

## CHAPTER 163

[House Bill No. 209]

## STATE FISCAL AGENCY ABOLISHED

AN ACT Relating to the state fiscal agency; repealing section 43.80.030, chapter 8, Laws of 1965, section 1, chapter 120, Laws of 1969 and RCW 43.80.030; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Section 43.80.030, chapter 8, Laws of 1965, section 1, chapter 120, Laws of 1969, and RCW 43.80.030 are each repealed.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 12, 1971.

Passed the Senate May 1, 1971.

Approved by the Governor May 20, 1971.

Filed in Office of Secretary of State May 21, 1971.

## CHAPTER 164

[Substitute House Bill No. 257]

## PUBLIC ASSISTANCE--

## SUPPORT OF MINOR DEPENDENT CHILDREN

## COLLECTION OF CHILD SUPPORT DEBTS

AN ACT Relating to public assistance; creating new sections; repealing section 17, chapter 173, Laws of 1969 ex. sess. and RCW 74.20.292; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent

children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this 1971 act be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs.

NEW SECTION. Sec. 2. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this 1971 act shall have the following meanings:

(1) "Department" means the state department of social and health services.

(2) "Secretary" means the secretary of the department of social and health services, his designee or authorized representative.

(3) "Dependent child" means any person under the age of twenty-one who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(4) "Superior court order" means any judgment or order of the superior court of the state of Washington or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

(5) "Responsible parent" means the natural or adoptive parent of a dependent child.

NEW SECTION. Sec. 3. Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents who are responsible for support of such children in an amount equal to the amount of public assistance money so paid: PROVIDED, That where there has been a superior court order or final decree of divorce, the debt shall be limited to the amount of said court order or decree. The department shall have the right to petition the appropriate superior court for modification of a superior court order on the same grounds as either party to said cause.

The department shall be subrogated to the right of said child or children or person having the care, custody, and control of said child or children to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys thus expended. If a superior court order or final decree of divorce enters judgment for an amount of support to be paid by an obligor parent, the

department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the department.

Debt under this section shall not be incurred by nor at any time be collected from a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status.

NEW SECTION. Sec. 4. The secretary may issue a notice of a child support debt accrued and/or accruing based upon subrogation to or assignment of the judgment created by a superior court order or final decree of divorce. Said notice shall be mailed to the debtor at his last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt. Said notice of debt shall include a statement of the child support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order or final decree of divorce to which the department is subrogated or has an assigned interest; a statement that the property of the debtor is subject to collection action; a statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the child support debt. Action to collect said subrogated or assigned child support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the receipt or refusal by the debtor of said notice of debt.

NEW SECTION. Sec. 5. In the absence of a superior court order or final decree of divorce, the secretary may issue a notice of a child support debt accrued and/or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. Said notice of debt shall be served upon the debtor in the manner prescribed for the service of summons in a civil action, including summons by publication where appropriate and necessary. The notice of debt shall include a statement of the child support debt accrued and/or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future; a statement of the amount of the monthly public assistance payment; a statement of the name of the recipient and the name of the child or children for whom assistance is being paid; a demand for immediate payment of the child support debt or in the alternative, a demand that the debtor make answer within twenty days of the date of service to the secretary stating defenses to liability under section 3 of this 1971 act; a statement that if no answer is made on or before twenty days from the date of the service, the child support debt shall be assessed and determined subject to computation, and is subject to collection action; a statement that the property of the

debtor will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver. If no answer is had by the secretary to the notice of debt on or before twenty days of the date of service, the child support debt shall be assessed and determined subject to computation and the secretary shall issue a collection warrant authorizing collection action under this 1971 act. If the debtor, within twenty days of date of service of the notice of debt, makes answer to the secretary alleging defenses to liability under section 3 of this 1971 act, said debtor shall have the right to a fair hearing pursuant to RCW 74.08.070 and 74.08.090. The decision of the department in the fair hearing shall establish the liability of the debtor, if any, for repayment of public assistance moneys expended to date as an assessed and determined child support debt. Action by the secretary under the provisions of this 1971 act to collect said child support debt shall be lawful from the date of issuance of the decision in the fair hearing. If the secretary reasonably believes that the debtor is not a resident of this state, or is about to move from this state, or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the child support debt, the secretary may file and serve liens pursuant to sections 6 and 7 of this 1971 act during pendency of the fair hearing or thereafter, whether or not appealed: PROVIDED, That no further action under sections 8, 13 and 14 of this 1971 act may be taken on such liens until final determination after fair hearing and/or appeal. The secretary shall in such cases, make and file in the record of the fair hearing an affidavit stating the reasons upon which said belief is founded: PROVIDED, That the debtor may furnish a good and sufficient bond satisfactory to the secretary during pendency of the fair hearing, or thereafter, and in such case liens filed shall be released. If the decision of the fair hearing is in favor of the debtor, all liens filed shall be released.

NEW SECTION. Sec. 6. Twenty-one days after receipt or refusal of notice of debt under provisions of section 4 of this 1971 act, or twenty-one days after service of notice of debt, or as otherwise appropriate under the provisions of section 5 of this 1971 act, a lien may be asserted by the secretary upon the real or personal property of the debtor. The claim of the department for a child support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in

which such property is located.

Whenever a child support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the child support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in sections 9 and 13 of this 1971 act, unless a written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state or unless a determination has been made in a fair hearing pursuant to section 5 of this 1971 act or by a superior court ordering release of said child support lien on the basis that no debt exists or that the debt has been satisfied.

NEW SECTION. Sec. 7. The secretary may at any time after filing of a child support lien serve a copy of said lien upon any person, firm, corporation, association, political subdivision or department of the state in possession of earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to said debtor. Said child support lien shall be served upon the person, firm, corporation, association, political subdivision or department of the state either in the manner prescribed for the service of summons in a civil action or by certified mail, return receipt requested. No lien filed under section 6 of this 1971 act shall have any effect against earnings or bank deposits or balances unless it states the amount of the child support debt accrued and unless service upon said person, firm, corporation, association, political subdivision or department of the state in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section.

NEW SECTION. Sec. 8. After service of a notice of debt as provided for in section 4 of this 1971 act stating a child support debt accrued and/or accruing based upon subrogation to or assignment of the amount required to be paid under any superior court order or final decree of divorce, or whenever a child support lien has been filed pursuant to section 6 of this 1971 act, the secretary is hereby authorized to issue to any person, firm, corporation, association, political subdivision or department of the state, an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the state property which is due, owing, or belonging to said debtor. The order to withhold and deliver which shall also be served upon the debtor, shall state the amount of the

child support debt accrued, and shall state in summary the terms of sections 9 and 10 of this 1971 act. The order to withhold and deliver shall be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision or department of the state upon whom service has been made is hereby required to answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the state any property which may be subject to the claim of the department of social and health services, such property shall be withheld immediately upon receipt of the order to withhold and deliver and shall after the twenty day period, upon demand, be delivered forthwith to the secretary. The secretary shall hold said property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the state subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary. Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement of the order to withhold and deliver. Delivery to the secretary shall serve as full acquittance and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter. The foregoing is subject to the exemptions contained in sections 9 and 13 of this 1971 act.

NEW SECTION. Sec. 9. Whenever a child support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision or department of the state asserting a child support debt against earnings and there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 7.33.280 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other regular intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm,

corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the child support debt stated in the lien or order to withhold and deliver has been withheld. As used in this 1971 act, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments by any department or division of the state based upon inability to work or obtain employment. "Earnings" shall also mean that part of temporary total disability payments and permanent total disability compensation to a workman allocated by RCW 51.32.090 and 51.32.060 respectively to the spouse and children of a workman, and shall also include no more than forty percent of the net proceeds of payments to a workman for permanent partial disability under RCW 51.32.080. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount be required by law to be withheld.

NEW SECTION. Sec. 10. Should any person, firm, corporation, association, political subdivision or department of the state fail to make answer to an order to withhold and deliver within the time prescribed herein; or fail or refuse to deliver property pursuant to said order; or after actual notice of filing of a child support lien, pay over, release, sell, transfer, or convey real or personal property subject to a child support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under section 13 of this 1971 act or fail or refuse to honor an assignment of wages presented by the secretary, said person, firm, corporation, association, political subdivision or department of the state shall be liable to the department in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorney fees.

NEW SECTION. Sec. 11. Whenever any person, firm, corporation, association, political subdivision or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus one hundred dollars, such person, firm, corporation, association, political subdivision or department of the state may, without liability under this act, release said excess to the debtor.

NEW SECTION. Sec. 12. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of a lien or order to withhold

and deliver or any other notice or document authorized by this 1971 act shall only be effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

NEW SECTION. Sec. 13. Whenever a child support lien has been filed pursuant to section 6 of this 1971 act, the secretary may collect the child support debt stated in said lien by the distraint, seizure, and sale of the property subject to said lien. The secretary shall give notice to the debtor and any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of said property. Said notice shall be given to such persons by certified mail, return receipt requested. A notice specifying the property to be sold shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this 1971 act, there shall be exempt from attachment,



distrain, seizure, execution and sale under this 1971 act such property as is exempt therefrom under the laws of this state.

NEW SECTION. Sec. 14. Whenever a child support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the superior court of the county where real or personal property is or was located and the lien was filed and judgment shall be rendered in favor of the department for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee, and the court shall order any property upon which any lien provided for by this 1971 act is established, to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this 1971 act.

NEW SECTION. Sec. 15. Any person owning real property, or any interest in real property, against which a child support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the secretary and upon such payment the secretary shall restore said property to him and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under section 14 of this 1971 act to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum.

NEW SECTION. Sec. 16. The secretary may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon the debt.

NEW SECTION. Sec. 17. The secretary may at any time release a child support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the secretary, or if said action will facilitate the collection of the

debt, but said release or return shall not operate to prevent future action to collect from the same or other property.

NEW SECTION. Sec. 18. If the secretary finds that the collection of any child support debt based upon subrogation to or assignment of the amount of support ordered by any superior court order or final decree of divorce is in jeopardy, he may make demand under section 4 of this 1971 act for immediate payment of the child support debt, and upon failure or refusal immediately to pay said child support debt, he may file and serve liens pursuant to sections 6 and 7 of this 1971 act, without regard to the twenty day period provided for in section 4 of this 1971 act: PROVIDED, That no further action under sections 8, 13 and 14 may be taken until the notice requirements of section 4 of this 1971 act are met.

NEW SECTION. Sec. 19. Interest of six percent per annum on any child support debt due and owing to the department under section 3 of this 1971 act may be collected by the secretary. No provision of this 1971 act shall be construed to require the secretary to maintain interest balance due accounts and said interest may be waived by the secretary, if said waiver would facilitate the collection of the debt.

NEW SECTION. Sec. 20. Any person against whose property a child support lien has been filed or an order to withhold and deliver has been served pursuant to this 1971 act may apply for relief to the superior court of the county wherein the property is located on the basis that no child support debt is due and owing: PROVIDED, That judicial relief shall not be granted except as provided for in RCW 74.08.080 whenever a fair hearing has been requested pursuant to section 5 of this 1971 act. Liens filed during pendency of fair hearing or court review shall be reviewed pursuant to RCW 74.08.080. It is the intent of this 1971 act that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies be exhausted prior to judicial review.

NEW SECTION. Sec. 21. All moneys collected in fees, costs, attorney fees, interest payments, or other funds received by the secretary which are unidentifiable as to the child support account against which they should be credited, shall be held in a special fund from which the secretary may make disbursement for any costs or expenses incurred in the administration or enforcement of the provisions of this 1971 act.

NEW SECTION. Sec. 22. Any child support debt due the department from a responsible parent which the secretary deems uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset: PROVIDED, That at any time after six years from the date a child support debt was incurred, the secretary may charge off as uncollectible any child

support debt upon which the secretary finds there is no available, practical, or lawful means by which said debt may be collected: PROVIDED FURTHER, That no proceedings or action under the provisions of this 1971 act may be begun after expiration of said six year period to institute collection of a child support debt. Nothing herein shall be construed to render invalid or nonactionable a child support lien filed prior to the expiration of said six year period.

NEW SECTION. Sec. 23. No employer shall discharge an employee for reason that a child support lien or order to withhold and deliver has been served against said employee's earnings: PROVIDED, That this provision shall not apply if more than three child support liens or orders to withhold and deliver are served upon the same employer within any period of twelve consecutive months.

NEW SECTION. Sec. 24. Any person, firm, corporation, association, political subdivision or department of the state employing a person owing a child support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a plan to satisfy or retire a child support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to said assignment of earnings. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

NEW SECTION. Sec. 25. By accepting public assistance for or on behalf of a child or children, the recipient shall be deemed to have made assignment to the department of any and all right, title, and interest in any child support obligation owed to or for said child or children up to the amount of public assistance money paid for or on behalf of said child or children for such term of time as such public assistance moneys are paid. The recipient shall also be deemed, without the necessity of signing any document, to have appointed the secretary as his or her true and lawful attorney in fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing child support payments which are received on behalf of said child or children as reimbursement for the public assistance moneys previously paid to said recipient.

NEW SECTION. Sec. 26. This 1971 act is necessary for the

immediate preservation of the public peace, health and safety and the support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 27. If any provision of this 1971 act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this 1971 act which can be given effect without the invalid provision or application, and to this end the provisions of this 1971 act are severable.

If any method of notification provided for in this 1971 act is held invalid, service as provided for by the laws of the state of Washington for service of process in a civil action shall be substituted for the method held invalid.

NEW SECTION. Sec. 28. Section 17, chapter 173, Laws of 1969 ex. sess. and RCW 74.20.292 are hereby repealed. Said repeal is not intended to affect any existing or accrued right or any action or proceeding already taken or instituted, or any rule, regulation or order already promulgated or administrative action already taken. Said repeal is not intended to revive any law heretofore repealed.

Passed the House March 29, 1971.

Passed the Senate May 1, 1971.

Approved by the Governor May 20, 1971.

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CHAPTER 165

[Engrossed House Bill No. 575]

JUVENILE PROBATION SERVICES--

BASE COMMITMENT RATE

AN ACT Relating to probation services; amending section 5, chapter 165, Laws of 1969 ex. sess. and RCW 13.06.050; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 5, chapter 165, Laws of 1969 ex. sess. and RCW 13.06.050 are each amended to read as follows:

No county shall be entitled to receive any state funds provided by this chapter until its application is approved, and unless and until the minimum standards prescribed by the department of ~~((institutions))~~ social and health services are complied with and then only on such terms as are set forth hereafter in this section.

(1) A base commitment rate for each county and for the state as a whole shall be calculated by the department of ~~((institutions))~~ social and health services. The base commitment rate shall be