - Any offense under this section may be inquired of and prosecuted in any district in which the child resided or the obligor resided during a period of nonpayment, or in any other district otherwise provided by law."

SECTION-BY-SECTION ANALYSIS

The Child Support Recovery Amendments Act of 1997 amends the current criminal statute regarding the failure to pay legal child support obligations, 18 U.S.C. §228, to create felony violations for aggravated offenses. Current law makes it a federal offense willfully to fail to pay a child support obligation with respect to a child who lives in another State if the obligation has remained unpaid for longer than a year or is greater than \$5,000. A first offense is subject to a maximum of six months of imprisonment, and a second or subsequent offense to a maximum of two years.

The bill addresses the law enforcement and prosecutorial concern that the current statute does not adequately address more serious instances of nonpayment of support obligations. For such offenses a maximum term of imprisonment of just six months does not meet the sentencing goals of punishment and deterrence. Aggravated offenses, such as those involving parents who move from State to State to evade child support payments, require more severe penalties.

Section 2 of the bill creates two new categories of felony offenses, subject to a two-year maximum prison term. These are: (1) traveling in interstate or foreign commerce with the intent to evade a support obligation if the obligation has remained unpaid for a period longer than one year or is greater than \$5,000; and (2) willfully failing to pay a support obligation regarding a child residing in another State if the obligation has remained unpaid for a period longer than two years or is greater

than \$10,000. These offenses, proposed 18 U.S.C. §228(a)(2) and (3), indicate a level of culpability greater than that reflected by the current six-month maximum prison term for a first offense. The level of culpability demonstrated by offenders who commit the offenses described in these provisions is akin to that demonstrated by repeat offenders under current law, who are subject to a maximum two-year prison term.

Proposed section 228(b) of title 18, United States Code, states that the existence of a support obligation in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that period. Although "ability to pay" is not an element of the offense, a demonstration of the obligor's ability to pay contributes to a showing of willful failure to pay the known obligation. The presumption in favor of ability to pay is needed because proof that the obligor is earning or acquiring income or assets is difficult. Child support offenders are notorious for hiding assets and failing to document earnings. A presumption of ability to pay, based on the existence of a support obligation determined under State law, is useful in the jury's determination of whether the nonpayment was willful. An offender who lacks the ability to pay a support obligation due to legitimate, changed circumstances occurring after the issuance of a support order has State civil means available to reduce the support obligation and thereby avoid violation of the federal criminal statute in the first instance.

In addition, the presumption of ability to pay set forth in the bill is rebuttable; a defendant can put forth evidence of his or her inability to pay.

The reference to mandatory restitution in proposed section 228(d) of title 18, United States Code, amends the current restitution requirement in section 228(c). The amendment conforms the restitution citation to the new mandatory restitution provision of federal law, 18 U.S.C. §3663A, enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132, section 204. This change simply clarifies the applicability of that statute to the offense of failure to pay legal child support obligations.

For all of the violations set forth in proposed subsection (a) of section 228, the government must show the existence of a determination regarding the support obligation, as under current law. Under proposed subsection (e)(1) the government must show, for example, that the support obligation is an amount determined under a court order or an order of an administrative process pursuant to the law of a State to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living. Proposed subsection (e)(1), however, expands the scope of covered support obligations to include amounts determined under a court order or an order of an administrative process pursuant to the law of an Indian tribe. Subsection (e)(3) defines the term 'Indian tribe' to mean an Indian or Alaska Native tribe, band, nation, pueblo,

village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe pursuant to section 102 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a. The expanded definition permits enforcement of the statute for all children for whom child support was ordered by either a State or tribal court or through a State or tribal administrative process.

Proposed subsection (e)(2) of section 228 amends the definition of "State," currently in subsection (d)(2), to clarify that prosecutions may be brought under this statute in a commonwealth, such as Puerto Rico. The current definition of "State" in section 228, which includes possessions and territories of the United States, does not expressly include commonwealths.

Proposed subsection (f) clarifies that prosecutions for violations of this section may be brought either in the district where the child resided or the obligor resided during a period of nonpayment. Inclusion of this language is necessary in light of a recent case, Murphy v. United States, 934 F.Supp. 736 (W.D. Va. 1996), which held that a prosecution had been improperly brought in the Western District of Virginia, where the child resided, because the obligor was required, by court order, to send his child support payments to the state of Texas. Proposed subsection (f) is not meant to exclude other venue statutes, such as section 3237 of title 18, United States Code, which applies to offenses begun in one district and completed in another.