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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 92 LCM-84

Date: June 12, 1992

Division: Administration

TO: Local District Commissioners

SUBJECT: Legislation Which Impacts the Child Support Enforcement Program

ATTACHMENTS: Relevant Sections of Chapter 41 of the Laws of 1992
(Not Available On-Line)

Effective April 2, 1992, legislation was enacted which has an impact on your district's child support enforcement program. A summary of the provisions and their program impact follow. We are providing you with this information for your review and action in advance of revisions to Department regulations and the Child Support Enforcement Manual (CSEM Vol. 1).

1. ENFORCEMENT OF RETROACTIVE SUPPORT

Statutory Change - Sections 236 and 240 of the Domestic Relations Law (DRL) and Sections 440, 449 and 545 of the Family Court Act (FCA) have been amended to clearly state that retroactive support shall be "support arrears/past due support" and shall be enforceable by income execution (including the additional amount for the reduction of arrears), and in any other manner provided by law. (See sections 139, 140, 141, 142, 143, and 144 of attachment).

Program Impact - These amendments clarify that the entire amount of retroactive support as established by the court is immediately subject to administrative enforcement remedies [i.e., income execution including provisions of Civil Practice Law and Rules Section 5241(b), the additional amount to reduce arrears, and other remedies if otherwise eligible], regardless of any court ordered amount for periodic payment to satisfy the retroactive support which may have been set by the court. In consideration of legislative intent, OCSE has determined that retroactive support should not be included in the amount of past-due support reported to consumer reporting agencies, and, as such, will modify the Child Support Management System (CSMS) accordingly.

Revised Policy Regarding Court Ordered Arrears - Because we have clear and explicit legal authority for the inclusion of retroactive support as "support arrears/past due support" and the recognition that retroactive support is subject to all administrative enforcement, NYS OCSE has reexamined the current procedures regarding court ordered arrears with periodic payment (expressed on CSMS as Arrears Set At Balance-ASAB). As you may know, court ordered arrears balances which have not been granted as a money judgment are not reflected on CSMS as past-due at the time such arrears data is entered on the system. Effective with court orders for arrears entered on CSMS on or after June 29, 1992, CSMS procedures will be revised so that the entire amount of any new order for arrears set by the court (with the exception of repayment of blood test or confinement costs not granted as a money judgment) will be reflected as past due and, as such, will be subject to any and all administrative enforcement mechanisms. This procedural change will ensure uniformity in enforcement of all child support arrears/past due support obligations.

2. EFFECTIVE DATE OF COURT ORDER

Statutory Change - FCA 440, 449 and 545 have been amended to provide that the effective date of the court order for child support is the earlier of the date the petition was filed or, in public assistance cases, the date public assistance became effective for the children for whom support is sought (See sections 142, 143 and 144 of attachment).

(Note: This amendment does not alter existing FCA 545 (2), which provides that at the discretion of the court, in paternity cases, the effective date of a court order may be from the date of a child's birth).

Program Impact - Child support enforcement workers need to ascertain the date public assistance (i.e., cash assistance programs which involve an assignment of support rights: ADC, HR and Title IV-E Foster Care) became effective for children for whom support is sought, and include the information on the support petition or otherwise make it available to the court for a determination of the effective date of the order.

Child support staff should review the "IVA APP Date" provided on the CSMS Child Screen (IVDJCH) for the relevant period of public assistance case activity for the children. In situations where a child was born on public assistance, local districts should use the child's date of birth. It is anticipated that CSMS will be enhanced to make permanent the "Auth From" date on IVDJCH.

Prompt filing of the petition after referral and obtaining orders for temporary child support will mitigate the impact of this provision on local districts and respondents. This law is intended to provide additional reimbursement for the costs of public assistance by requiring the court to calculate the amount of retroactive support owed beginning from the date public assistance becomes effective for children. Please note that this provision only applies to child support. Any spousal support which may be sought is only retroactive to the date of petition filing. Modifications are being made to the support petitions and orders on CSMS Document Generation Module which will be available soon.

3. INFORMATION ON COURT ORDERS

Statutory Change - DRL 240 and FCA 413 have been amended to provide that in any court order which establishes child support where the support amount deviates from the presumptive amount as calculated pursuant to the Child Support Standards Act (CSSA) of 1989, the court must set forth in the written order the presumptive amount of such party's pro rata share of the basic support obligation and the court's reasons for any deviation. These amendments place similar requirements on validly executed agreements or stipulations for the payment of child support where the support amount deviates from the presumptive amount as calculated pursuant to the CSSA. Where such agreements or stipulations are presented to a court for incorporation in an order, they must specify the amount that the basic child support obligation would have been and the reasons for deviation. In addition to this requirement on the party's (which includes local IV-D agency representatives who agree to stipulation in IV-D cases), any court order incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation (See sections 145, 146, 147 and 148 of attachment).

Program Impact - These changes to State law are made to achieve compliance with Federal regulations which require that a state's support guidelines (i.e. CSSA) be considered in any determination of support orders, including orders made by agreements and stipulations. Local district legal representatives and child support enforcement court workers should ensure that the CSSA amount is being determined in every case and, if the court deviates from CSSA, that both the CSSA amount and the reasons for deviation are included in the order. As a reminder, deviations below the CSSA may only occur in non-ADC cases (if at all), since Department regulations prohibit agreements or stipulations in public assistance cases below CSSA [(See 18 NYCRR 347.8(c)]. Modifications are being made to support orders on the CSMS Document Generation Module to accommodate these provisions, and will be available soon.

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Please share this LCM with your Child Support Enforcement Coordinator and legal representatives for child support matters. If there are any questions, please contact your OCSE County Representative 1-800-342-3012.

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Deputy Commissioner
for Administration