

BRADLEY AMENDMENT

What does the Bradley amendment do?

States must have laws that provide that child support payments become a judgment by operation of law and that prohibit retroactive modification of arrearages. Retroactive modification of arrearages occurs when a court or administrative body takes actions to erase or reduce arrearages that have accrued under a court or administrative order for support. In effect, retroactive modification of arrearages alters the obligor's obligation without the concurrence of the obligee (or the State in the case of assigned support) and is expressly prohibited by section 466(a)(9)(C) of the Social Security Act and 45 CFR 303.106. Prior to passage of the Bradley amendment in 1986, judges could unilaterally reduce the arrears balance on an order because they believed the arrears were too high. The Bradley amendment prohibits this practice.

It is not discussed here but
the "judgment by operation
of law" is what allows
automated enforcement such as
bank attachments + garnishments.

INFO FROM OLSE
RE

1. BRADLY AMENDMENT
2. MODIFYING ARREARAGES

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DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

PIQ - 99-03

DATE: March 22, 1999

TO: State IV-D Directors

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

RE: Compromise of Child Support Arrearages

Question 1: Is there authority for States to accept less than the full payment of assigned child support arrearages?

Response: Yes. A State could accept less than the full payment of arrearages assigned to the State on the same grounds that exist for compromise and settlement of any other judgment in the State.

We articulated this position in PIQ-89-02 issued on February 14, 1989 and later in the preamble to final regulations at 45 CFR 303.106 pertaining to "Procedures to Prohibit Retroactive Modifications of Child Support Arrearages" which was published in the Federal Register on April 19, 1989 (54 FR 15764). Federal law at section 466(a)(9) of the Social Security Act (the Act) and implementing regulations at 45 CFR 302.70(a)(9) provide that child support is a judgment on and after the date due with the full force, effect and attributes of a judgment of the State, and not subject to retroactive modification. Such support judgments may, however, be compromised or satisfied by specific agreement of the parties on the same grounds as exist for any other judgment in the State. Judgments involving child support arrearages assigned to the State under titles IV-A, IV-E and XIX of the Act, may not be compromised by an agreement between the obligee and obligor unless the State, as assignee, also approves such an agreement. State law may further require that the court or administrative authority must endorse any agreement affecting child support orders to ensure that the best interests of the child are protected.

We encourage caution not to confuse compromising arrearages with the statutory prohibition against retroactive modification of arrearages. The State plan requirement at section 454(20) of the Act requires States to enact laws that implement statutorily required procedures found at section 466 of the Act. Thus States must have laws that provide that child support payments become a judgment by operation of law and prohibit retroactive modification of arrearages. Retroactive modification of arrearages occurs when a court or administrative body takes actions to erase or reduce arrearages that have accrued under a court or administrative order for support. In effect, retroactive modification of arrearages alters the obligor's obligation without the concurrence of the obligee (or the State assignee) and is expressly prohibited by section 466(a)(9)(C) of the Act and 45 CFR 303.106.

Question 2: Would accepting a reduced payment for assigned child support arrearages violate existing Federal distribution law that requires sharing any assigned child support collections with the Federal government?

Response: No. Federal law does not prohibit State (or private) settlement of a judgment obligation, consistent with State law governing settlement of any other money judgment. While an agreement to compromise or settle the amount owed under the judgment and assigned to the State affects the amount payable for reimbursement to the Federal government, the Federal interest is contingent upon the State's collection of the debt. The Federal interest does not vest until support is available for distribution. Any amount collected under the judgment must be distributed in accordance with section 457 of the Act.

Some States have given consideration to compromise of arrearages when the custodial parent and the noncustodial parent marry or reunite (if they have been legally separated). For example, Washington State statute and administrative rules allow certain child support debts to be "written off" (RCW 74.20A.220, WAC 388-14-385). The process is managed through a "conference board" proceeding in which a Division of Child Support (DCS) attorney and one or more other DCS staff members review the case to determine whether the support debt creates a hardship. Generally the Conference Board bases the hardship determination on a comparison of the family income to the State needs standard for the family size. This process has been a useful tool to assist reconciled or remarried parents with financial difficulties. DCS is careful not to use this remedy in such a way that it would encourage domestic violence or coercion.

There may be other circumstances that warrant consideration of compromising arrearages in accordance with State law. However, States should use caution not to send a message that obligors can ignore support obligations because of the possibility that the State may eventually accept less than the full amount owed in satisfaction of the debt.

We hope this information will prove helpful.

Child Support Q&A

Q: What is this Administration doing to ensure that more parent's are paying child support?

A: President Clinton has made child support enforcement a top priority, and it is paying off. Department of Health of Human Services (HHS) recently set new performance records for the program. In 1998, HHS collected an estimated \$14.4 billion, an increase of over 80 percent since fiscal year 1992 when only \$8 billion was collected. Included in the amount is a record \$1.1 billion in delinquent child support collected from Federal income tax refunds for tax year 1997. This was a 70 percent increase since 1992, and collections were made on behalf of nearly 1.3 million families. In 1997 we also established 1.3 million paternities, an increase of more than 100 percent since 1992 when 516,949 were established.

The President signed the Personal Responsibility and Work Opportunity Reconciliation Act in August 1996. Better known as welfare reform, the law provides critical new tools to improve our Nation's child support program - central registries of child support orders, a national directory of new hires, streamlined paternity establishment procedures, uniform interstate child support laws, license revocation, and passport denial. An example of the success HHS is already seeing from the 1996 welfare law is the National Directory of New Hires, which last year located 1.2 million delinquent parents in interstate cases.

BRADLEY AMENDMENT

Child Support -
Bradley
Amendment

Q: What does the Bradley amendment do?

A: Prior to passage of the Bradley amendment in 1986, judges could unilaterally reduce the arrears balance on an order because they believed the arrears were too high. The Bradley amendment prohibits this practice. Now, per the Bradley amendment, states must have laws that provide that child support payments become a judgment by operation of law and that prohibit retroactive modification of arrearages. Retroactive modification of arrearages occurs when a court or administrative body takes actions to erase or reduce arrearages that have accrued under a court or administrative order for support. In effect, retroactive modification of arrearages alters the obligor's obligation without the concurrence of the obligee (or the State in the case of assigned support) and is expressly prohibited by section 466(a)(9)(C) of the Social Security Act and 45 CFR 303.106. Such support judgments, however, may be compromised or satisfied by specific agreement of the parties on the same grounds as exist for any other judgment in the State. Judgments involving child support arrearages assigned to the State under titles IV-A, IV-E and XIX of the Act, may not be compromised by an agreement between the obligee and obligor unless the State, as assignee, also approves such an agreement. However, if the State does approve, then the assigned arrearages may be modified.

Child-support law amendment comes to attention of Hill

Provision revision could put end to horror stories

By Cheryl Wetzstein
THE WASHINGTON TIMES

In 1990, Lockheed employee and divorced father Bobby Sherrill was captured in Kuwait and spent nearly five harrowing months as an Iraqi hostage.

When Mr. Sherrill was released, he returned to his joyful, weeping family in North Carolina.

The next night, the sheriff came to arrest Mr. Sherrill. The charge: not paying \$1,425 in child support while he was a hostage.

A similar shock awaited Clarence Brandley.

In 1980, the Texas high school janitor was wrongly accused of murder. He spent nearly 10 years in prison, most of it on death row, until his exoneration in January 1990.

In 1991, Mr. Brandley sued the state for wrongful imprisonment. The state responded with a bill for nearly \$50,000 in child support that Mr. Brandley didn't pay while in prison.

The child-support meters never stopped running on Mr. Sherrill or Mr. Brandley because they didn't ask a court to reduce their payments.

Such lapses are costly because of a federal law known as the Bradley amendment. Reforming the Bradley amendment could come up today in a House hearing on fatherhood and child support.

The amendment, named for former Sen. Bill Bradley, New Jersey Democrat, says that once a child-support obligation has been established, it can't be retroactively reduced or forgiven by a judge.

The amendment was enacted in 1986 to stop parents from running up huge child-support debts and getting a sympathetic judge to erase them.

Twelve years later, however, the unintended consequences of the Bradley amendment have become clearer, and a growing number of people are calling for the law to be repealed or at least modified.

According to the reformers, the Bradley amendment:

- All but ensures that any parent who has a dip in cash flow will be buried under a debt that cannot be legally escaped.

- Helps chase poor men into illegal activities or the underground economy, away from "mainstream" jobs and their children.

Reformers are having some success arguing their case on Capitol Hill, but admit that their battle is uphill: Members of Congress are loath to do anything that might be seen as going soft on child-support enforcement.

However, reformers say, they have a powerful incentive for change in the way the Bradley amendment keeps low-income fathers trapped in child-support debt.

Congress and the White House are both pushing to get low-income fathers to support their families and even marry the mothers of their children, said one reformer who asked not to be identified.

But these fathers "are not marriage material with a huge debt over their head," he says. When reform of the Bradley amendment is presented in this context, "more people understand that something has to be done to fix it," he says.

The nation's child-support enforcement system was created in 1975 to collect monthly payments from parents whose families were on welfare, were in danger of going on welfare or needed help with collections.

Currently, the \$3 billion federal-state system is working on behalf of 30 million children owed support.

Last year, according to the federal Office of Child Support Enforcement (OCSE), a record \$14.4 billion in child support was collected.

The Bradley amendment has often worked as intended, by locking in arrears while the system doggedly pursues wily, wealthy parents who ducked their obligations.

Some big catches have included a New York plastic surgeon who owed \$172,000, a professional athlete who owed \$76,000 and a yacht company owner who owed \$50,000, according to a recent article in Government Executive magazine.

The child-support system is hailed when it bags deadbeats like these.

But there's less applause when the system applies the same tough rules and penalties on people like the shaggy-haired man who recently stood in handcuffs before a Maryland Circuit Court judge.

The shaggy-haired man told the judge he lived with his mother and was too disabled to work. He had just spent two weeks in jail for not paying his \$10-a-week child support. His total debt was \$42,788.

The judge ordered the man to pay \$75 a week toward his debt.

But even at that rate, observed a lawyer, "it will take that guy 80 years to pay it off."

Several child-support advocacy groups say that, despite these pitiful cases, the Bradley amendment should be maintained because it serves a need.

"We supported the Bradley amendment when it passed, because it stopped a judge in State B from wiping out [the debt from] an order passed by a judge in State A," says Geraldine Jensen, president of the Association for Children for Enforcement of Support.

"We still need it because 40 per-

cent of cases are interstate, and we still only have 20 percent of people paying" their full support, says Ms. Jensen.

Moreover, she adds, 80 percent of those who owe child support are middle- to upper-income parents who can pay.

"If you change the Bradley amendment itself, you provide an incentive for guys who can pay but are determined not to," says Vicki Turetsky, senior staff lawyer at the Center for Law and Social Policy.

However, despite the Bradley amendment's hold on accrued debts, and a new array of enforcement tactics, the child-support system still collects less than half of what is owed. Vermont collects the most — 41 percent of owed support, according to OCSE data, while 25 states collect 20 percent or less of owed support.

A lot of this debt is owed by "dead-broke dads," "turnip dads" or "beat-dead dads," say scholars and advocacy groups.

"Turnip" dads are those who earn less than \$130 a week and would be impoverished themselves if they paid support, says Ford Foundation Project Officer Ronald B. Mincy.

Mr. Mincy and Elaine J. Sorensen estimate that between 16 percent and 33 percent of fathers are "turnips."

The "beat-dead dads" are the ones who have child-support orders set so high that "any hiccup in cash flow" quickly results in thousands of dollars of arrears, says Ron Henry, a lawyer active in the Children's Rights Council and Men's Health Network.

"Then the Bradley amendment [says] once an arrearage is accrued, it exists forever. You cannot waive it. You cannot modify it. Too bad, sucker," says Mr. Henry, who says the law should be repealed.

The child-support system, Mr. Henry adds, ostensibly allows parents to change the amount of their child-support payments.

But in practice, the system is unwieldy and prefers inertia in people's lives until the child reaches age 18 — no one remarries, no one loses a job, no one becomes disabled, no one goes to jail, he says.

A major reason many child-support orders are set at high amounts and grow so fast is because they are set without the paying parent in the courtroom, say experts.

The Los Angeles Times reported last fall that "roughly 70 percent" of fathers "are not in court when paternity is estab-

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House member urges radar sales to Taiwan

Gilman calls proposed ban shortsighted

By Bill Gertz
THE WASHINGTON TIMES

The chairman of the House International Relations Committee will seek to reverse administration efforts to bar the sale of defensive radar to Taiwan.

Talks between U.S. and Taiwanese government officials are to begin today on Taipei's annual request for U.S. arms.

According to officials close to the talks, the White House and State Department prevailed over the Pentagon in interagency policy discussions and succeeded in blocking several important weapons systems sought by the Taiwanese.

Rep. Benjamin A. Gilman, the committee chairman, said in a letter to Secretary of State Madeleine K. Albright that he will seek legislation to circumvent the decision if the State Department denies long-range early warning radar to Taiwan.

Mr. Gilman said the State Department "is advocating a policy that is not merely wrong-headed but also dangerous to the people of Taiwan and the personnel of our U.S. armed forces who may one day be called on to help defend Taiwan."

The White House opposes the radar sales because of Chinese opposition to Asian missile defenses, which could neutralize Beijing's growing short-range missile force. The Defense Intelligence Agency

estimates China will deploy up to 650 M-9 and M-11 missiles near Taiwan over the next six years.

"I will not accept a decision by the administration to deny early warning radar systems to Taiwan," Mr. Gilman wrote in the April 22 letter. "I have directed my staff to prepare legislation to rescind the president's legal authority to restrict the transfer of such systems to Taiwan."

Mr. Gilman, New York Republican, said that the legislation will be introduced immediately after the rejection of the radar, and that the measure "will command broad, bipartisan support in the Congress."

Earlier, the congressman had written to President Clinton urging him to approve the radar sale.

Mr. Gilman said he does not seek to complicate U.S. relations with China.

"But we have to recognize that Taiwan's need for early warning radar is the direct result of menacing policies that have been deliberately pursued by the Chinese government and cannot abide a decision by the Clinton administration to leave Taiwan vulnerable to the growing threat," he said. "In addition to the long-range radar, the Taiwanese also seek to buy Aegis radar deployed on U.S. warships, submarines, air-launched anti-ship and anti-aircraft missiles and Patriot-design ground-based anti-aircraft missiles, according to U.S. officials."

lished and their monthly obligations set."

Men might not even know they owe child-support, retroactive to the day their family went on welfare, say experts.

The same Los Angeles Times story said that local law enforcement records showed that "on average, more than 350 men a month are incorrectly named as fathers."

The Bradley amendment ensures that even if the court makes a mistake, "you can never get out of it," says Mike Ewing, a leader of the Virginia Fatherhood Initiative in Norfolk, who knows several men who are paying support even though DNA tests proved they weren't the children's father.

"I think the Bradley amendment was well intended... but we need to come up with an amendment to the Bradley amendment," says Joe Jones, who works with low-income fathers with the Partnership for Fragile Families and Baltimore City's Healthy Start program.

The way child support works now, says Mr. Jones, "is like giving a young, low-income minority father a credit card with \$10,000 worth of debt on it. How in the heck will he ever be able to pay it off?"

Wendell Primus, a senior analyst at the Center on Budget and Policy Priorities, says the child-support system "has to undergo a cultural change similar to the way the [welfare] office did."

Its mission should move from

one of "collection and disbursement" to working with fatherhood groups and others to get these fathers "employed and connected to their children," says Mr. Primus.

Such an effort is under way in Anne Arundel County, where a Child Support Initiative program helps parents who face jail.

The government-funded CSI program steers men to training and jobs, and gives them a stipend, which they can apply toward child support.

Between 1993 and 1998, the 462 parents in the program paid \$2.2 million in child support, including \$464,880 from stipends, says program administrator Brent Johnson, a lawyer with the Public Defenders Office. He adds 271 parents are working.

Other innovations have

emerged to deal with the child-support system's idiosyncrasies.

Tennessee, for instance, enacted a law last year that will "forgive" the state portion of a child-support debt if the parents of the child marry and live together. The deal is off if the parents break up.

In some courts, support orders are rewritten to assign most of the money to the arrears. A \$200-a-month order, for example, might be rewritten to request \$10 for current support and \$190 for the arrears, which upholds the Bradley amendment but slows the descent into debt.

But both advocates and opponents of change agree that any efforts to reform entrenched child-support rules such as the Bradley amendment are nascent and easily aborted.

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