

2A:17-56.7 to 2A:17-56.15

LEGISLATIVE HISTORY CHECKLIST

NJSA 2A:17-56.7 to 2A:17-56.15;  
54:1-58.1 et al. ("Support Enforcement Act")

LAWS 1981 CHAPTER 417

Bill No. S1508

Sponsor(s) Limpan, Dwyer & Scardino

Date Introduced Sept. 29, 1980

Committee: Assembly Judiciary, Law, Public Safety & Defense  
Senate Judiciary

Amended during passage Yes No Assembly Committee Substitute enacted.

Date of Passage: Assembly Dec. 10, 1981  
Senate Jan. 22, 1981

Date of approval Jan. 9, 1982

Following statements are attached if available:

Sponsor statement	<u>Yes</u>	<del>No</del> original bill & OCR attached
Committee Statement: Assembly	<u>Yes</u>	<del>No</del>
Senate	<u>Yes</u>	<del>No</del>
Fiscal Note	<u>Yes</u>	No
Veto Message	<u>Yes</u>	No
Message on signing	<u>Yes</u>	No

Following were printed:

Reports	<u>Yes</u>	<del>No</del>
Hearings	<u>Yes</u>	No

Report, referred to in sponsors' statement:

974.90 New Jersey. Commission on Sex Discrimination  
W872 in the Statutes.  
1981b Second report. Sept., 1981. Trenton, 1981.  
(pp. 20-23, Appendix C-D)

(over)

6/22/81

Wisconsin statute, referred to in NJ law (attached): P.L. 1981, c.105

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417

1-9-82

81

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
SENATE, No. 1508

STATE OF NEW JERSEY

ADOPTED JUNE 22, 1981

AN ACT concerning income execution, supplementing chapter 17 of Title 2A of the New Jersey Statutes, amending and supplementing the "Wage Reporting Act" (P. L. 1980, c. 48) and repealing P. L. 1977, c. 292.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. (New section) This act shall be known and may be cited as  
2 the "New Jersey Support Enforcement Act."

1 2. (New section) Every order of a court for alimony, mainte-  
2 nance or child support payments shall include a written notice to  
3 the payer stating that the order may be enforced by an income  
4 execution upon the commissions, earnings, salaries, wages and  
5 other current or future income due from the payer's employer or  
6 successor employers.

1 3. (New section) The payee or the county agency administering  
2 Title IV-D of the Federal Social Security Act on behalf of the  
3 payee, may apply to the county probation office of the county in  
4 which the payer resides for an income execution after the payer  
5 has failed to make a required alimony, maintenance or child sup-  
6 port payment within 25 days of its due date. Subject to the pro-  
7 visions of section 4 of this act, the income execution shall take  
8 effect as and when provided by the county probation office.

1 4. (New section) a. The county probation office shall notify the  
2 payer of the application for income execution by certified or regis-  
3 tered mail with return receipt requested to the last known address.  
4 The notice shall be postmarked no later than 10 days after the  
5 date on which the application was filed, and shall inform the payer  
6 that the execution shall take effect 20 days after the postmarked  
7 date of the notice unless the payer requests a court hearing. The  
8 payer may, before the effective date of the execution request a court-  
9 hearing on the issue of whether the income execution should take  
10 effect and the amount and schedule of arrearages. The court hear-  
11 ing requested under this section shall be held within 30 days after  
12 the date of the request. At the hearing the burden shall be on the

13 payer to demonstrate good cause why the income execution, in-  
14 cluding the amount or schedule of arrearages, should not take effect.  
15 Payment of arrearages after the due date shall not be good cause.

16 b. The county probation department shall prepare the execu-  
17 tion which shall include the amount of the monthly payments set  
18 forth in the order and where appropriate a schedule of payments  
19 towards the arrearages due at the time the execution takes effect  
20 in accordance with the provisions of this act. If the court modifies  
21 any alimony, maintenance or child support order based upon  
22 changed circumstances, the income execution amount shall also be  
23 changed accordingly. This income execution shall have priority  
24 over any other executions.

25 c. An execution made under section 3 shall continue in full force  
26 and effect until such time as a court order to the contrary is  
27 entered upon a showing of good cause.

1 5. (New section) An execution made under section 3 of this act  
2 shall be binding upon the employer and successor employers 1  
3 week after service upon the employer by the county probation office  
4 of a true copy of the execution and annexed to a copy of the order  
5 by personal service or by registered or certified mail with return  
6 receipt requested until further order of the court. For each pay-  
7 ment, the employer may receive \$1.00 which shall be deducted  
8 from the employee's salary in addition to the amount of the support  
9 order.

1 6. (New section) The employer may not use an execution as a  
2 basis for the discharge of any employee or for any disciplinary  
3 action against the employee. An employer who discharges or dis-  
4 ciplines an employee in violation of this act or who discriminates  
5 in hiring because of an income execution or a potential execution  
6 is a disorderly person.

1 7. (New section) In every award for alimony, maintenance or  
2 child support payments the judgment or order shall provide that  
3 payments be made through the probation office of the county in  
4 which the payer resides, unless the court, for good cause shown,  
5 otherwise orders. Upon the signing of an order or judgment  
6 allowing alimony or support or both through the county probation  
7 office the court shall send to the county probation office a statement  
8 with the addresses, telephone numbers, social security numbers  
9 of both parties and the name and address of the payer's place of  
10 employment. Each judgment or order for alimony, maintenance  
11 or child support shall include an order that the payer and payee  
12 notify the appropriate county probation office of any change of

13 employer or change of address within 10 days of the change. Fail-  
 14 ure to provide this information shall be considered a violation of  
 15 this order. When a county probation office is unable to locate the  
 16 payer's current employer in order to effectuate an income execu-  
 17 tion under this act, the office is authorized to utilize the procedure  
 18 established in the "Wage Reporting Act," P. L. 1980, c. 48  
 19 (C. 54:1-55 et seq.).

1 8. (New section) Subject to the provisions of section 4 of this  
 2 act, a person already entitled to payments under any alimony,  
 3 maintenance or child support order issued prior to the effective  
 4 date of this act or the county agency administering Title IV-D  
 5 of the Federal Social Security Act on behalf of such payee may  
 6 apply to the appropriate county probation office for an income  
 7 execution order in accordance with the provisions of this act. A  
 8 payee who does not receive payments made through the county  
 9 probation office shall file an affidavit when applying for the exe-  
 10 cution stating that the payment was not made within 25 days of  
 11 its due date. Alimony maintenance or child support payments not  
 12 presently made through the county probation office shall be so  
 13 made upon application of the payee unless the payer upon appli-  
 14 cation to the court shows good cause to the contrary.

15 The court and the county probation office shall follow the pro-  
 16 cedures established in this act.

1 9. (New section) The Administrative Director of the Courts  
 2 whenever possible shall, every calendar quarter, provide the Di-  
 3 rector of the Division of Taxation with a list, in a form and manner  
 4 prescribed by the Director of the Division of Taxation, which  
 5 shall contain the name and social security number of a person  
 6 subject to an income execution and who cannot be located by the  
 7 appropriation county probation office of the payer to effectuate  
 8 the execution.

1 10. Section 6 of P. L. 1980, c. 48 (C. 54:1-60) is amended to  
 2 read as follows:

3 6. Upon making such comparison, the Director of the Division  
 4 of Taxation shall provide to the Directors of the Divisions of Public  
 5 Welfare, Unemployment and Disability Insurance and the Admin-  
 6 istrative Director of the Courts the name, amount of wages, social  
 7 security number and employer's name and address, of each person  
 8 whose social security number appears on any list provided by  
 9 either division or office and on the list of persons to whom wages  
 10 were paid. The respective divisions shall investigate and, if ap-  
 11 propriate, take action against said person. The Administrative

12 Office of the Courts shall use the information provided by the  
13 Director of the Division of Taxation to effectuate an income exe-  
14 cution through the appropriate county probation office.

1 11. Section 9 of P. L. 1980, c. 48 (C. 54:1-63) is amended to  
2 read as follows:

3 9. Notwithstanding the provisions of R. S. 54:50-8 and R. S.  
4 54:50-9, the Division of Taxation or its employees may make only  
5 those disclosures to officers or employees of the Division of Public  
6 Welfare in the Department of Human Services, county welfare  
7 boards, the Division of Unemployment and Disability Insurance  
8 in the Department of Labor and Industry and the Administrative  
9 Office of the Courts required to implement the provisions of this  
10 act; provided, however, that no disclosure may be made to any  
11 receiving agency herein with respect to Federal tax information  
12 obtained directly from the Internal Revenue Service pursuant to  
13 agreement except with the consent of the Internal Revenue Service.

1 12. (New section) An income execution order against a payer  
2 pursuant to this act may be docketed in any other court and from  
3 the time of its docketing, the execution order shall have the same  
4 force and operation as an order of the court in which it is docketed.

1 13. P. L. 1977, c. 292 (C. 2A:17-56.1 et seq.) is repealed.

1 14. This act shall take effect 130 days after enactment.

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SENATE, No. 1508

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 29, 1980

By Senators LIPMAN, DWYER and SCARDINO

Referred to Committee on Judiciary

AN Act concerning income assignment, supplementing Chapter 17 of Title 2A of the New Jersey Statutes, amending and supplementing the "Wage Reporting Act" (P. L. 1980, c. 48), and repealing P. L. 1977, c. 292.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. (New section) This act shall be known and may be cited as the  
2 "Income Assignment Act."

1 2. (New section) Every order of a court for alimony, mainte-  
2 nance or child support payments shall direct the payer to assign  
3 commissions, earnings, salaries, wages and other current or future  
4 income due from the payer's employer or successor employers to  
5 the county probation office in the county where the action is filed,  
6 as will be sufficient to meet the payments for alimony, maintenance,  
7 or child support as set forth therein and to defray arrearages in  
8 payments due at the time the assignment takes effect. If the court  
9 modifies any alimony, maintenance or child support order based  
10 upon changed circumstances, the income assignment amount shall  
11 also be changed accordingly. The execution of this order of assign-  
12 ment shall have priority over any other executions.

1 3. (New section) The payee or the county agency administering  
2 Title IV-D of the Federal Society Security Act on behalf of the  
3 payee, may apply to the county probation office in which the payee  
4 resides for an income assignment after the payer has failed to  
5 make a required alimony, maintenance or child support payment  
6 within 2 weeks of its due date. Subject to the provisions of section 4  
7 of this act, the income assignment shall take effect as and when  
8 provided by the county probation office.

1 4. (New section) The county probation office shall notify the  
2 payer of the income assignment application by certified or regis-

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

3 tered mail with return receipt requested to the last known address.  
4-5 The notice shall be postmarked no later than 10 days after the date  
6 on which the application was filed, and shall inform the payer that  
7 the assignment shall take effect 10 days after the postmarked date  
8 of the notice.

9 The payer may, before the effective date of the assignment,  
10 request a court hearing on the issue of whether the income assign-  
11 ment should take effect. The court hearing requested under this  
12 section shall be held within 30 days after the date of the request.  
13 If at the hearing the payer establishes that extraordinary circum-  
14 stances prevented fulfillment of the alimony, maintenance or child  
15 support payment and that these circumstances were beyond the  
16 control of the payer, the court may direct that the income assign-  
17 ment not take effect until such time, within 12 months, that another  
18 month's payment is missed. If a delay is granted, the income assign-  
19 ment shall go into effect if, within the following 12 months, the  
20 payer fails to make in full any payment within 2 weeks of its due  
21 date. When all arrearages in payments have been collected, the  
22 income assignment order shall continue for 12 months, during  
23 which time only the regular payments shall be deducted. After 12  
24 months the income assignment order shall cease.

1 5. (New section) An assignment made under section 3 of this act  
2 shall be binding upon the employer and successor employers 1 week  
3 after service upon the employer by the county probation office of a  
4 true copy of the assignment signed by the employee and annexed  
5 to a copy of the order by personal service or by registered or  
6 certified mail with return receipt requested until further order of  
7 the court. For each payment, the employer may receive \$1.00 which  
8 shall be deducted from the employee's salary in addition to the  
9 amount of the support order.

1 6. (New section) The employer may not use an assignment as  
2 a basis for the discharge of an employee or for any disciplinary  
3 action against the employee. An employer who discharges or dis-  
4 ciplines an employee in violation of this act or who discriminates  
5 in hiring because of an income assignment or a potential execution  
6 is a disorderly person.

1 7. (New section) In every award for alimony, maintenance or  
2 child support payments the judgment or order shall provide that  
3 payments be made through the probation office of the county in  
4 which the payee resides, unless the court, for good cause shown,  
5 otherwise orders. Upon the signing of an order or judgment  
6 allowing alimony or support or both through the county probation

7 office the court shall send to the county probation office a statement  
8 with the addresses, telephone numbers, social security numbers  
9 of both parties and the name and address of the payer's place of  
10 employment. Each judgment or order for alimony, maintenance or  
11 child support shall include an order that the payer and payee  
12 notify the appropriate county probation office of any change of  
13 employer or change of address within 10 days of the change. Failure  
14 to provide this information shall be considered a violation of this  
15 order. When a county probation office is unable to locate the  
16 payer's current employer in order to effectuate an income assign-  
17 ment under this act, the office is authorized to utilize the procedure  
18 established in the "Wage Reporting Act," P. L. 1980, c. 48  
19 (C. 54:1-55 et seq).

1 8. (New section) A person already entitled to payments under  
2 any alimony, maintenance or child support order issued prior to  
3 the effective date of this act, may file a motion with the court for a  
4 modification of that order to include an income assignment order  
5 in accordance with the provisions of section 1 of this act. Within  
6 30 days of the filing of the motion, the court shall schedule a hearing  
7 to determine whether an income assignment order shall be issued  
8 to enforce the existing order. If the court issues an income assign-  
9 ment order, any maintenance, alimony or child support payment  
10 already due to the payee but not enforced through the county pro-  
11 bation office where the payee resides, shall be enforced through the  
12 county probation office. The court and the county probation office  
13 shall follow the procedures established in this act.

1 9. (New section) The Administrative Office of the Courts shall  
2 have the authority to establish a schedule of the amount of arrear-  
3 ages to be paid off in addition to the current amount. The schedule  
4 shall include the payer's income level and the amount of arrearages  
5 in addition to any other relevant factors.

1 10. (New section) The Administrative Director of the Courts  
2 whenever possible shall, every calendar quarter, provide the  
3 Director of the Division of Taxation with a list, in a form and  
4 manner prescribed by the Director of the Division of Taxation,  
5 which shall contain the name and social security number of every  
6 person ordered to assign income who has defaulted on his or her  
7 alimony, maintenance or child support payments and who has not  
8 notified the appropriate county probation office of the current  
9 employer.

1 11. Section 6 of P. L. 1980, c. 48 (C. 54:1-60) is amended to read  
2 as follows:

3 6. Upon making such comparison, the Director of the Division  
 4 of Taxation shall provide to the Directors of the Divisions of  
 5 Public Welfare [and], Unemployment and Disability Insurance  
 6 and the Administrative Director of the Courts the name, amount of  
 7 wages, social security number and employer's name and address,  
 8 of each person whose social security number appears on any list  
 9 provided by either division or office and on the list of persons to  
 10 whom wages were paid. The respective divisions shall investigate  
 11 and, if appropriate, take action against said person. *The Adminis-*  
 12 *trative Office of the Courts shall use the information provided by*  
 13 *the Director of the Division of Taxation to effectuate an income*  
 14 *assignment through the appropriate county probation office.*

1 12. Section 9 of P. L. 1980, c. 48 (C. 54:1-63) is amended to read  
 2 as follows:

3 9. Notwithstanding the provisions of R. S. 54:50-8 and R. S.  
 4 54:50-9, the Division of Taxation or its employees may make only  
 5 those disclosures to officers or employees of the Division of Public  
 6 Welfare in the Department of Human Services, county welfare  
 7 boards [and], the Division of Unemployment and Disability Insur-  
 8 ance in the Department of Labor and Industry and the *Administra-*  
 9 *tive Office of the Courts* required to implement the provisions of this  
 10 act; provided, however, that no disclosure may be made to any  
 11 receiving agency herein with respect to Federal tax information  
 12 obtained directly from the Internal Revenue Service pursuant to  
 13 agreement except with the consent of the Internal Revenue Service.

1 13. P. L. 1977, c. 292 (C. 2A:17-56.1 et seq.) is repealed.

1 14. This act shall take effect 120 days after enactment.

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#### STATEMENT

This bill provides for an automatic assignment of income as part of any maintenance, alimony or child support order. The assignment takes effect when the payer fails to make a payment within 2 weeks of its due date. The employer is required to deduct the current payment plus a portion of the arrearages and forward the amount to the county probation office. The employer may receive \$1.00 for expenses which may be deducted from the money paid the employee. If extraordinary circumstances prevent the payer from making a payment, an appeal procedure is provided to hold the assignment in abeyance until the court make a determination. The county probation office may enforce the income assignment provision by using the "Wage Reporting Act."

On the recommendation of the Commission on Sex Discrimination in the Statutes this legislation was proposed to provide a new remedy for a serious problem. The number of parents who default on their child support payments, leaving the other parent with the burden of supporting a family, has reached a critical level. As a result of runaway parents many families are forced to go on welfare; this primarily affects women since they are the traditional care-takers of children. It has been said that since women can earn only 59% of what men earn given equivalent levels of education, the surest route to poverty is for a household to lose its male breadwinner. The severe earning gap between men and women is the consequence of firmly rooted biases in our social, educational and economic institutions. By strengthening the child support enforcement system, however, we are taking an immediate step towards narrowing the enormous gap in economic well-being between children who live in female-headed households without support from their fathers and children who are still supported by their fathers.

In New Jersey over 200,000 women are on welfare. Despite the fact that the State will receive upwards of \$11.5 million this year in recoveries from the New Jersey Title IV-D Program for AFDC families, an estimated \$270 million has gone uncollected since the program began in late 1975. The State share of these overdue payments is \$101.25 million.

Under the current New Jersey law a parent has to go to court and get an order to garnish the wages of the defaulting spouse after an alimony, maintenance or child support payment is 45 days overdue. But what frequently happens is that an absent parent will wait until the end of the 45 days and make a token payment, thus preventing the court from garnishing the salary. Another 45 days must elapse before his wages can be touched. Then the cycle of evasion can start again. This legislation repeals the existing law and institutes a more effective and efficient system. Under the income assignment concept there is no delay created by scheduling new court appearances and needless paperwork is eliminated.

In 1977 Wisconsin successfully enacted an income assignment law, after which this bill is modeled. Within the first months after its enactment the amount of Wisconsin's collections increased dramatically. This legislation attempts to improve the problem of support enforcement by establishing a new, viable approach.

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4 income due from the payer's employer or successor employers to  
5 the county probation office in the county where the action is filed,  
6 as will be sufficient to meet the payments for alimony, maintenance,  
7 or child support as set forth therein and to defray arrearages in  
8 payments due at the time the assignment takes effect. If the court  
9 modifies any alimony, maintenance or child support order based  
10 upon changed circumstances, the income assignment amount shall  
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6 on which the application was filed, and shall inform the payer that  
7 the assignment shall take effect 10 days after the postmarked date  
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9 The payer may, before the effective date of the assignment,  
10 request a court hearing on the issue of whether the income assign-  
11 ment should take effect. The court hearing requested under this  
12 section shall be held within 30 days after the date of the request.  
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15 support payment and that these circumstances were beyond the  
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17 ment not take effect until such time, within 12 months, that another  
18 \*~~month's payment is missed~~\* *payment is more than 2 weeks*  
19 *overdue*\*. If a delay is granted, the income assignment shall go  
20 into effect if, within the following 12 months, the payer fails  
21 to make in full any payment within 2 weeks of its due date.  
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7 office the court shall send to the county probation office a statement  
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 5 in accordance with the provisions of section 1 of this act. Within  
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 12 county probation office. The court and the county probation office  
 13 shall follow the procedures established in this act.

1 9. (New section) The Administrative Office of the Courts shall  
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1 10. (New section) The Administrative Director of the Courts  
 2 whenever possible shall, every calendar quarter, provide the  
 3 Director of the Division of Taxation with a list, in a form and  
 4 manner prescribed by the Director of the Division of Taxation,  
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1 11. Section 6 of P. L. 1980, c. 48 (C. 54:1-60) is amended to read  
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3 6. Upon making such comparison, the Director of the Division  
4 of Taxation shall provide to the Directors of the Divisions of  
5 Public Welfare **【and】**, Unemployment and Disability Insurance  
6 *and the Administrative Director of the Courts* the name, amount of  
7 wages, social security number and employer's name and address,  
8 of each person whose social security number appears on any list  
9 provided by either division *or office* and on the list of persons to  
10 whom wages were paid. The respective divisions shall investigate  
11 and, if appropriate, take action against said person. *The Adminis-*  
12 *trative Office of the Courts shall use the information provided by*  
13 *the Director of the Division of Taxation to effectuate an income*  
14 *assignment through the appropriate county probation office.*

1 12. Section 9 of P. L. 1980, c. 48 (C. 54:1-63) is amended to read  
2 as follows:

3 9. Notwithstanding the provisions of R. S. 54:50-8 and R. S.  
4 54:50-9, the Division of Taxation or its employees may make only  
5 those disclosures to officers or employees of the Division of Public  
6 Welfare in the Department of Human Services, county welfare  
7 boards **【and】**, the Division of Unemployment and Disability Insur-  
8 ance in the Department of Labor and Industry *and the Administra-*  
9 *tive Office of the Courts* required to implement the provisions of this  
10 act; provided, however, that no disclosure may be made to any  
11 receiving agency herein with respect to Federal tax information  
12 obtained directly from the Internal Revenue Service pursuant to  
13 agreement except with the consent of the Internal Revenue Service.

1 13. P. L. 1977, c. 292 (C. 2A:17-56.1 et seq.) is repealed.

1 14. This act shall take effect 120 days after enactment.

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR

**SENATE, No. 1508**

**STATE OF NEW JERSEY**

DATED: JUNE 22, 1981

The purpose of this bill is to create a new procedure for enforcing court orders for alimony, child support and maintenance.

After consultation with the Department of Human Services and the New Jersey Bar Association, a committee substitute for the original bill was drafted. The following is a description of the committee substitute:

*Section 1* Title—Support Enforcement Act

*Section 2* provides every court order for alimony, child support or maintenance would contain a provision authorizing an assignment of wages to the county probation office upon failure to make payment.

*Section 3* provides that an application for an income assignment may be made if any required alimony or support payment is not received within 25 days of its due date. The application is made to the county probation office by the person entitled to the payment or the county agency administering the Child Support Enforcement Program on behalf of the person entitled to payment.

*Section 4* provides that upon application for a wage assignment, the probation office is required to notify the person obligated to make the payment. That person may request a hearing on the issue of whether the wage assignment should be issued. If a hearing is requested, the person obligated to pay has the burden to demonstrate good cause why the income execution should not take effect. Payment of arrearages after the due date would not constitute good cause.

*Section 4* also provides: that the execution shall include the monthly payment due and may include, if ordered by the court, a schedule of payments towards the arrearages due at the time the execution takes effect; that if the support order is ever modified, the income execution shall reflect that change; that the income execution shall have priority over any other execution, and that the execution will remain in effect until the court orders otherwise.

*Section 5* provides that a wage assignment is binding upon an employer 1 week after the employer has received service from the county probation department. An employer is allowed to deduct an additional dollar from the employee's salary for each payment made under the assignment order to help defray administrative costs. This is the same deduction permitted upon the present garnishment statute.

*Section 6* provides that any employer who dismisses or disciplines an employee because of a wage assignment is guilty of a disorderly persons offense. The present garnishment law also contains this provision.

*Section 7* provides that every alimony or support order shall provide for payment through the county probation office unless the court for good cause orders otherwise.

*Section 7* also requires the court to supply the probation office with the address of both parties and the address of the employer of the person required to make payment. That person is also required to inform, within 10 days, the probation office of a change of employer or address. Failure to do so is considered a violation of the court order.

*Section 7* further provides that a probation office may use the procedures of the recently enacted Wage Reporting Act to effectuate a wage assignment.

*Section 8* provides that a person entitled to child support or alimony under any court order issued prior to the effective date of this act may move for an income assignment pursuant to the provisions of section 4.

*Section 9* requires the Administrative Office of the Courts to provide the Division of Taxation (Taxation administers the Wage Reporting Act) with a list of persons ordered to assign income and who has not notified the probation office of their current employer.

*Sections 10 and 11* amend the Wage Reporting Act to allow for the exchange of information necessary to effectuate income assignments between the Administrative Office and Taxation.

*Section 13* repealing the existing statutes dealing with the garnishment of wages for failure to make support payments.

*Section 19* provides that this bill shall take effect 120 days after enactment.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1508

**STATE OF NEW JERSEY**

DATED: DECEMBER 11, 1980

The number of parents who default on their child support payments, leaving the other parent with the burden of family support, has reached a critical level. As a result of negligent or runaway parents, many families are forced to go on welfare. It is estimated that delinquent support payments totalling \$270 million have gone uncollected since 1975.

Under the current New Jersey law a parent has to go to court and get an order to garnish the wages of the defaulting spouse after an alimony, maintenance or child support payment is 45 days overdue. What frequently happens, however, is that an absent parent will wait until the end of the 45 days and make a token payment, thus preventing the court from garnishing the salary. Another 45 days must elapse before the defaulting parent's wages can be touched, at which point the cycle of evasion can start again.

Seeking to address this problem, S-1508, the "Income Assignment Act" provides for the inclusion of a wage assignment provision in every court order for alimony, support or maintenance. If a person who is obligated to make such a payment is more than 2 weeks delinquent, his wages could be automatically garnished. It is hoped that this change in the garnishment procedures will result in a lower rate of payment defaults and thus lower welfare costs.

The following is a section by section description of S-1508's provisions:

*Section 1* is the title.

*Section 2* provides that every court order for alimony, child support or maintenance would contain a provision authorizing an assignment of wages to the county probation office upon failure to make payment.

*Section 3* provides that an application for an income assignment may be made if any required alimony or support payment is more than 2 weeks late. The application is made to the county probation office by the person entitled to the payment or the county agency administering the Child Support Enforcement Program on behalf of the person entitled to payment.

*Section 4* provides that upon application for a wage assignment, the probation office is required to notify the person obligated to make the payment. That person may request a hearing on the issue of whether the wage assignment should be issued. If a hearing is requested and the person can establish that extraordinary circumstances beyond his control prevented payment, the court may order the delay of the assignment. If another payment is missed within 12 months, however, the assignment goes into effect automatically. A technical amendment clarifying this language was adopted by the committee.

Section 4 also provides that a wage assignment will remain in effect until all arrearages are collected, plus an additional 12 months.

*Section 5* provides that a wage assignment is binding upon an employer 1 week after the employer has received service from the county probation department. An employer is allowed to deduct an additional dollar from the employee's salary for each payment made under the assignment order to help defray administrative costs. This is the same deduction permitted by the present garnishment statute.

*Section 6* provides that any employer who dismisses or disciplines an employee because of a wage assignment is guilty of a disorderly persons offense. The present garnishment law also contains this provision.

*Section 7* provides that every alimony or support order shall provide for payment through the county probation office unless the court for good cause orders otherwise.

Section 7 also requires the court to supply the probation office with the address of both parties and the address of the employer of the person required to make payment. That person is also required to inform the probation office of a change of employer or address within 10 days of the change. Failure to do so is considered a violation of the court order.

Section 7 further provides that a probation office may use the procedures of the recently enacted Wage Reporting Act to effectuate a wage assignment.

*Section 8* provides that a person entitled to child support or alimony under any order issued prior to the effective date may move for modification of that order to include income assignment. A hearing would be held within 30 days to determine whether an income assignment shall be issued to enforce the existing order.

*Section 9* requires the Administrative Office of the Courts to establish a schedule for the payment of arrearages.

*Section 10* requires the Administrative Office of the Courts to provide the Division of Taxation (Taxation administers the Wage Reporting Act) with a list of persons whose income has been assigned and who have not notified the probation office of their current employers.

*Sections 11 and 12* amend the Wage Reporting Act to allow for the exchange of information necessary to effectuate income assignments between the Administrative Office and Taxation.

*Section 13* repeals the existing statutes dealing with the garnishment of wages for failure to make support payments.

*Section 14* provides that S-1508 shall take effect 120 days after enactment.

S-1508 which is based on a Wisconsin statute is supported by the Department of Human Services.

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**767.262****FAMILY CODE****Note 16**

peal. Gauger v. Gauger (1914) 147 N.W. 1075, 157 Wis. 630.

Where an appeal by plaintiff in a divorce suit, complaining of the amount awarded her in lieu of alimony, is without merit, and she has already been allowed in the appellate court \$125 as expenses, defendant will not, on affirmance, be required to pay further costs other than clerk's fees. Von Trott v. Von Trott (1903) 94 N.W. 798, 118 Wis. 29.

The refusal of the clerk to tax the costs on appeal against the respondent wife was reversed. Johnson v. Johnson

(1900) 83 N.W. 291, 107 Wis. 188, 81 Am.St.Rep. 836.

On appeal from a judgment denying a divorce asked by the wife, the supreme court, in view of the facts that the judgment was clearly right, and that the defendant is in very moderate circumstances, and has already paid \$113 as suit money, and that, on the other hand, his conduct was harsh and blameworthy, requires him to pay the fees of the clerk of the supreme court and about half the expense of printing the plaintiff's case and brief. Phillips v. Phillips (1870) 27 Wis. 252.

**767.263 Notice of change of employer and change of address**

Each order for child support or maintenance payments shall include an order that the payer and payee notify the clerk of court of any change of employer or change of address within 10 days of such change.

**Historical Note****Source:**

L.1977, c. 105, § 43.

St.1977, § 247.263.

L.1979, c. 32, § 50, eff. July 20, 1979.

**Effective date.** L.1977, c. 105, § 62, provides:

"(1) This act applies to all actions affecting marriage, and to all actions for modification or enforcement of previously entered orders in actions affecting marriage, which are commenced on and after the effective date of this act.

"(2) This act shall take effect on the first day of the 4th month after its publication."

[Published Oct. 15, 1977]

**Legislative purpose.** For a statement of the intent of the legislature in enacting L.1977, c. 105, relating to revision of the laws applicable to actions affecting marriage, see the note following W.S.A. § 767.01.

**Library References**

Divorce ⇐308.

C.J.S. Divorce § 321.

**767.265 Assignment of income**

(1) Each order for child support under s. 767.23 or 767.25, for maintenance payments under s. 767.23 or 767.26, for family support under s. 767.261, for support by a spouse under s. 767.02(1) (f) or for maintenance payments under s. 767.02(1) (g) shall include an order directing the payer to assign commissions, earnings, salaries, wages and other income due or to be due in the future from his or her employer or successor employers to the clerk of the court where the action is filed, as will be sufficient to meet the maintenance payments, child support payments or family support payments imposed by the

court for the support of the spouse or minor children or both and to defray arrearages in payments due at the time the assignment takes effect. The assignment of income shall take effect when the requirement of sub. (2) has been satisfied, or, at the discretion of the court or family court commissioner, may take effect immediately.

(1m) Any spouse who is entitled to a payment of support which has been ordered by the court or family court commissioner under s. 767.23, 767.25, 767.26 or 767.261 may apply to the court or court commissioner for an income assignment under sub. (1). Upon receipt of the application, the court or family court commissioner shall order the payer to execute an income assignment. The court or family court commissioner may order the income assignment to take effect immediately or after the requirements of sub. (2) are satisfied.

(2) The family court commissioner, upon application of the person receiving payments, shall send a notice by certified mail to the last-known address of any payer who has failed to make a required maintenance payment or child support payment within 20 days of its due date. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the recipient that an assignment of his or her income shall go into effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, request a hearing on the issue of whether the income assignment should take effect, in which case the income assignment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that extraordinary circumstances prevented fulfillment of the maintenance payment or child support obligation and that such circumstances are beyond the control of the payer, the family court commissioner may direct that the income assignment not take effect until such time, within 12 months, as another month's payment is missed. If such a delay is granted, the income assignment shall, upon application, go into effect if, within the following 12 months, the payer fails to make in full any payment within 20 days of its due date. Either party may, within 15 working days of the date of the decision by the family court commissioner under this section, seek review of the decision by the court with jurisdiction over the action.

(3) An assignment made under this section shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail, until further order of the court. For

each payment the employer shall receive \$1 which shall be deducted from the money to be paid the employe. Section 241.09 does not apply to assignments under this section. An employer who fails to make the assignment after receipt of the true copy of the assignment and order as provided in this section may be fined not more than \$200 and may be required to pay the amount assigned to the clerk of the court. The employer may not use such assignments as a basis for the discharge of an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe in violation of this subsection may be fined not more than \$200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

(4) In this section, "employer" includes the state and its political subdivisions.

#### Legislative Council Note—1977

The most significant enforcement remedy created under Ch. 105, Laws of 1977, is the wage assignment provision. Although court-ordered wage assignments have been used in the past to enforce child and spousal support orders, the prior statute allowed application for a wage assignment to be filed only after a default in payments had occurred. The Divorce Reform Act requires the court to order a wage assignment whenever it issues a financial order in an action affecting marriage. Although the wage assignment would not be placed into effect unless the payer later defaulted without reasonable excuse, the fact that such an assignment has been executed and filed with the court is designed to discourage default and simplify the procedures necessary to enforce the court's order should a default occur.

The wage assignment is an order from the person whom the court has ordered to make payments, to that person's employer, directing the employer to assign to the clerk of courts that portion of the person's salary which will be sufficient to meet the court-ordered payments. The employer is statutorily authorized to deduct an additional \$1, for each payment to defray the costs of implementing the assignment, but the employer is prohibited from discharging or taking disciplinary action against the employe on account thereof. An employer violating this restriction is guilty of a misdemeanor and may be required to reinstate the employe with back pay.

If the payer neglects or refuses to make a full payment within 20 days after it is due, the payee may apply to the family court commissioner to have the wage assignment sent to the payer's employe-

er. The law requires both payer and payee to notify the court within 10 days of any change of address or employer.

Within 10 days after such an application is received, the family court commissioner must send notice by certified mail to the payer's last known address, declaring the intention to place the assignment in effect unless the payer demands a hearing within 10 days to deny or explain the default. If a hearing is requested by the payer, it must be held within 10 days after the request. In order to prevent the wage assignment from being sent to his employer, the payer must show that "extraordinary circumstances," beyond the control of the payer, precluded compliance with the court order. If the payer meets this burden, the wage assignment will not be sent unless another payment becomes more than 20 days overdue within the following 12 months. Either party may, within 15 days, appeal the court commissioner's decision on the wage assignment to the court which issued the financial order whose enforcement is in issue.

The wage assignment provisions of the Divorce Reform Act may be used to enforce financial orders issued prior to the effective date of the new act, but only after the payer has failed to make a payment within 20 days of its due date. Application for a court-ordered wage assignment in such cases must be made within six months after the last missed payment.

**Historical Note**

**Source:**

- L.1977, c. 105, § 44.
- St.1977, § 247.265.
- L.1979, c. 32, §§ 50, 92(4), eff. July 20, 1979.
- L.1979, c. 196, §§ 34 to 37, eff. Aug. 1, 1980.
- L.1979, c. 196, §§ 826, 827, eff. April 30, 1980.

**Prior Laws:**

- L.1965, c. 129, § 3.
- L.1967, c. 220, §§ 1m, 2, eff. Dec. 13, 1967.
- L.1969, c. 55, § 100.
- L.1969, c. 236, § 3, eff. Nov. 30, 1969.
- L.1971, c. 110, §§ 1, 2, eff. Nov. 7, 1971.
- L.1971, c. 220, § 9.
- L.1975, c. 94, § 91(3), eff. Oct. 30, 1975.
- L.1975, c. 199, § 368, eff. April 15, 1978.
- St.1975, § 247.232.
- L.1977, c. 105, § 33.

**Applicability.** L.1979, c. 196, § 49, provides:

"This act applies to all actions affecting marriage and to all motions concerning actions affecting marriage which

are commenced or filed on or after the effective date of this act, including motions or actions for modification or enforcement of orders entered prior to the effective date of this act."

**Effective date.** L.1977, c. 105, § 62, provides:

"(1) This act applies to all actions affecting marriage, and to all actions for modification or enforcement of previously entered orders in actions affecting marriage, which are commenced on and after the effective date of this act.

"(2) This act shall take effect on the first day of the 4th month after its publication."

[Published Oct. 15, 1977]

**Legislative purpose.** For a statement of the intent of the legislature in enacting L.1977, c. 105, relating to revision of the laws applicable to actions affecting marriage, see the note following W.S.A. § 767.01.

**Wage assignments in pending or granted annulments, legal separations or divorces.**

L.1977, c. 105, § 61 provides:

"(1) The court shall order a wage assignment, upon application of the person receiving payments, in any action affecting marriage commenced prior to the effective date of this act which includes an order for child support, alimony or periodic payments, when the requirements of subs. (2) and (3) have been met.

"(2) The person receiving payments may make application to the family court commissioner which states that the payer has failed to make in full a payment as established by the court within 20 days of the date the payment was due. Such application shall be made within 6 months from the date of the last missed payment.

"(3) The family court commissioner, upon application of the person receiving payments, shall send a notice by certified mail to the last-known address of any payer who has failed to make a required payment within 20 days of its due date. The notice shall be post-marked no later than 10 days after the date on which the application was filed and shall inform the recipient that a wage assignment shall be ordered, to take effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, request a hearing on the issue of whether the wage assignment should be ordered, in which case the wage assignment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that extraordinary circumstances prevented fulfillment of the support obliga-

tion and that such circumstances are beyond the control of the payer, the family court commissioner may direct that the wage assignment be delayed until such time, within 12 months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, be ordered if, within the following 12 months, the payer fails to make in full any payment within 20 days of its due date. Either party may, within 15 working days of the date of the decision by the family court commissioner under this section, appeal to the court which issued the original support or maintenance order.

"(4) An assignment made under this section shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail, until further order of the court. For each payment the employer shall receive \$1 which he shall deduct from the money to be paid the employe. Section 241.09 of the statutes shall not apply to assignments under this section. The employer may not use such assignments as a basis for the discharge of an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe in violation of this subsection may be fined not more than \$200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected."

#### Law Review Commentaries

Wage assignment after divorce. 1968  
Wis.L.Rev. 281.

#### Library References

Divorce  $\Leftrightarrow$  308.

C.J.S. Divorce § 321.

#### Notes of Decisions

In general 1

Hearing 2

1. In general

This section requires every order for support or maintenance listed there-

in to include a wage assignment order. Op.Atty.Gen., April 5, 1979.

## 2. Hearing

In signing order to show cause for contempt for failure to satisfy obligation after divorce, judge should and must consider whether a separate and prelim-

inary hearing pursuant to wage assignment proceeding under this section is applicable, practical or feasible and if judge rules out the necessity to conduct that separate hearing, order to show cause or resulting order should cite that determination. *Schroeder v. Schroeder* (1981) 302 N.W.2d 475, 100 Wis.2d 625.

## 767.27 Disclosure of assets required

(1) In any action affecting the family, except an action to affirm marriage under s. 767.02(1) (a), the court shall require each party to furnish, on such standard forms as the court may require, full disclosure of all assets owned in full or in part by either party separately or by the parties jointly. Such disclosure may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but shall not be limited to, real estate, savings accounts, stocks and bonds, mortgages and notes, life insurance, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested, and any other financial interest or source. The court shall also require each party to furnish, on the same standard form, information pertaining to all debts and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure constitutes perjury. The court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past 2 years, and may require copies of such returns for prior years.

(2) Disclosure forms required under this section shall be filed within 90 days after the service of summons or the filing of a joint petition or at such other time as ordered by the court or family court commissioner. Information contained on such forms shall be updated on the record to the date of hearing.

(3) Information disclosed under this section shall be confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting the family of the disclosing parties.

(4) Failure by either party timely to file a complete disclosure statement as required by this section shall authorize the court to accept the statement of the other party as accurate.

(5) If any party deliberately or negligently fails to disclose information required by sub. (1) and in consequence thereof any asset or assets with a fair market value of \$500 or more is omitted from