

“To Pay or Not to Pay” Is Less of an Option for Texas Support Obligor Under the New Involuntary Wage Assignment Provisions: TEX. FAM. CODE ANN. § 14.091(p), (q) (Vernon Pamph. Supp. 1984).

On November 8, 1983, voters in Texas approved a constitutional amendment¹ which made possible the implementation of a monumental piece of child support enforcement legislation—section 14.091(p), (q) of the Texas Family Code providing for involuntary wage assignment.² The implementation of the new legislation was contingent upon voter approval of the amendment which provides a single exception to the Texas Constitution’s long-standing prohibi-

1. Following voter approval of the proposed amendment, article XVI, § 28 of the Texas Constitution states: “No current wages for personal service shall ever be subject to garnishment, *except for the enforcement of court-ordered child support payments.*” TEX. CONST. art. XVI, § 28 (emphasis added). See Tex. H.R.J. Res. 1, 68th Leg., 1983 Tex. Sess. Law Serv. A-241 (Vernon).

2. TEX. FAM. CODE ANN. § 14.091(p), (q) (Vernon Pamph. Supp. 1984). Section 14.091 of the Code provides the rules for wage assignment, both voluntary and involuntary. Subsections (a) through (o) list general wage assignment guidelines as well as specific guidelines for voluntary assignments. Subsections (p) and (q) exclusively address and authorize involuntary wage assignment. Subsections (p) and (q) are to be implemented according to the guidelines set forth in subsections (a) through (o). The new involuntary wage assignment provisions read as follows:

(p) Involuntary Assignment of Earnings

(1) The court of continuing jurisdiction may order an involuntary assignment of earnings for child support upon proper motion, notice to all parties, and a hearing.

(2) An involuntary assignment of earnings may be ordered if the court finds that the total amount of child support in arrears was equal to or in excess of the amount due for a two-month period at the time the motion for involuntary assignment was filed with the court.

(3) In determining the amount of the assignment, the court may consider, in addition to other relevant factors, the amount of support in arrears as well as the amount of payments to become due in the future.

(4) A motion for an involuntary assignment of earnings may be filed by:

(A) the person entitled to receive support for the benefit of a child;

(B) the attorney general if the state is providing assistance to or services for the child; or

(C) the court of continuing jurisdiction.

(5) An assignment ordered under this subsection shall be subject to all other provisions of this section.

(q) If a court orders an assignment it may award reasonable attorney’s fees and court costs to the party who requested the assignment.

Id.

tion against employee wage garnishment. The new amendment provides for involuntary wage garnishment for the sole purpose of enforcing child support obligations.³ The amendment and new legislation were prompted in part by the realization that the number of parents breaching their support obligations had reached "epidemic" proportions.⁴ Growing public awareness and concern over this crisis forced the legislature to acknowledge and address the ineffectiveness of existing support enforcement provisions. The new involuntary wage assignment provisions, in conjunction with existing Code sections, are designed to provide more effective enforcement of child support orders and more specifically to provide the courts with the enforcement tools necessary for such enforcement.

I. TRADITIONAL AND RECENT SUPPORT ENFORCEMENT TOOLS

Child support orders have been enforceable by means of various statutory tools, each designed to address and remedy the myriad of problems encountered in the support enforcement area. The traditional tools available in Texas for support enforcement have been: (1) incarceration for contempt of court;⁵ (2) reduction to judgment thereafter enforceable as a judgment debt;⁶ (3) probation of a contempt order on the condition that the support obligor commence regular support compliance;⁷ and much more recent enforcement tools include (4) court-ordered posting of bond or deposit of security with the court by self-employed individuals and others not subject

3. Tex. H.R.J. Res. 1, 68th Leg., 1983 Tex. Sess. Law Serv. A-241 (Vernon). Section 14.091, as worded, provides for involuntary wage *assignment*, not wage garnishment. By definition, garnishment denotes a one-time action to collect a debt or past due child support payments. See C. ROBITSCHER, CHILD SUPPORT: ISSUES FACING THE STATE (Apr. 4, 1983) (House Study Group Special Legis. Rep. No. 91, at 13) [hereinafter cited as HOUSE STUDY GROUP]. Wage assignment, on the other hand, is designed to keep support payments current by providing for prearranged monthly deductions from the support obligor's future paychecks. *Id.*

4. The Texas Department of Human Resources (DHR) reported that of parents obligated to provide support in court-ordered child support cases under DHR jurisdiction, only 27.7% of the obligors were complying with their obligations. See HOUSE STUDY GROUP, *supra* note 3, at 2. National statistics indicate that 80% of all Aid to Families with Dependent Children cases directly result from a parent's absence from the family home and subsequent failure to provide financial assistance or support. S. REP. NO. 1356, 93d Cong., 2d Sess. 51-55 (1974), reprinted in 1974 U.S. CODE CONG. & AD. NEWS 8133, 8145-49.

5. TEX. FAM. CODE ANN. § 14.09(a) (Vernon 1975).

6. *Id.* § 14.09(c).

7. *Id.* § 14.12 (Vernon Pamph. Supp. 1984).

to wage assignment;⁸ and (5) voluntary wage assignment.⁹ While each of these tools is designed to help further the goals of support enforcement legislation, regular and full compliance with support obligations, each obviously employs a different means to achieve that end.¹⁰

A. Contempt of Court

Section 14.09(a) of the Texas Family Code provides for the enforcement of support orders by holding the defaulting parent in contempt of court.¹¹ The theory underlying this enforcement tool is that the threat of being fined or incarcerated for up to six months for contempt will provide incentive for support obligors to comply with the terms of the support order.¹² For a support order to be enforced by contempt, however, the order must itself be capable of enforcement.¹³ This means that the support order must be unambiguous, clearly written, capable of performance, and free of constitutional defects.¹⁴ Unfortunately, most contempt findings attacked at the appellate level through writs of habeas corpus are found to be defective in one way or another and thus unenforceable.¹⁵ Delinquent

8. *Id.* § 14.09(e).

9. *Id.* § 14.091(a)-(o).

10. This discussion is limited to the more commonly used and generally recognized civil remedies for support enforcement and is by no means an exhaustive list. For other possible support enforcement tools, see 42 U.S.C. § 651 (Supp. V 1981) (provisions of Title IV-D of the Social Security Act of 1975 enacted to help locate absent parents and secure support compliance); TEX. FAM. CODE ANN. §§ 21.01, 21.28, 21.32(b) (Vernon 1975 & Pamph. Supp. 1984) (provisions of the Uniform Reciprocal Enforcement of Support Act, which facilitates support enforcement when the supporting parent and child reside in different states); TEX. HUM. RES. CODE § 46.001 (Vernon 1980) (designates the DHR as the state agency charged with administering support enforcement under Title IV-D of the Social Security Act); TEX. PENAL CODE ANN. § 25.05 (Vernon 1974) (criminal nonsupport statute).

11. TEX. FAM. CODE ANN. § 14.09(a) (Vernon 1975).

12. TEX. REV. CIV. STAT. ANN. art. 1911(a), § 2(a) (Vernon Pamph. Supp. 1984). "Every court other than a justice court or municipal court may punish by a fine of not more than \$500, or by confinement in the county jail for not more than six months, or both, any person guilty of contempt of the court." *Id.*

13. See Sampson, *Texas Family Code Symposium—Title 2. Parent and Child*, 13 TEX. TECH L. REV. 927, 956 (1982) [hereinafter cited as *1982 Family Code Symposium*].

14. *Id.* See, e.g., *Ex parte* Bush, 619 S.W.2d 298, 299 (Tex. Civ. App.—Tyler 1981, no writ) (detailing due process requirements of notice and a hearing for valid contempt proceedings); *Ex parte* Eureste, 614 S.W.2d 647, 648 (Tex. Civ. App.—Austin 1981, no writ) (notice is essential to a valid contempt order); *Ex parte* Carpenter, 566 S.W.2d 123, 124 (Tex. Civ. App.—Houston [14th Dist.] 1978, no writ) (contempt order invalid when support order is vague and indefinite).

15. See *1982 Family Code Symposium*, *supra* note 13, at 956. See also Solender, *Family*

child support payments are therefore only "theoretically" enforceable under this Code provision.¹⁶ Ideally, the threat of contempt should motivate a defaulting obligor to commence regular support compliance. In practice, however, actual enforcement of a contempt finding may in fact be counter-productive and thus frustrate the goal of support compliance.¹⁷ Obviously a jailed support obligor cannot earn money, and therefore, the goal of securing support payments cannot be achieved.¹⁸

B. *Reduction to Judgment*

Another tool available for the enforcement of child support orders is the reduction of delinquent support obligations to a judgment as provided in section 14.09(c) of the Texas Family Code.¹⁹ Under this section, the party entitled to receive payments for the child's benefit must file a motion with the court requesting that delinquent payments be reduced to a judgment.²⁰ After ten days notice to the delinquent obligor of his breach of his support obligation, the court may reduce the delinquent payments to a judgment which is thereafter enforceable according to the means available for the enforcement of debts generally.²¹ This provision provides retroactive relief in that the movant may obtain a judgment for *past* delinquent support payments only. This section alone, however, will not help to secure *prospective* relief in the form of regular support compliance. The party seeking to enforce delinquent support payments under this section must reduce the unpaid support payments to a judgment and attempt to enforce the judgment debt subject to all debtor protections under Texas law.²² Enforcement and collection

Law: Parent and Child, 36 Sw. L.J. 155, 178-79 (1982) (discussion of the procedural difficulties encountered in enforcing support orders through contempt proceedings).

16. *See supra* note 15.

17. *See* HOUSE STUDY GROUP, *supra* note 3, at 15.

18. *Id.* *See also* H. KRAUSE, CHILD SUPPORT IN AMERICA 81-82 (1981) (jailing should be used only as a last resort for flagrant abusers).

19. TEX. FAM. CODE ANN. § 14.09(c) (Vernon 1975).

20. *Id.*

21. *Id.*

22. Until the passage of the recent constitutional amendment, one of the most significant debtor protections was the prohibition of wage garnishment. *See* TEX. CONST. art. XVI, § 28 (constitutional prohibition of any garnishment of current wages); TEX. REV. CIV. STAT. ANN. arts. 3835, 3836(a)(7) (Vernon Pamph. Supp. 1984) (provisions for exemption of real and personal property, including wages, from satisfaction of debts); *id.* art. 4099 (Vernon 1966) (statutory prohibition of wage garnishment).

of delinquent support payments under this section can be time consuming and costly. Therefore, this section is perhaps most useful only to the moving party who is confident that collection will be possible once the court reduces the debt to a judgment.

C. Probation of a Contempt Order

A third way the courts have attempted to enforce child support obligations has been by the probation of a contempt order as provided in section 14.12 of the Texas Family Code.²³ Under this section, an obligor in contempt of court for failure to meet support obligations may have a commitment order suspended by the court and may be placed on probation.²⁴ Probation is contingent upon full compliance with the support order and subject to any other reasonable conditions which the court might impose.²⁵ According to the provisions of this section, the length, terms, and conditions of probation are highly discretionary and fairly flexible.²⁶

This probation provision provides the adjudged contemner an opportunity to "purge" the contempt finding.²⁷ The contempt adjudication will not dissolve until the contemner has paid his support arrearages.²⁸ The probation period, however, may extend longer to ensure fulfillment of the primary goal which is "to coerce a consistent pattern of child support payments by conditioning recalcitrant obligors to the habit of paying."²⁹

Under this section, a "contempt probationer" is subject to many of the same terms and conditions imposed on criminal probationers, and in keeping with the enforcement scheme, subsection (d) provides for the arrest by warrant of probationers in violation of their probation conditions.³⁰ Once arrested, a probationer is entitled to have a hearing to determine if the evidence warrants a continuation, modification, or revocation of the probation agreement.³¹ The-

23. TEX. FAM. CODE ANN. § 14.12 (Vernon Pamph. Supp. 1984).

24. *Id.* § 14.12(a).

25. *Id.*

26. *Id.*

27. *See 1982 Family Code Symposium, supra* note 13, at 966.

28. *Id.* *See also Ex parte* Hooks, 415 S.W.2d 166 (Tex. 1967) (no dissolution of contempt adjudication until all arrearages paid).

29. *See 1982 Family Code Symposium, supra* note 13, at 966.

30. TEX. FAM. CODE ANN. § 14.12(d) (Vernon Pamph. Supp. 1984).

31. *Id.* Subsection (d) is in essence a codification of a series of appellate decisions which held unconstitutional the former practice of arresting and incarcerating contempt probationers without notice or a hearing. *See, e.g., Ex parte* Sauser, 554 S.W.2d 239 (Tex. Civ.

oretically this section gives a second chance to delinquent support obligors by means of a second opportunity to comply with their support obligation and avoid incarceration for contempt. Ideally, the very real threat of imminent incarceration in the event of noncompliance with the probation conditions should provide incentive for support compliance. In practice, however, this probation period or "second chance" often has the effect of just delaying the inevitable incarceration for contempt and prolonging the period during which the children entitled to the obligor's support payments must rely on other resources or go without.

D. *Bond Execution and Security Deposits*

A fourth enforcement tool available in section 14.09(e) which went into effect on June 17, 1983, is the required execution of a bond or security deposit by defaulting obligors to the court, both conditioned on the payment of delinquent and future child support obligations.³² This section is designed to complement the new wage assignment provisions in that it imposes the bond or security requirement on those defaulting obligors whose wages are for various reasons unassignable.³³ Upon the failure of the support obligor to make two or more payments under the support order, the court can collect on the bond or consider forfeited all or a part of the security.³⁴ The money collected is then forwarded to the party entitled to receive the support payments for the benefit of a recipient child.³⁵ Support money collected in this manner is applied to the obligor's outstanding indebtedness, and such collection in no way precludes the enforcement of the support obligation by any other enforcement tools. Nor does such collection provide the obligor with a defense in a future contempt proceeding.³⁶ This provision is designed to encourage voluntary compliance with the support order, and the bond or security requirement gives the court additional leverage in seeking that goal.

App.—Dallas 1977, no writ); *Ex parte Hart*, 520 S.W.2d 952 (Tex. Civ. App.—Dallas 1975, no writ).

32. TEX. FAM. CODE ANN. § 14.09(e) (Vernon Pamph. Supp. 1984).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

E. *Voluntary Wage Assignment*

A fifth and final enforcement tool made available to Texas support enforcement officials on June 17, 1983, is the new *voluntary* wage assignment provision found in section 14.091(a)-(o) of the Texas Family Code.³⁷ Under this provision, a support obligor can "voluntarily" assign a portion of his wages in order to meet his support obligation.³⁸ Voluntary wage assignment basically entails the support obligor's filing with the court a signed wage assignment which the court can then, after notice to all parties and a hearing, forward to the obligor's employer.³⁹ An employer who receives an assignment order is directed by the court to withhold from the assignor's disposable earnings the lesser of either the amount specified in the assignment or up to one-third of the assignor's disposable earnings.⁴⁰ The employer is to automatically deduct the necessary amount from the employee's check and forward the cash to either the court registry or a child support collection office which in turn forwards the support money to the recipient.⁴¹ Any employer who either refuses to comply with the assignment order or who refuses to hire or who terminates an employee as a result of the order will be liable to either the recipient of the support for the amount not paid under the assignment order or to the employee for wrongful discharge.⁴² Attorney fees and court costs are also chargeable to an employer under these circumstances.⁴³ The assignment order, however, must give the employer notice of this liability.⁴⁴ In the final analysis, voluntary wage assignment is a euphemism, for the obligor who does not voluntarily assign his wages will most likely end up in jail for defaulting on support payments in contempt of court.

37. *Id.* § 14.091(a)-(o). Perhaps one possible utility of voluntary wage assignment is that of a budget device for the support obligor who intends to meet the obligations imposed under the support order. One commentator has asserted that defaults frequently result from the obligor's unmanageable accumulation of arrearages. *See* H. KRAUSE, *supra* note 18, at 82.

38. TEX. FAM. CODE ANN. § 14.091(a) (Vernon Pamph. Supp. 1984).

39. *Id.* § 14.091(a)-(c).

40. *Id.* § 14.091(c).

41. *Id.* § 14.091(d).

42. *Id.* § 14.091(h), (i).

43. *Id.*

44. *Id.*

II. GENESIS OF A NEW ENFORCEMENT TOOL

A. *The Proposed Legislation*

During the summer of 1982 the Senate Subcommittee on Public Health and Welfare conducted an interim study of child support enforcement in Texas with the goal of developing new tools to augment existing enforcement provisions.⁴⁵ Hearings were held and testimony was received from representatives of various state agencies charged with enforcing support collection as to the need for supplementation of current enforcement tools.⁴⁶ The subcommittee hearings received widespread publicity, which enhanced public awareness of the critical need for new legislation in the support enforcement area.⁴⁷ All of this culminated in a legislative package which recommended, in part, legislation for both voluntary and involuntary wage assignment to facilitate support collection.⁴⁸ The recommendation also cited the need for a constitutional amendment to permit the implementation of involuntary wage assignment because the Texas Constitution had long prohibited wage garnishment for any purpose.⁴⁹ By the spring of 1983 the subcommittee's recommendations were adopted in the form of a proposed constitutional amendment allowing for the enforcement of support orders by wage assignment.⁵⁰ Related legislation detailing the procedure to be followed in the actual assignment of income for child support was also adopted.⁵¹ On June 17, 1983, *voluntary* wage assignment went into effect,⁵² and on November 8, 1983, *involuntary* wage assignment became enforceable⁵³ following voter approval of the proposed

45. See HOUSE STUDY GROUP, *supra* note 3, at 9. An important resource heavily relied upon by the Texas Legislature in developing the new wage assignment provisions is C. KASTNER & L. YOUNG, *IN THE BEST INTEREST OF THE CHILD: A GUIDE TO STATE CHILD SUPPORT AND PATERNITY LAWS* (1981). This resource is in essence a guide which provides both an overview of major support enforcement problems as well as samples of exemplary state legislation which has been enacted to counteract those problems.

46. See HOUSE STUDY GROUP, *supra* note 3, at 9.

47. See *supra* note 4 for a discussion of the staggering default statistics which were disclosed and subsequently publicized following the subcommittee hearings.

48. See HOUSE STUDY GROUP, *supra* note 3, at 9.

49. Prior to being amended, TEX. CONST. art. XVI, § 28 provided that: "No current wages for personal service shall ever be subject to garnishment." *Id.*

50. See Tex. H.R.J. Res. 1, 68th Leg., 1983 Tex. Sess. Law Serv. A-241 (Vernon).

51. See Act of June 17, 1983, ch. 402, §§ 1, 2, 1983 Tex. Sess. Law Serv. 2169-73 (Vernon).

52. See TEX. FAM. CODE ANN. § 14.091(a)-(o) (Vernon Pamph. Supp. 1984).

53. See *id.* § 14.091(p), (q).

amendment, thus completing the wage assignment package. The end result is a revolutionary new support enforcement tool available for the collection and enforcement of court-ordered child support.

B. *Proponents' Arguments for Involuntary Wage Assignment*

In advocating wage assignment legislation, proponents argued that the low rate of support compliance was directly attributable to the lack of necessary enforcement tools critical to effective and efficient support enforcement.⁵⁴ This argument gained credibility when Texas child support enforcers submitted that Texas had become a "haven" for support obligors who wanted to avoid their court-ordered obligations.⁵⁵ In seeking to obtain new enforcement tools, proponents of wage assignment argued that the legislative intent underlying the Texas Constitution's prohibition of wage garnishment actually *supported* the proposed amendment for the assignment of wages to enforce child support.⁵⁶ Proponents pointed to a historical note in Vernon's Texas Constitution Annotated which supports this argument.⁵⁷ The note states in essence that every man owes a first duty to his family, and thus the framers of the Texas Constitution felt it was better for some creditors to go unpaid than for the debtor and his family to be deprived of the income necessary to keep them independent and free from want.⁵⁸ Based on this note, proponents argued that it seemed fair to conclude that the legislative intent underlying the garnishment prohibition was to protect the employee's ability to support his family.⁵⁹ It follows that the garnishment prohibition serves no purpose when the employee's "creditors" are his own children. Proponents argued that the purpose underlying section 28 of article 16 would actually be *furthered* by providing for wage assignment to enforce child support orders.⁶⁰

Proponents of wage assignment also argued that "everyone" would benefit from the use of such an enforcement tool.⁶¹ For example, the obligor benefits because his support obligation would

54. See HOUSE STUDY GROUP, *supra* note 3, at 6.

55. *Id.*

56. *Id.* at 14.

57. TEX. CONST. art. XVI, § 28 interp. commentary (Vernon 1955).

58. *Id.*

59. See HOUSE STUDY GROUP, *supra* note 3, at 14.

60. *Id.* at 14-15.

61. *Id.* at 15.

"automatically" be deducted from his paycheck.⁶² Parents ordered to pay support would no longer be burdened by putting a check in the mail. Employers, proponents argued, would also benefit because employees under a wage assignment would not be constantly absent from work, losing time due to continual court proceedings relating to defaults in their support obligations.⁶³ Employers, it was also submitted, would be minimally burdened by the assignments which would just become part of the regular payroll process.⁶⁴ Third, and most importantly, proponents argued that support recipients would be assured of routine, periodic payments of the support order.⁶⁵ This would eliminate the need to resort to multiple court proceedings to collect the support to which they are entitled under the order every time the support obligor stopped paying.⁶⁶ Finally, proponents argued that society in general would benefit because wage assignments would shift the burden of supporting needy children from the state to those responsible parents with the ability and the obligation to pay.⁶⁷ Through wage assignment, society's interest in ensuring adequate support for needy children would be realized.⁶⁸

62. *Id.*

63. *Id.* See also H. KRAUSE, *supra* note 18, at 76 (theory underlying wage assignments is to prevent the need for continual court proceedings relating to support defaults).

64. See HOUSE STUDY GROUP, *supra* note 3, at 15.

65. *Id.*

66. *Id.* at 15-16. This argument received support from a report issued by the Texas Legislative Council relating to the proposed constitutional amendment permitting wage assignment for support enforcement. In that report one of the arguments listed in favor of the proposed amendment was that Texas, as the only state with a constitutional prohibition against wage garnishment, needed some form of wage assignment to provide children in Texas with an enforcement tool to effectively enforce their parents' obligations. The report also noted that children in at least 47 other states have a statutory right to enforce the support obligation owed them through some form of wage withholding or assignment. TEX. LEGIS. COUNCIL, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS (Info. Rep. No. 83-4 at 25) (Aug. 1983).

67. See HOUSE STUDY GROUP, *supra* note 3, at 4. Although exact dollar amounts are in dispute, it is generally acknowledged that the implementation of wage assignments will save the state and federal government, and thus taxpayers, millions of dollars in decreased financial assistance to children otherwise not receiving the support to which they are entitled. *Id.* at 19-20. Any savings should be welcome in view of the fact that Texas expended more money in 1977 in support collection attempts than it realized by actual support collection. See H. KRAUSE, *supra* note 18, at 414 n.5.

68. See HOUSE STUDY GROUP, *supra* note 3, at 3.

C. *Opponents' Arguments Against Involuntary Wage Assignment*

Opponents of wage assignment cited various concerns over the proposed amendment and related legislation. One of the concerns expressed was that wage assignment would create an adversary relationship between employers and their employees who were subject to an assignment.⁶⁹ Also cited was concern that employees seeking work would suffer discrimination by employers who did not want to be "administratively inconvenienced" by an assignment order.⁷⁰ Wage assignment orders, opponents argued, could also be an intrusion into an employee's privacy as employers learned that the employee was divorced or had a child born out of wedlock.⁷¹ Opponents also submitted that to allow the taking of a portion of an employee's wages before that individual receives each paycheck would be to deny workers the fruits of their labor, thus discouraging workers from employment.⁷² Opponents also criticized the fact that wage assignment places the burden of collecting and paying child support obligations on the employer, who thus suffers an otherwise unnecessary administrative burden.⁷³ Finally, opponents asserted a "pandora's box" objection by alleging that once wage assignment is permitted to enforce support obligations the way will be cleared for wage assignment to meet other debts and obligations.⁷⁴

III. SECTION 14.091(p), (q)—INVOLUNTARY WAGE ASSIGNMENT

A. *Mechanics of the New Provision*

The new Texas Family Code provision for the involuntary assignment of earnings has, in effect, provided a critical new link in the chain of enforcement methods available to enforce support orders.⁷⁵ The new statute provides that upon proper motion, after notice to all parties and a hearing, a court of continuing jurisdiction *may* order an involuntary wage assignment to be issued.⁷⁶ As a precondition to such an assignment, the court must determine whether

69. *Id.* at 14.

70. *Id.*

71. *Id.*

72. TEX. LEGIS. COUNCIL, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS (Info. Rep. No. 83-4 at 26) (Aug. 1983).

73. *Id.*

74. *Id.*

75. See generally TEX. FAM. CODE ANN. § 14.091(p), (q) (Vernon Pamph. Supp. 1984).

76. *Id.* § 14.091(p)(1) (emphasis added).

the obligor has defaulted on an amount equal to or in excess of two payments under the support order at the time the assignment motion was filed.⁷⁷ Motions for involuntary assignments can be filed by the person entitled to receive support for the benefit of a child,⁷⁸ the state's attorney general if the state is providing services or assistance to the child,⁷⁹ or by the court of continuing jurisdiction upon its own motion.⁸⁰ If the court decides to issue an assignment order, the order must comply with the general assignment guidelines provided in section 14.091(a)-(o).⁸¹

B. *Procedural Safeguards*

Procedurally, the new statute has some built-in safeguards to help ensure that wage assignment is effective. For example, subsection (g) states that unless otherwise provided, a wage assignment for the purpose of collecting child support has priority over any other garnishment, attachment, execution, or assignment against the support obligor.⁸² Subsections (h) and (i) provide for employer liability when either the assignment order is not complied with or when an employee is denied employment or wrongfully discharged as a result of the assignment order.⁸³ An employer must be provided with notice of this liability in the assignment order.⁸⁴ So notified, however, the employer will be liable for the amount of support not deducted from the employee's paycheck and disbursed to the support recipients, as well as reasonable attorney fees and court costs.⁸⁵ Wrongful discharge of an employee under a wage assignment will subject the employer to liability for current wages and other benefits as well as reasonable attorney fees and court costs incurred by an employee seeking relief from a wrongful discharge under this section.⁸⁶ Guidelines are provided to an employer served with more

77. *Id.* § 14.091(p)(2).

78. *Id.* § 14.091(p)(4)(A).

79. *Id.* § 14.091(p)(4)(B).

80. *Id.* § 14.091(p)(4)(C).

81. *See supra* notes 37-44 and accompanying text for a discussion of these provisions.

82. TEX. FAM. CODE ANN. § 14.091(g) (Vernon Pamph. Supp. 1984).

83. *Id.* § 14.091(h), (i).

84. *Id.*

85. *Id.* § 14.091(h).

86. *Id.* § 14.091(i). This section provides a critical safeguard to the employee subject to a wage assignment as studies indicate that such assignment orders have frequently triggered job dismissals. *See Comment, The Effect of the Garnishment Provisions of the Consumer Protection Act Upon State Garnishment Laws*, 9 HOUS. L. REV. 537, 539 (1972).

than one wage assignment for the same employee.⁸⁷ This also helps to ensure fairness to support recipients to the extent that the disbursement of the limited portion of wages available for assignment will be done equitably. Subsections (k)-(m) provide very broad definitions of "earnings," "disposable earnings," and "employer" so as to include as many individuals and assignment circumstances as possible.⁸⁸ And finally, subsection (o) makes it clear that wage assignment can be used in conjunction with any and all other enforcement tools available for the enforcement of support orders.⁸⁹

C. *Practical Limitations of Involuntary Wage Assignment*

No statute, however, is perfect, and section 14.091 in its current form has a few built-in drawbacks and practical limitations. One potential drawback is that involuntary wage assignment under section 14.091(p)(1) is discretionary with the court, not mandatory.⁹⁰ If, in the future, judges utilize this enforcement tool whenever possible, the discretionary language should pose no problem. Judicial reluctance to impose involuntary wage assignments could, however, defeat the entire purpose of this new tool. An obvious practical limitation on involuntary wage assignments is that employees determined to avoid an assignment order can "job-hop" so as to avoid keeping any one job long enough for an assignment to be imposed.⁹¹ The state of the economy and the high unemployment rate may deter most obligors from choosing this course. A third drawback to involuntary wage assignment is that support recipients may not be able to realize the full amount of the support owed as a result of the limit set on the amount of wages assignable.⁹² Obviously the legislature had to allow the obligor enough money to subsist, so the support recipients under a support order that amounts to *more than* one-third of the obligor's disposable earnings⁹³ will not realize full

87. TEX. FAM. CODE ANN. § 14.091(i) (Vernon Pamph. Supp. 1984).

88. *Id.* § 14.091(k)-(m).

89. *Id.* § 14.091(o).

90. *Id.* § 14.091(p)(1). *See supra* note 2.

91. Under § 14.091(e), an assignment order does not go into effect until 15 days *after* the order is served on the employer. Section 14.091(d) provides that assignment orders automatically dissolve without court order once the employee ceases employment with the employer under an assignment order.

92. TEX. FAM. CODE ANN. § 14.091(c) (Vernon Pamph. Supp. 1984).

93. "Disposable earnings" is defined in § 14.091(l).

support compliance through wage assignment alone.⁹⁴ Finally, wage assignments are patently ineffective for those individuals who are unemployed, self-employed, or otherwise employed under circumstances which make wage assignment impractical.⁹⁵ The legislature anticipated this drawback, however, and enacted section 14.09(e)⁹⁶ which provides for court-ordered posting of bond or deposit of security with the court by self-employed individuals and others not subject to wage assignment.⁹⁷ This provision gives the court monetary leverage because failure to comply with the support order under this provision triggers the forfeiture of the bond or security held by the court.⁹⁸

IV. CONCLUSION

Section 14.091(p) and (q) of the Texas Family Code, providing for involuntary wage assignment, is designed to provide a more direct, efficient, nonpunitive means of enforcing and collecting support obligations. It has been said that "[t]he focus of child support enforcement should not be to punish the absent parent for a failure to pay, but to secure regular support payments for dependent children."⁹⁹ Section 14.091, to the extent that a support obligor comes within its provisions, will provide Texas support enforcement officers with an effective tool to enforce support obligations.¹⁰⁰ The provision also demonstrates that the primary focus of support enforcement should be on the parents' duty to support their children. A major goal of this legislation is to shift the burden of providing child support from the state's taxpayers to the absent parent. Through section 14.091, the Texas Legislature has declared that this goal will be accomplished by forcing responsible parents with the ability to pay to support their own children.

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94. Section 14.091(o), however, provides that an involuntary wage assignment order will not preclude the use of any and all other remedies available to enforce support orders.

95. See HOUSE STUDY GROUP, *supra* note 3, at 14.

96. TEX. FAM. CODE ANN. § 14.09(e) (Vernon Pamph. Supp. 1984).

97. See *supra* text accompanying notes 32-36.

98. *Id.*

99. HOUSE JUDICIARY COMM., INTERIM REP., 66th Leg., at 32 (1981).

100. See Yee, *What Really Happens in Child Support Cases: An Empirical Study of Child Support Orders in the Denver District Court*, 57 DEN. L.J. 21, 49 (1979) (discussion of wage assignment as an effective means to enforce child support orders).