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March 11, 2013

To: Mr. Chairman Lance Kinzer and Honorable Members of the House Committee on Judiciary

RE: SB125, enforcement of support orders; income withholding  
Scheduled for hearing 03/12/13

A custodial parent has three alternatives when seeking support enforcement assistance: Department of Children and Families (DCF), Court Trustee or private enforcement. If a parent is receiving services from DCF, DCF is their only option. However, parents who no longer receive or have never received DCF services can go to a trustee office or private attorney for assistance.

**What SB125 does:** First, New Section 1 of SB125 requires all support payments made through the Kansas Payment Center (KPC) to be disbursed pro rata among all cases of a non-custodial parent according to the federal distribution rules provided in 42 USC 657. Putting it very simplistically, payments are applied to current support first and then arrears, which includes arrears owed to the state.

Second, Section 6 of SB125 amends KSA 23-3102 to include a definition of "income withholding agency" for the first time. The bill limits that definition solely to the department of children and families. Section 6 of SB125 should be amended to expand the definition of "income withholding agency" to include court trustees. Both DCF and court trustees issue income withholding orders and both answer questions by payors regarding compliance with income withholding orders. The proposed Section 6 of SB125 should be amended to read:

*(e) "Income withholding agency" means the department of children and families or court trustees.*

**Why SB125 is problematic for custodial parents:**

1. A parent who has never assigned their support rights to DCF, who has never even talked to DCF staff, is required to receive support according to DCF rules.
2. A parent who is entitled to receive maintenance (spousal support) in addition to child support will not be treated fairly. For example, \$500 maintenance and \$200 child support is paid to the KPC in one case; currently the KPC would apply payments first to support and then to maintenance in that particular case. However, I believe under the federal distribution rules and SB125, the \$700 payment will go to pay current child support in all support cases the non-custodial parent has in Kansas before maintenance is paid. Even though a court determined a need for monthly maintenance, that need is undermined by DCF/federal distribution rules.

3. The custodial parent can only check payments on the KPC website in their particular case. They have no access to support order amounts or arrears amounts in other cases. How do they know they received a correct pro rata distribution?

**Why SB125 is problematic for trustees and private attorneys:**

1. Three Court Trustee offices in Kansas do not have contracts with DCF to collect support in IV-D cases: Douglas, Wyandotte, and Shawnee. These offices are funded by trustee fees assessed on the amount of support collected. So, if today I collect \$500 in a Douglas County case, I receive \$25 in trustee fees (5% fee on support paid). If SB125 passes, that \$500 will be prorated among all cases of the non-custodial parent and, because less money is posted to the Douglas County case, the collection fee is less. DCF can intercept state or federal tax refunds or unemployment benefits yet DCF may not be authorized to share those payments with non-IV-D cases; it is a one way street. Budgets for three trustee offices will clearly be impacted by SB125 as written.

2. A non-custodial parent may have support cases entered in district courts across Kansas or even outside Kansas, but I only have authority to collect in Douglas County district court cases. If SB125 passes as written, I will be collecting support for cases where I have no statutory or contractual authority.

3. As with custodial parents, my office also does not have knowledge of other cases a non-custodial parent has. We have no access to a DCF database. Nor do we or private attorneys have access to current support obligations or arrears amounts, or arrearage calculations in those other cases. It will be extremely difficult to explain to a custodial parent why the amount of support they received is reduced or when they can expect a full payment.

**What should this committee do?** First, because the federal pro rata distribution rules do not contemplate trustee offices or private enforcement, I respectfully ask you to strike New Section 1 of SB125. Title IV-D distribution rules should apply only to Title IV-D cases. Second, Section 6 of SB125 should be amended to expand the definition of "income withholding agency" to include court trustees.

Thank you for your time and consideration.

Sincerely,



Katy S. Nitcher  
District Court Trustee