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CHILD SUPPORT ENFORCEMENT IN MONTANA

Thomas W. Christie

I. INTRODUCTION

The law of child support enforcement is complicated and somewhat confused, comprising some state and some federal acts. To help make sense of this field, this comment first addresses the history of child support enforcement efforts and primary enforcement options. Next, this comment outlines the statutory scheme of the Uniform Reciprocal Enforcement of Support Act (URESA), the federal programs under Title IV-D of the Social Security Act, and Montana’s implementation of these federal programs. Further, this comment discusses the application of these acts as practical enforcement techniques. Finally, this comment examines changes which could effect better child support enforcement, including recently adopted changes in federal law.

A. The Problem

Child support has become a very important aspect of family life in American society. American family life has become complex, producing greater strains on marriages and family. Economic pressures frequently force both partners in a marriage to develop careers outside the home, leaving less time to work on interpersonal relationships. While divorce rates climbed dramatically in the last few decades, the marriage rate remained relatively static. Studies reveal that when a marriage begins faltering, the couple may try parenthood to cement their relationship. Although a new child in-

2. Id. See also M. HENRY AND V. SCHWARTZ, ESSENTIALS FOR ATTORNEYS IN CHILD SUPPORT ENFORCEMENT xix (Nat’l Inst. for Child Support Enforcement, 1986). Estimates currently suggest that 49% of marriages will fail. MACIONIS, supra note 1, at 371.
3. MACIONIS, supra note 1, at 371.
itially may help stabilize a marriage, the result is frequently temporary.  

As well as high divorce rates, children born out of wedlock also contribute to the child support problem. Unwed mothers present the most rapid growth rate in single parent households. Observers note particularly great increases in the number of single teenage mothers. In 1981 roughly half of all teenage mothers gave birth out of wedlock. The rate of unwed teenage pregnancy in Montana has increased dramatically also. In 1986, the Montana Health Department reported that almost 1,300 teenage girls gave birth, more than double the number fifteen years before.  

The dual role of main caretaker for a child and main economic provider is burdensome at best. An associated problem which strongly affects child support issues stems from the “feminization of poverty.” The majority of custodial parents are women, which compounds economic difficulties. Single female parents cannot compete effectively in a work force where their gender is a handicap. The plight of a teenage single mother is worse yet, as the teenager typically lacks marketable skills.  

The high divorce and single parent numbers represent a very real cost to the American family. Without both parents in the family unit, the entire family’s lifestyle declines. This decline occurs both in quality, resulting from work requirements outside the home for the residential caretaker of the child, and in quantity, since a single income household does not have the purchasing power of a two-income family unit. Consequently some contribution from the absent parent becomes essential to ensure the quality of life of children in single parent households.  

The statistical results of absent parents are staggering. In  

4. Statistics demonstrate divorce typically occurs within the first eight years of the marriage, resulting in a single-parent household. Id.  

5. *Id.*  


8. While fathers are becoming the custodial parents more frequently, women continue to greatly outnumber men. Montana also follows this general trend. In 1979, Montana had 820 households headed by men with children under six years of age and 4,704 households headed by women with children under age six. *MONTANA DEP’T. OF LABOR AND INDUSTRY, MONTANA WOMEN IN THE 80’s 92 (1985)* [hereinafter *MONTANA WOMEN IN THE 80’s*] (citing Montana 1980 Census).  

9. This comment will not attempt to summarize wage and benefit information. See generally *MONTANA WOMEN IN THE 80’s, supra* note 8, and *MONTANA DEP’T. OF LABOR AND INDUSTRY, MONTANA FRINGE BENEFIT AND WAGE INFORMATION BY OCCUPATIONAL CLASSIFICATION* (1986). Both of these publications contain statistics and analyses regarding the composition and status of Montana’s work force, and demonstrate that women earn roughly 60% of men’s typical wages.
1983, the national poverty rate for all families was over fifteen percent. However, if no husband lived with the family, the percent more than tripled.\textsuperscript{10}

Family impoverishment due to non-payment of child support also represents a burden to the state. In 1981 the Department of Health and Human Services found that almost two-thirds of the mothers heading households with minor children had secured child support awards.\textsuperscript{11} Yet of these women, only forty-seven percent received full child support payments, and twenty-eight percent received nothing.\textsuperscript{12} Consequently, many of these parents must look to public assistance for support, primarily Aid to Families with Dependent Children (AFDC).\textsuperscript{13}

The states have long dealt with these problems, with varying success. In 1984, Congress gave the states added enforcement techniques by amending Title IV-D of the Social Security Act.\textsuperscript{14} However, child support enforcement has a long history.

\textbf{B. History}

In 1909 the Commissioners on Uniform Laws recognized the need for a nation-wide act aimed at helping families left destitute and deserted when one spouse had abandoned the family by leaving the jurisdiction.\textsuperscript{15} The following year, the Commissioners presented the Uniform Desertion and Non-Support Act.\textsuperscript{16} Twenty-four jurisdictions quickly adopted the Act,\textsuperscript{17} which made husbands who had abandoned their familial obligations criminally liable. The Act provided adopting states only limited powers. It contained no provisions for interstate enforcement, and sought only to enhance the criminal laws of the adopting states.\textsuperscript{18} Thus, while the Act aided some families, many simply did not fall under its jurisdiction, as the abandoning parent could still avoid familial obligations by exiting the jurisdiction.

Beginning in the 1940s, the centralization of information through the Social Security Administration provided new resources

\begin{itemize}
  \item \textsuperscript{10} HENRY AND SCHWARTZ, supra note 2, at xx.
  \item \textsuperscript{11} Id. at xxi.
  \item \textsuperscript{12} Id.
  \item \textsuperscript{13} Id.
  \item \textsuperscript{15} UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA), 9B U.L.A. 556 (1950).
  \item \textsuperscript{16} Id.
  \item \textsuperscript{17} Id.
  \item \textsuperscript{18} Id.
\end{itemize}
to the Commissioners on Uniform Laws. In 1950, the Commissioners attempted to remedy some problems of the previous Act through the Uniform Reciprocal Enforcement of Support Act (URESA).\textsuperscript{19} It contained provisions to allow both criminal and civil avenues for an abandoned family to seek support.\textsuperscript{20} UREA also furnished improved means to enforce support when parties resided in different states.\textsuperscript{21} The most recent version of UREA\textsuperscript{22} provided two ways for a family to force the abandoning parent to comply with a support order.\textsuperscript{23} The family could register a support order in a number of jurisdictions, where the absent parent might live.\textsuperscript{24} Alternatively, the family could fully litigate the support issue in the absent parent’s jurisdiction.\textsuperscript{25} In either case the absent parent’s jurisdiction could not avoid hearing the case.\textsuperscript{26} A key provision of UREA required the county or district attorney to represent the family in obtaining child support.\textsuperscript{27}

Since 1968, all U.S. states and territories, including Montana, have adopted UREA in substantially similar form.\textsuperscript{28} Also, the

\textsuperscript{19} In 1940, the National Conference on Uniform State Laws began studying the flaws in the Uniform Desertion and Non-Support Act. The Commissioners produced various drafts in 1946, 1948 and 1949 before the conference adopted the 1950 version. UREA, 9B U.L.A. 556 (1950).

\textsuperscript{20} Id.

\textsuperscript{21} Id.

\textsuperscript{22} Although two basic forms of UREA exist (the 1950 version and the 1968 version) many of the substantive provisions are virtually identical. Technically, Montana has adopted the 1968 revised version of UREA, occasionally abbreviated as R/URESA. Most commentators in this area do not emphasize the distinction unless focusing on a specific provision existing only in R/URESA. Since all jurisdictions have some form of UREA, and refer to it as such, this comment conforms to the usual abbreviation. In most practical situations, problems regarding the differences will not arise as both UREA and R/URESA require that the laws of the initiating state govern the enforcement procedure and further mandate that the forwarded petition include copies of the initiating state’s UREA or R/URESA statutes. See note 126, infra.


\textsuperscript{26} UREA § 30, 9B U.L.A. 529-31 (1968).

\textsuperscript{27} UREA § 18(b), (c), 9B U.L.A. 461-66 (1968).

\textsuperscript{28} States and territories maintaining a version of the 1950 UREA include: Alabama, Alaska, Connecticut, Delaware, the District of Columbia, Guam, Indiana, Maryland, Massachusetts, Mississippi, Missouri, New York, Puerto Rico, Tennessee, Texas, Utah, the Virgin Islands and Washington. UREA, 9B U.L.A. 553 (1950). All other jurisdictions have adopted a version of the 1968 revised UREA. UREA, 9B U.L.A. 381 (1968). Even though the states may use different versions of UREA, the substance and goals remain unchanged. As the Commission reported:

\textsuperscript{[URESA’s] purpose has been, and is, not to create new duties of support but to provide by reciprocal legislation for the enforcement, across state lines, of duties of support already existing. It has become an accepted pattern of American life

https://scholarship.law.umt.edu/mlr/vol50/iss1/8
Montana version allows for intrastate as well as interstate application. 29

Although local prosecutors successfully used URESA to aid many families, the need for efficient interstate child support enforcement continued. Congress helped by amending Title IV-D, the Child Support Enforcement Amendments of 1984, to the Social Security Act. 30 This legislation requires interstate cooperation in securing support for children. The Title IV-D amendments and URESA compliment each other, providing an impressive array of legal strategies to secure child support payments. Additionally, through the Title IV-D procedures, state agencies provide many obligees with child support enforcement services at little or no cost. Yet even with these services available, many obligees receive nothing because they are not aware of Title IV-D and other child support enforcement programs.

II. FEDERAL CHILD SUPPORT ENFORCEMENT REQUIREMENTS

Within Title IV-D, the first statutory section 32 provides an overview of the system required of each state. The Social Security Act’s Child Support Amendments gave greater importance to the special IV-D agency, which on the federal level is referred to as the National Child Support Enforcement Office. As well, each state must also have a corresponding state child support enforcement office. Another key feature required by federal law is the “Parent Locator Service,” 33 which also has state and federal counterparts. Title IV-D mandates the creation of expedited procedures to establish and collect support through wage assignments and tax offsets. 34 Most important, federal law requires cooperation between the various states’ Title IV-D agencies in paternity establishment and child support collection. 35 To aid states in carrying out the

that one cannot escape the duty to support his family merely by leaving the state.


31. The terms “obligee” and “obligor” are used herein respectively to denote the custodial parent owed the child support and the parent owing the support.


35. Id.
program, Congress provided a partial subsidy.\(^{36}\) Congress also provided incentive payments to the Title IV-D agency of each state following the federal plan.\(^{37}\)

To comply with federal law,\(^{38}\) the Montana Legislature designated the Montana Department of Revenue and its Child Support Enforcement Bureau as the state's Title IV-D agency. In turn, the Child Support Enforcement Bureau established the necessary procedures and mechanisms.\(^{39}\)

The "expedited process" is one important provision of the federal scheme.\(^{40}\) This provision requires that each state implement a process through which the Title IV-D agency may establish and enforce support obligations. The federal guidelines set forth strict time requirements defining an expedited process.\(^{41}\) The federal scheme envisioned a quick alternative to lengthy judicial processes, while maintaining due process rights, and providing qualified presiding officers and judicial review.\(^{42}\) Although Montana had already authorized such an extra-judicial hearing process, the legislature had to adopt enforcement provisions.\(^{43}\)

Federal law requires that single parent recipients of Title IV-A

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\(^{39}\) In 1979 the Montana legislature established the Department of Revenue's power in this area with the passage of S.B. 221, 1979 Mont. Laws 612 (codified as MONT. CODE ANN. §§ 40-5-201 to -310 (1987)). This legislation allows the Department of Revenue to hear cases and establish support orders administratively. In 1985, the legislature adopted the Child Support Enforcement Act of 1985, 1985 Mont. Laws 571 (codified as MONT. CODE ANN. §§ 40-5-401 to -434 (1987)). These statutes grant the Department of Revenue power to establish administrative income withholding. As pointed out in the statement of intent, the law "is to ensure that the support of children is the highest priority in the allocation of a responsible parent's income through the timely and automatic initiation of income withholding procedures whenever a delinquency occurs equal to at least one month's support payment." ANNOTATION, MONT. CODE ANN. § 40-5-401 (1987). The legislature adopted this law in response to the Child Support Enforcement Amendments of 1984.


\(^{41}\) 45 C.F.R. § 303.101(b)(2) (1987) provides that all AFDC referred support "actions . . . must be completed . . . within the following time frames: (i) 90 percent in 3 months; (ii) 98 percent within 6 months; and (iii) 100 percent within 12 months."

\(^{42}\) 45 C.F.R. § 303.101(c) (1987).

\(^{43}\) 45 C.F.R. § 303.101(b)(3) (1987) allows state legislatures also to empower the Title IV-D agencies to resolve paternity questions. However, the language makes inclusion of paternity in the expedited procedure optional. Montana has thus far chosen not to bring this important area of child support enforcement under the powers of the Department of Revenue's Child Support Enforcement Bureau.
benefits—Aid to Families with Dependent Children (AFDC)—must use the administrative process offered by the Department of Revenue. However, an obligee need not receive public assistance to make use of the Title IV-D agency. Montana provides that the Department of Revenue (Department) may accept applications from non-AFDC recipients seeking aid in child support enforcement. Statutorily, the Department may collect a minimal charge for the process. The Department, however, will collect this fee from the obligor in addition to any child support obligation due.

Law requires that the federal Department of Health and Human Services create and maintain a Parent Locator Service. This Service gives authorized persons access to otherwise confidential information to help locate an absent parent for child support establishment and enforcement. Federal regulations also require that each state program create a Parent Locator Service. The Department of Revenue, as Montana's IV-D agency, also acts as a


In the event that public assistance is furnished by a state or county agency or in instances where the department [of Revenue] has contracted to collect support, the department [of Revenue] shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(Emphasis added.)

Other subsections of the same statute clearly set forth the position of the Department of Revenue. MONT. CODE ANN. § 40-5-202(4) provides that the Department becomes a real party in interest when any public assistance is rendered to the obligee, and MONT. CODE ANN. § 40-5-202(5) invalidates any agreements made between the obligor and obligee which may effect a termination of the Department's recovery rights unless it has consented to the agreement.

45. Although the language of MONT. CODE ANN. § 40-5-203 (1987) appears to give discretion to the Department of Revenue, 45 C.F.R. § 302.33(a) (1987) maintains that the "State plan must provide that the . . . services established under the plan shall be made available to any individual . . . who files an application for services with the IV-D agency."


central information collection unit. As each state, as well as the federal government, cooperates in exchanging information on child support obligors, the state and federal Parent Locator Services constitute a potentially powerful location device.

Once the Parent Locator has found an obligor, the obligee can then act to secure compliance with a support order. Each situation is distinct and may require different enforcement tactics. Under certain conditions the most expedient solution might be for the obligee to pursue enforcement independently. Under other conditions, the local county attorney may have to act. Frequently, the Department of Revenue can provide the most efficient child support enforcement through its administrative processes.

III. INITIATION OF THE ENFORCEMENT PROCESS

A. Intrastate Enforcement of Support Obligations

An obligee may undertake interstate enforcement in a number of ways. The obligee can use a private attorney or a county attorney; the Department of Revenue Child Support Enforcement Bureau usually offers the most efficient and effective enforcement procedure. The process of intrastate child support enforcement begins when the Department of Revenue receives a referral. This referral may come from AFDC, a private individual or another state’s Title IV-D program. The Department of Revenue Child Support Enforcement Bureau then sets up a file including a support assignment from non-AFDC applicants. Although not mandatory, the assignment simplifies support payment through its centralized administrative procedure. Upon completion of the initial paperwork, the Department checks the obligor’s address. If the Department cannot confirm the address, it uses all community and

52. The obligee may wish to pursue independent enforcement when the obligor recently received a temporary job or when the obligee can easily establish judicial garnishment.
53. State involvement would be helpful especially in cases where the obligor contests paternity.
54. The support assignment document transfers the obligee’s rights to the child support payment to the Department of Revenue Child Support Enforcement Bureau. It directs the obligor to pay the Department any child support payments. The Department then passes the payments on to the obligee.
55. MONT. CODE ANN. § 40-5-205 (1987) provides that, regardless of a prior court order indicating that support be paid to a clerk of court, once notice has been served on the clerk’s office that the obligee is receiving public support, child support money shall be paid through the Department of Revenue.
state resources available to learn the obligor’s whereabouts.56

After locating the obligor, the Department will send the obligor either a notice of debt accrued57 or a notice of liability.58 In the case of the obligee’s assignment to the Department of Revenue, the notice of debt accrued must inform the obligor of the debt and demand payment within thirty days.59 Further, the notice must state that the obligor’s property is subject to seizure and sale to satisfy the debt.60 The notice of liability must include a statement of the debt arising from the public support the obligee has and will receive.61 As with the notice of debt, the notice of liability demands payment within thirty days.62

In both notices, the Department must inform the obligor of his or her right to a fair administrative hearing.63 This hearing provides an opportunity for the obligor to raise possible defenses to liability for the support amount.64 Under Montana law, should the obligor fail to appear, the hearing officer will issue a default judgment in favor of the obligee.65 Within twenty days of this hearing, the hearing officer must make an order including findings, conclusions and a final determination of amounts owed.66 The Child Support Enforcement Bureau may then file this document with any clerk of court. Once filed and docketed, the administrative order has the same effectiveness as any district court order.67 The filed and docketed order allows the Department to collect the debt administratively through liens, executions, and the Warrant for

56. These resources include credit bureaus and state and local tax authorities.
57. The notice of debt accrued is used when an obligee has voluntarily subrogated or assigned the debt. MONT. CODE ANN. § 40-5-222(1) (1987).
58. The notice of liability is used if AFDC or another public assistance program has referred the case. MONT. CODE ANN. § 40-5-223 (1987).
64. These statutes require that the obligor exercise this right within 20 days after receipt of the debt notice and within 30 days after receiving the liability notice.
65. The Child Support Enforcement Amendments of 1984 have limited possible defenses to mistakes of fact, jurisdiction, fraud and statute of limitations. Pub. L. No. 98-378, 98 Stat. 1305 (codified as 42 U.S.C. §§ 651-665 (1982 & Supp. I 1983, Supp. II 1984, Supp. III 1985, Supp. IV 1986)). See Henry and Schwartz, supra note 2, at 161-77 and 200-201. As these authors point out, the obligor may raise other issues which courts mistakenly treat as defenses. These may include visitation, custody, inability to pay and equitable defenses. Although these defenses will not often succeed, common sense indicates that a solution which incorporates the concerns and interests of all parties will be more effective in recovering amounts owing.
Distrain. 68

Generally a two-stage appeal exists from Department of Revenue administrative determinations. Ordinarily an unfavorable determination is appealed first to the Montana State Tax Appeal Board, and then to Montana district court. 69 However, in child support determination cases, the appeal goes directly to district court. Should the obligor prevail in district court, the resulting judicial order automatically modifies the administrative determination. 70

B. Interstate Enforcement of Support Obligations

1. Title IV-D Procedures

An obligee may initiate interstate enforcement in several ways. Title IV-D requires that each state establish an interstate income withholding procedure. 71 Thus Montana’s Department of Revenue may institute interstate income withholding or fulfill a request forwarded by another state’s Title IV-D agency. 72 The statutory scheme requires that the Department of Revenue determine if the obligor resides in its jurisdiction. 73 If the Title IV-D agency fails to locate the obligor, it will forward the enforcement request to another jurisdiction where the obligor may live. 74

Drafting the withholding application requires care. When a problem arises with the request, the Montana statute does not require the Department of Revenue to correct the application. Although the Department will make all possible corrections, errors and omissions slow the enforcement process. 75

68. Id.


70. Mont. Code Ann. § 40-5-226(7) (1987). However, this expedited appeal applies only to child support determinations. If the Department of Revenue uses a tax offset procedure, the obligor must use the two-stage appeal process. See text accompanying notes 200-06 infra.


2. The Uniform Reciprocal Enforcement of Support

Montana's statutory scheme provides another route for interstate enforcement through the Uniform Reciprocal Enforcement of Support Act (URESA).\(^76\) Action through URESA would be particularly effective when the absent obligor has no income to withhold, but does have property. URESA provides two methods for interstate enforcement of support: action under Part III or under Part IV.\(^77\) URESA Part III requires that the responding state's courts make an independent determination of the support obligation.\(^78\) Part IV merely provides that the clerk of court in the responding state register the court order for support.\(^79\)

a. Proceedings Under URESA Part III

Under URESA Part III proceedings, the Montana obligee or his or her representative\(^80\) must file a verified\(^81\) district court petition for support enforcement.\(^82\) The petition must contain the obligor's name and, if possible, address.\(^83\) If the obligee receives public assistance, he or she must acknowledge this in an affidavit.\(^84\)

The obligee or representative files the petition in the appropriate state court where the obligee resides.\(^85\) In Montana, the district...
court is the appropriate forum. The court must accept the petition, regardless of whether another action is pending for custody, annulment, separation, dissolution or adoption. Furthermore, the court cannot refuse the petition because it has issued a support order previously. If the obligee is a minor, the legal guardian may file the petition without the appointment of a guardian ad litem.

If the obligee cannot pay filing fees, URESA provides that the court must waive them. The initiating court may then request the responding court to collect its costs from the obligor as well. However, recovery of court costs cannot take precedence over collection of support.

A county attorney or the Department of Revenue may represent the obligee at both the initiating and responding hearings. If the county attorney neglects or refuses to aid the obligee, the Montana Attorney General must either order compliance or undertake representation.

Once the petition is verified and filed, the district court examines the petition to determine whether the obligor owes a support duty. After an affirmative determination, the court certifies the petition. The clerk of court then forwards three copies of the petition and certification to the responding state. Some courts also include a recommended support amount. However, such recommendations do not bind the responding court during its own hearing on the obligation.

To aid an obligee in locating an obligor, URESA mandates the use of the states' information agencies. Montana's information agency is the Department of Revenue. This agency, in addition to

91. Although Mont. Code Ann. § 40-5-113 (1987) provides that the Department of Social and Rehabilitation Services, a county commissioner, or local welfare officer can represent the obligee, as a practical matter only a county attorney or the Department of Revenue Child Support Enforcement Bureau will undertake representation.
94. Id.
96. Henry and Schwartz, supra note 2, at 204.
98. Although statutorily the Department of Social and Rehabilitative Services is the information agency, the Department of Revenue actually provides this service. Mont. Code Ann. § 40-5-118 (1987).
compiling jurisdictional enforcement information, operates the state Parent Locator Service.\textsuperscript{99} The state service can access the federal Parent Locator Service, containing social security numbers, names, addresses, property holdings, and work and credit history.\textsuperscript{100} On request by agencies or individuals, the Parent Locator Service attempts to locate an obligor for child support enforcement.\textsuperscript{101} The Service also forwards the petitions certified by initiating courts to the state where the obligor resides or has property.\textsuperscript{102}

After the petition's registration in the appropriate state, the responding court has the duty to examine the petition and provide for hearing and enforcement.\textsuperscript{103} The county attorney has the obligation to take all legal steps necessary to assure jurisdiction over the obligor or his property.\textsuperscript{104} The prosecutor must advise the court if it cannot get jurisdiction. The responding court must then order a continuance until it receives more accurate information which will establish proper jurisdiction.\textsuperscript{105} If the responding prosecutor locates the obligor or the obligor's property in a different jurisdiction, the clerk of court forwards the order there.\textsuperscript{106} If the prosecutor cannot find the obligor or the obligor's property in the jurisdiction, the prosecutor must inform the initiating state.\textsuperscript{107}

If the responding court obtains jurisdiction, it must hear the case.\textsuperscript{108} If an action pending elsewhere prevents the responding court from making a final determination, URESA authorizes the entry of an enforceable support order \textit{pendente lite}.\textsuperscript{109} After final determination elsewhere, the responding court must conform its temporary order to the final judgment.\textsuperscript{110}

Before the state can execute on obligor's property, URESA Part III provides an opportunity for the obligor to present defenses to the court.\textsuperscript{111} Since the obligor and obligee often live in different states, a hearing with both parties present may be logistically im-

\begin{itemize}
\item \textsuperscript{100} \textit{Id}.
\item \textsuperscript{101} A government agency, court or private attorney (there is a minimal fee for private actions) can use the Parent Locator Service.
\item \textsuperscript{102} \textit{Mont. Code Ann.} § 40-5-118 (1987); URESA § 17, 9B U.L.A. 458 (1968).
\item \textsuperscript{104} \textit{Mont. Code Ann.} § 40-5-119 (1987); URESA § 18, 9B U.L.A. 461 (1968).
\item \textsuperscript{105} \textit{Mont. Code Ann.} § 40-5-120 (1987); URESA § 19, 9B U.L.A. 528 (1968).
\item \textsuperscript{106} \textit{Mont. Code Ann.} § 40-5-120(2) (1987); URESA § 19, 9B U.L.A. 466 (1968).
\item \textsuperscript{107} \textit{Mont. Code Ann.} § 40-4-120(3) (1987); URESA § 19, 9B U.L.A. 446 (1968).
\item \textsuperscript{110} \textit{Id}.
\item \textsuperscript{111} \textit{Mont. Code Ann.} § 40-5-121 (1987); URESA § 20, 9B U.L.A. 469 (1968).
\end{itemize}
possible. If a full hearing is necessary, the court will grant a continuance to gather necessary information. Should the responding court require evidence from the absent obligee, it may request the initiating court judge to officiate at a deposition.

URESAA establishes special rules to allow a complete exposition of facts. The statutory scheme provides immunity from criminal prosecution for information given by the obligor called as an adverse witness. Hence the obligor may not claim Fifth Amendment rights against self-incrimination in order to refuse answering any questions. This immunity does not extend to perjurious statements, however. URESA also denies parties the right to assert that communications between husband and wife are privileged. Both parties must testify regarding any pertinent information, including marriage and paternity. However, URESA prevents the responding court from examining matters other than the determination and enforcement of child support duties. URESA provides that when an obligor denies paternity in good faith and both parties are present, the responding court will adjudicate the question. If further evidence is necessary, or if a party is absent the court may adjourn the hearing until resolution of paternity issues. Upon an affirmative finding of a support obligation, the responding court makes a formal order for support.

An odd problem occurs when a certified petition includes a previous final court order entitled to full faith and credit. Since Part III requires a hearing and a new order issued by the responding court, two competing orders may exist. Confusion may arise regarding whether the responding court's order has modified the original order. Although modifications of support orders by responding courts appear contrary to the intentions of URESA's

112. Jurisdictions are divided on what a “full” hearing might include. Recently, the Montana Supreme Court avoided adoption of either the majority view (responding court may enter its own decree after an independent review of the duty and support amount owed) or the minority view (responding court may hear evidence only on the validity of the original order, jurisdiction and procedure) in State ex rel. Worden, Mont. at ___, 700 P.2d at 152. Instead the court determined the case on other issues.

116. Id.
118. State ex rel. Dewyea v. Knapp, 208 Mont. 19, 674 P.2d 1104 (1984). Thus such issues as divorce, child custody or visitation privileges may not be raised.
drafters, the Montana Supreme Court implied that responding Montana courts have jurisdiction to modify a foreign support order. The best approach to reconcile the two conflicting orders is to view them independently and to apply any support payments made on either order against both.

b. Proceedings under URESA Part IV

If the obligee has already obtained a support order in the initiating state, the obligee, or the obligee's representative may register the order in any jurisdiction. Registration presents several advantages over other alternatives. For example, the registered court order need not be a final order, nor does the proceeding require personal jurisdiction. Registration gives no automatic hearing as under URESA Part III proceedings and enforcement may commence immediately.

Registration requires that the responding state receive a certified order. The obligee may register the order in jurisdictions regardless of whether the obligor is present or has enough minimum contacts to satisfy due process requirements. Although the obligee may register an order, little will occur unless the responding state has personal or subject matter jurisdiction.

123. Campbell v. Jenne, 172 Mont. 219, 563 P.2d 574 (1977). The Montana Supreme Court held that if the initiating state's order provides that no responding state may issue a superseding order, the responding court may not issue a modification. The implication is that unless a "no modification" clause appears in the order, Montana district courts may issue modifications to child support orders. Although this case suggests the possibility of modification, due process requirements still apply. Before a modification could be issued the court would have to hear both parties, lessening Campbell's impact.
124. See Henry and Schwartz, supra note 2, at 213.
125. One glaring problem in URESA is the lack of pro se action. Self-help provisions may alleviate some of the backlog of support cases at the Department of Revenue Child Support Enforcement Bureau. Since URESA action request forms have been standardized and are available through Title IV-D agencies, there seems little reason not to allow a pro se procedure.
126. Mont. Code Ann. § 40-5-140 (1987). Furthermore, the obligee's attorney must file: a) three copies of the order; b) a copy of the issuing state's URESA statutes; and c) a signed statement from the obligee with post-office address. Id. The petition must contain the post-office address and last known residence of the obligor, amount of unpaid support, a list of the obligor's executable property, and all registering jurisdictions. Id.
127. Although the Montana Supreme Court has not addressed this issue, it would probably follow the logical approach of the Alaska court in Lagerwey v. Lagerwey, 681 P.2d 309, 311 (Alaska 1984).
128. Jurisdictional requirements may present particular problems regarding Native Americans residing on reservations. In two cases, Montana district courts lacked the requisite personal jurisdiction to enforce support payments under URESA against Native American obligors. State ex rel. Three Irons v. Three Irons, ___ Mont. ___, 621 P.2d 476 (1980) and State ex rel. Flammond v. Flammond, ___ Mont. ___, 621 P.2d 471 (1980). These
URESA provides that the clerk of court maintain a registry of foreign support orders. On receipt of the order the responding clerk of court adds the certified order and informs the local prosecutor. The county attorney must attempt to obtain jurisdiction over the obligor or his property.

c. Remedies and Appeals Under URESA

Regardless of whether the obligor has proceeded under Part III or Part IV, the responding court may require the obligor to perform whatever it deems necessary for compliance with the support order. These requirements may include the obligor posting a bond, making personal payment to the clerk of court, or the court may hold the obligor in contempt. URESA requires that the obligor at least pay all amounts due (including any arrearage) under the support order to the clerk of the responding court. The clerk’s office in turn forwards the amounts received to the clerk of the initiating court, who passes them on to the obligee. The responding court must furnish a certified statement of payments made upon the request of the initiating court. The responding court also must forward a copy of its support orders to the initiating court.

Should the obligor or the obligee dispute the responding court’s order, URESA provides that either may request the attorney general to appeal the order to the initiating or responding state’s appellate court. Since any appeal would be in the public interest, the state justice department pays the appeal costs.

In the unlikely event that a responding court refuses to entertain a support action, an initiating Title IV-D agency may request that the Secretary of Health and Human Services seek certification to United States district court. The Secretary of the Department
of Health and Human Services grants certification on a showing that the responding state has not acted to enforce an existing order within sixty days of receipt.142

IV. ENFORCEMENT TECHNIQUES

Once an obligee has obtained either an administrative or judicial order, the obligee may proceed to enforce the order. This comment treats only a few of the many means available to force an obligor's compliance with an order.

A. Income Withholding

The most effective method for securing child support payments is for the obligor to authorize income withholding voluntarily. This method prevents arrearage so long as the obligor remains employed. This solution may not be acceptable to all obligors, since even though Montana law provides protection from discharge due to assignments,143 some stigma may attach to the action.

Montana's statutory scheme allows the Department of Revenue to institute income garnishment through administrative procedures.144 The Department uses income withholding to force compliance with any proper judicial145 or administrative support order.146 These provisions exist primarily to enforce child support obligations. However, the Department of Revenue may also use income withholding to force payment of interest on unpaid child support and maintenance to the custodial parent.147 The obligor may also face withholding to reimburse state agencies providing support assistance to the child.148

An order may also require withholding when an arrearage has accrued. Montana law provides the obligee two alternatives to impose wage withholding, a judicial process through district court149 and an administrative process through the Department of Revenue Child Support Enforcement Bureau.150

146. Id.
147. Id.
148. Id.
1. Judicial Withholding

The obligee, the guardian of the child to receive the support, or any of several state agencies\textsuperscript{151} may initiate the judicial process.\textsuperscript{152} The process cannot commence until the obligor has missed the equivalent of three month's support payments.\textsuperscript{153} On receipt of a petition alleging such an arrearage, the obligor receives a notice that an order will issue if the obligation remains unpaid after fifteen days.\textsuperscript{154} This notice also informs the obligor of his or her right to contest the proceeding.\textsuperscript{155} If the obligor denies the allegations, the court schedules a hearing to make a determination on the facts.\textsuperscript{156}

Once the court has determined the arrearage, or on the obligor's default, the court then orders the obligor's employer to initiate withholding.\textsuperscript{157} The court-ordered amount must be at least twenty-five percent of the obligor's income,\textsuperscript{158} but not exceed the federally prescribed limit.\textsuperscript{159} Essentially, the court-ordered installments must suffice to make the current child support payments due, and eliminate any arrearage within two years.\textsuperscript{160} At the court's discretion, it may also order a five dollar handling charge payable to the obligor's employer for each withholding.\textsuperscript{161} The court may also provide that withholding continue beyond the period necessary to pay off the arrearage.\textsuperscript{162} By statute, Montana law provides that income withholding for child support payments takes priority over any other garnishments, assignments or voluntary deductions, except those issued by the Department of Revenue.\textsuperscript{163}

2. Administrative Withholding

The administrative process provided by the Department of

\begin{itemize}
\item \textsuperscript{151} These agencies are the Departments of Revenue, Social and Rehabilitation Services, and Family Services.
\item \textsuperscript{152} \textsc{Mont. Code Ann.} § 40-5-303 (1987).
\item \textsuperscript{153} \textsc{Mont. Code Ann.} § 40-5-304 (1987).
\item \textsuperscript{154} \textsc{Mont. Code Ann.} § 40-5-305 (1987).
\item \textsuperscript{155} \emph{Id}.
\item \textsuperscript{156} \textsc{Mont. Code Ann.} § 40-5-307 (1987).
\item \textsuperscript{157} \textsc{Mont. Code Ann.} § 40-5-308 (1987).
\item \textsuperscript{158} \textsc{Mont. Code Ann.} § 40-5-309(1)(b) (1987).
\item \textsuperscript{160} \textsc{Mont. Code Ann.} § 40-5-309(1)(a) (1987).
\item \textsuperscript{161} \textsc{Mont. Code Ann.} § 40-5-309(2) (1987).
\item \textsuperscript{162} \textsc{Mont. Code Ann.} § 40-5-309(3) (1987).
\item \textsuperscript{163} \textsc{Mont. Code Ann.} § 40-5-310 (1987).
\end{itemize}
Revenue Child Support Enforcement Bureau offers several advantages over the judicial process. It is automatic, inexpensive to the obligee, and takes effect more rapidly than judicial withholding. Montana statutes provide that once an obligee has applied for assistance in securing child support, the Department automatically keeps track of the obligor's payments. If Department records indicate an arrearage equal to one month's support obligation, the Department must commence an administrative withholding procedure.

The administrative process attempts to fulfill due process requirements by assuring that the obligor receive notice personally or by certified mail. The notice must state the withholding amount and inform the obligor of the right to a hearing. To request a hearing, the obligor must file a written request with the Department of Revenue within ten days of service. The statute designates teleconferencing as the preferred hearing method, although the obligor may request an in-person hearing. The obligor must have the results of the hearing within forty-five days after receiving the notice.

If withholding is ordered, the Department of Revenue follows the same guidelines for amount determination used in the judicial process. Unlike judicial withholding, administrative withholding offers an advantage in that withholding automatically continues beyond the payment of any arrearage. Administrative withholding ends only when the obligee decides to end the Department of Revenue's involvement in the child support case, or the obligation and arrearage become extinct.

Income withholding will not be satisfactory in every support enforcement case. The obligor may be self-employed or unemployed making wage assignments and garnishment impossible. In these circumstances, the obligee should consider levying on the ob-

164. In AFDC cases, obligees automatically assign their rights to the support to the state. In Montana, the Department of Revenue Child Support Enforcement Bureau automatically attempts to enforce these support obligations, and by statute, the obligee must cooperate in the enforcement effort. Mont. Code Ann. § 40-5-204 (1987).
166. Id.
168. Id. The statute also limits the obligor's defenses to mistakes of fact at the hearing.
liger’s property. Also, resort to the Department of Revenue for state and federal income tax offsets presents another remedy. The most dramatic remedy for a child support arrearage is full collection by the Internal Revenue Service.

B. Liens and Execution

1. Liens Instituted by the Obligee

The Title IV-D amendments require that each state have in place some means for establishing a lien on the obligor’s property. Since Montana law provides no specific child support lien, the obligee creates a lien in the same manner as do other general lienholders on personal and real property. After the lien attaches, the obligor may pursue any of several actions. The obligor may pay the child support owed, in return for the obligee’s removal of the lien. The obligee may attempt to execute on the lien, or simply wait until the obligor sells the property. Finally, the statute of limitations may extinguish the lien.

A judgment lien based on a child support order is effective for ten years. Thus the lien must be renewed periodically before the statute runs. During the first six years of this period, the obligee can automatically receive a writ of execution. During the remaining four years of the lien’s effectiveness, the obligee obtains the writ by leave of the court.

2. The Department of Revenue’s Warrant for Distraint

When the Department of Revenue Child Support Enforcement Bureau represents the obligee, there is recourse to a more expedient lien to secure the support obligation. The Montana legislature extended the Department of Revenue’s state income tax lien, the Warrant for Distraint, to cover delinquent child support obligations. The Warrant for Distraint is an order issued by the


Department of Revenue to a sheriff or other agent\textsuperscript{180} directing satisfaction of the child support obligation.\textsuperscript{181} A Warrant may also include accumulated interest.\textsuperscript{182} This remedy becomes available thirty-one days after the obligor receives, and ignores, either the notice of debt or the notice of liability.\textsuperscript{183}

The Warrant for Distraint functions both as a lien\textsuperscript{184} and as a writ of execution.\textsuperscript{185} For the Warrant to act as a lien, the Department files the Warrant with the clerk of court where the obligor has real or personal property. The clerk adds the Warrant to the judgment docket, listing the obligor as a judgment debtor.\textsuperscript{186} Once filed, the Warrant becomes a lien, subjecting the obligor’s property to levy in the same manner as other judgments.\textsuperscript{187} Alternatively, the warrant is a writ of execution, which the Department may issue to a sheriff directly.

The Department may release any excess above the amount claimed by the Warrant for distraint to the obligor.\textsuperscript{188} Also the obligor has a right of redemption in this property.\textsuperscript{189} Further, the Department of Revenue Child Support Enforcement Bureau can also release a distraint on the obligor’s property if this will ease later collection.\textsuperscript{190}

\textsuperscript{180.} The statute directs the warrant to the sheriff “or to any agent authorized by law to collect [the support debt],” Mont. Code Ann. § 15-1-701(1) (1987). This is important because the obligor’s property may be in the hands of third persons. Mont. Code Ann. § 40-5-242 (1987) imposes civil liability on any person or entity failing to comply with the warrant for distraint. This liability amounts to the lesser of the amount listed in the warrant or the value of the property that the person or entity released to the obligor. Department attorney fees, interest and costs are also available. However, it is important to note that in Montana, when the obligee’s representative serves a notice on a bank or savings and loan association which has several branch offices, the notice is valid only as to the branch served. Mont. Code Ann. § 40-5-244 (1987).


\textsuperscript{183.} Mont. Code Ann. § 40-5-241 (1987). These notices are discussed supra, text accompanying notes 60 and 61.


\textsuperscript{189.} The obligor may redeem any property subject to distraint by paying the amount due plus reasonable attorney fees and costs to the Department of Revenue. The obligor may exercise this right of redemption any time while the Department of Revenue holds the property. Additionally, the obligor has until 240 days after a sale to satisfy the warrant. Mont. Code Ann. § 40-5-245 (1987).

C. Tax Offsets

Tax offsets provide a very effective means for obtaining child support payments. Federal law requires that Title IV-D agencies establish a procedure to intercept both state and federal tax refunds.\(^{191}\) To use the tax offset method, a Montana obligee must work through the Department of Revenue Child Support Enforcement Bureau.

1. Federal Tax Offsets

Federal guidelines establish distinct criteria for AFDC and non-AFDC cases.\(^{192}\) In an AFDC case, the arrearage must exceed $150.00 and represent at least three months' support payments before the obligee can use the federal tax offset.\(^{193}\) In a non-AFDC case, the arrearage must exceed $500.00 and represent an obligation only for child support and not for maintenance.\(^{194}\) If the arrearage meets these requirements, the Department of Revenue forwards a notification to the national Office of Child Support Enforcement.\(^{195}\) After verifying the notification, the national office transfers the request for tax offset to the Treasury Department.\(^{196}\)

Federal law entitles the obligor to two notices in federal tax offset cases. The first notice, provided by either the Title IV-D agency or the national Office of Child Support Enforcement, notifies the obligor that the obligation is past due, explains the right to contest the determination, and informs the obligor of available administrative review procedures.\(^{197}\) The Internal Revenue Service provides the second notice at the time of the offset.\(^{198}\) If the obligor filed a joint return, the Service also provides information to the joint-filer on the procedure to secure the proper share of a refund.\(^{199}\)

196. 45 C.F.R. 303.72(c) (1987).
199. Id. The non-AFDC obligee should take care before requesting a federal tax offset. If the Internal Revenue Service successfully offsets the obligor's withholding, it has three years from the filing date to audit and assess an additional tax. I.R.C. § 6501(a) (West Supp. 1988). Moreover, if the obligor has substantially understated his or her income, the Internal Revenue Service can conduct an audit within six years of the filing date. I.R.C. § 6501(e)(1)(A). Should the Internal Revenue Service assess the obligor additional taxes from
2. **Montana State Tax Offsets**

The Administrative Rules of Montana regulate the procedures for the state tax offsets. These rules apply to both the AFDC and non-AFDC cases which the Department represents. The obligation must arise from a contract, or court or administrative order. The Department then notifies the obligor of the impending offset and offers the opportunity for a hearing. The obligor has thirty days during which to respond, or the Department will complete the offset procedure. If the obligor so requests, the Department's Child Support Enforcement Bureau will schedule an administrative hearing. The State Tax Appeal Board hears appeals of fact.

3. **Interstate State Income Tax Offsets**

Federal law requires that the states work together in securing amounts owed under child support obligation through state income tax offset procedures. Under the federal guidelines, a state's Title IV-D agency may apply to another state to obtain the interstate tax offset. Consequently, the obligee must have made an assignment to the Title IV-D agency. The Title IV-D agency must confirm the overdue support amount and inform the responding state whenever the obligor makes substantial payments.

In non-AFDC cases unlike AFDC cases, the Title IV-D agency must inform the custodial parent that it intends to pursue interstate tax offset collection. With all interstate tax offsets, the initiating state must send advance written notice to the obligor including notice of procedures to contest the offset.

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*a previous year when a child support offset has occurred, the Service may try to recover the offset from the obligee to pay the obligor's tax liability. These tax assessment provisions apply to AFDC recipients; however, since the Montana Department of Revenue receives the Internal Revenue Service offset, it pays the additional federal tax resulting from a reassessment.*

200. **Admin. R. Mont.** 42.6.201-204 (1988).
204. *Id.*
205. **Admin. R. Mont.** 42.6.204 (1988).
209. 45 C.F.R. § 303.102(b)(1) and (b)(2) (1987).
211. 45 C.F.R. § 303.103(d) (1987). 45 C.F.R. § 303.103(e) (1987) requires that each state implement some procedure consistent with due process requirements, allowing the obligor to contest the offset. This regulation also requires that each state establish some proce-
D. Complete Collection by the Internal Revenue Service

Full collection by the Internal Revenue Service represents perhaps the most extreme collection effort available to the obligee. Only obligees who have made an application or a mandatory assignment to the state Title IV-D agency may use this remedy. The Title IV-D agency must certify the case to the Secretary of the Treasury. Additionally, federal guidelines impose several other eligibility requirements before a Title IV-D agency certifies a case. The obligee must have obtained a court or administrative support order; the obligor must have an arrearage of at least $750.00; and the obligee must have made previous reasonable efforts to collect the support debt.

Once the Title IV-D agency has determined that a case is eligible, federal law requires that the Title IV-D agency forward each request with an adequate identification of the obligor and a copy of all court and administrative support orders. The Treasury Department also requires a summation of the support enforcement techniques attempted, why they failed and why further action by the state Title IV-D agency would be futile. The requirement that the Title IV-D agency include a statement identifying and locating the obligor’s assets for a Treasury levy raises some problems. In most cases if the state Title IV-D agency can identify an obligor’s asset, it can attach that asset without recourse to Internal Revenue Service collection.

E. Contempt Proceedings

The decision to obtain a contempt order requires careful consideration because a contempt order imposes either jail time or a fine. Either penalty may ultimately prove counterproductive: a fine commandeers monies which might otherwise go to the obligee; a jail sentence lasting longer than a few days may keep the obligor from working, lessening the amount available to the obligee. However, under certain situations, a contempt order may provide the
dure to allow a person who has filed jointly with the obligor to protect his or her share of a refund.

212. 45 C.F.R. § 303.71(c)(1) and (c)(5) (1987).
216. 45 C.F.R. § 303.71(e)(2) and (e)(3) (1987). Each request must also contain identification information including the obligor’s name, social security number, address, and employment. 45 C.F.R. § 303.71(e)(1) (1987).
only means to convince the obligor to make support payments.

Two forms of contempt procedures exist: criminal and civil. County prosecutors rarely charge obligors with criminal contempt.\(^{219}\) Criminal contempt, with its requirement of knowingly acting with contempt for the court, will rarely provide a remedy for child support obligors. However, a civil contempt order can help convince an obligor of the necessity of making child support payments. Montana law provides that willful failure to comply with a court order constitutes contempt.\(^{220}\) Therefore, an obligor's willful disregard of court-ordered child support may be adequate cause for civil contempt order.

Statutorily, Montana provides two methods of proceeding with a contempt charge. The first method is a warrant of attachment.\(^{221}\) This warrant functions similarly to an arrest warrant.\(^{222}\) The other method is a show cause order.\(^{223}\) Both allow the court to impose a fine or a very short jail sentence.\(^{224}\) In either case the obligee or the obligee's representative prepares an affidavit stating that a support order exists, that the obligor had knowledge of the obligation, and that the obligor did not comply with the order.\(^{225}\) With either a warrant of attachment or a show cause order, the obligor must appear at a hearing to answer the contempt charges and may raise any defenses. Inability to pay constitutes the primary defense. The obligee will therefore need to demonstrate the obligor's financial ability to make support payments.\(^{226}\)

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\(^{219}\) As with all criminal actions, criminal contempt charges require instigation by a county attorney and full criminal procedure protection to the obligor. MONT. CODE ANN. § 45-7-309(1) (1987). Statutorily, criminal contempt means behavior aimed at interrupting court proceedings or "[impairing] the respect due to [the court's] authority." MONT. CODE ANN. § 45-7-309(1)(a) (1987).

\(^{220}\) MONT. CODE ANN. § 3-1-402(2) (1987); MONT. CODE ANN. § 3-1-403 (1987); MONT. CODE ANN. § 3-1-501(e) (1987).

\(^{221}\) MONT. CODE ANN. § 3-1-513 (1987).

\(^{222}\) MONT. CODE ANN. § 3-1-515 (1987) provides, "Upon executing the warrant of attachment, the sheriff must keep the person in custody . . . ." MONT. CODE ANN. § 3-1-514 (1987) requires the issuing judge to set a bail amount in the warrant. The obligor may pay this amount and be released at any time.

\(^{223}\) MONT. CODE ANN. § 3-1-513 (1987).

\(^{224}\) MONT. CODE ANN. § 3-1-519 (1987).

\(^{225}\) MONT. CODE ANN. § 3-1-512 (1987). Because the contemptuous behavior in this instance occurred out of the court's presence, an affidavit setting forth the pertinent facts is necessary. Note, however, that while MONT. CODE ANN. § 3-1-501(e) defines "disobedience of any lawful judgment, order or process of the court" as contempt, evidentiary problems may result if noncompliance with a foreign order is the basis for a contempt charge. See S. GARRISON, MONTANA URESA MANUAL 9-5, (1984) (available through the Montana Dep't. of Revenue, Helena, Mont.) for a discussion of this issue, and the specific items needed to show a prima facie case.

\(^{226}\) See HENRY AND SCHWARTZ, supra note 2, at 126, for a helpful discussion of the proof necessary to establish inability to make payments.
Ideally, the mere threat of a contempt order will coerce an intransigent obligor into fulfilling the support obligation. However, requiring the obligor to complete a long jail sentence may not be as effective as the court’s suspending all but two days of a sentence. The obligor can serve these two days on a weekend, receiving a taste of jail without threatening employment security. If the obligor continues to flaunt the court-ordered support, the judge may then reinstate the full sentence.

V. Choosing a Method of Support Enforcement

Currently Montana obligees have many methods available to enforce a support order. Obligees may represent themselves, hire a private attorney, contact the county attorney or apply to the Department of Revenue Child Support Enforcement Bureau for representation. Because of the wide range of remedies and the low cost, the Department of Revenue is usually the logical choice. Time considerations, however, may require quicker action than the Department can provide. If, for example, the obligor obtains temporary employment, the obligee may have to act before the Child Support Enforcement Bureau can. In such cases, an alternative, such as a show cause order for judicial withholding, may be advisable.

VI. Some Suggested Legislative Improvements

Many remedies exist to ensure that the obligor fulfills child support obligations. Yet even with the available procedures, the legislature can still improve child support enforcement.

A. New Federal Title IV-D Amendments

In the last few months, new federal law has been enacted to allow better child support enforcement. Many of the provisions of this federal enactment will require state legislatures to adopt new laws. The key provisions of the federal statutes treat mandatory

227. MONT. CODE ANN. § 3-1-519 (1987), provides a maximum penalty of five days in jail and fine of $500. Garrison suggests that the obligee or obligee’s representative set forth each contemptuous action individually, thus allowing the court to sentence the obligor to five days’ jail time for each action. GARRISON, supra note 225, at 9-7.

228. Of course, even the threat of a jail sentence may not move the most obstinate obligor. In such cases, a county attorney may file a complaint for criminal nonsupport under MONT. CODE ANN. § 45-5-621 (1987).

229. The Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988). This comment gives only a brief overview of the new law because the corresponding federal regulations have not been issued yet.
wage withholding in child support orders, the use of guidelines in setting child support orders with triennial reviews, and broadening information available to the Federal Parent Locator Service.

1. Mandatory Wage Assignment at the Time of the Initial Support Order

Perhaps the most effective means to enforce child support is to prevent an arrearage from occurring in the first place. Such a mandatory provision would also serve to alleviate the stigma which attaches to a child support wage assignment or garnishment. The new federal law requires that within two years of the Act’s passage, regardless of whether an obligor owes an arrearage, all new or modified child support orders must include mandatory wage withholding provisions.\textsuperscript{230} The amended statute provides two exceptions: in cases where a court or administrative process makes an affirmative determination that immediate withholding is not necessary;\textsuperscript{231} and in cases where the obligor and obligee have entered into an alternative arrangement in a written contract.\textsuperscript{232} The federal law requires that the states legislate mandatory withholding schemes for these two exceptions when the obligor has an arrearage equal to one month’s support.\textsuperscript{233} Moreover this law requires that the state establish a process to evaluate and act on withholding requests made by obligees.\textsuperscript{234} While these provisions apply mainly to support cases enforced by state agencies, the federal law also requires that mandatory wage withholding extend to all child support orders issued within five years of enactment.\textsuperscript{235}

Since all child support orders would contain such arrangements, obligors could feel less embarrassed about wage assignment.\textsuperscript{236} Ultimately mandatory wage assignments would reduce the burden on the court and administrative enforcement systems. It

\textsuperscript{236} Although some may argue that public embarrassment is an effective enforcement technique, mandatory wage assignment would help prevent arrearages and obviate the need for further enforcement methods.
would eliminate the need for a separate proceeding to enforce the provisions of the original child support order.

Of course, mandatory wage assignment arrangements will not eradicate enforcement problems. There will be many obligors who are self-employed or unemployed and therefore unreachable through wage assignment. However, such a provision will greatly reduce arrearages and enforcement difficulties.

2. Guidelines for Setting and Reviewing Child Support Awards

The new federal amendments also require that within two years each state adopt a plan to set and periodically examine minimum support award amounts.237 As well, within five years, the states must create some mechanism to review and adjust child support award amounts every three years.238 However, this procedure is not automatic; if neither parent has requested a review, no court or administrative process will examine and adjust the support amount.239

3. Additional Information Available for Child Support Enforcement

Congress has added state and federal wage and unemployment claims information to the Parent Locator Service.240 Also, to allow faster access to information about obligors, the new federal amendments mandate that each state require the social security numbers of each parent at the time of a child's birth.241 Although this information will not be placed on the birth certificate, the state must make the social security numbers available to the Title IV-D agency for child support enforcement purposes.242

B. Limitation of Matters Brought Before a Court when Establishing the Enforcement of a Support Order

Current Montana law limits the Department of Revenue Child Support Enforcement Bureau in the actions it may take in repre-

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239. Id.
242. Id.
senting the obligee. The Department may enforce only the existing child support order. Thus while the Department can address arguments such as the sufficiency of the obligor's income to make support payments or the validity of the support order itself, the Department cannot counter issues such as visitation and custody. When an obligor raises such arguments, the obligee must retain representation independent of the Department. In such situations, then, two attorneys represent the obligee: the Department's attorney to enforce the support order, and a private attorney to defend against modification. The appearance of the obligee's two representatives, litigating different aspects of the same order, results in increased confusion and expense.

Two possible answers readily appear. The legislature could either empower the Department of Revenue Child Support Enforcement Bureau to represent obligees in modification proceedings, or it could limit the issues raised in actions involving the Department.

Were the legislature to broaden the scope of Department's duties, the Bureau's attorneys would have to re-litigate issues supposedly resolved in the original decree. This solution would unify procedures and reduce logistical problems, but it would also require more personnel, with corresponding budget increases.

A more economical solution appears in the limitation of issues that the obligor may raise regarding the support order. The legislature could require that courts sever an enforcement action brought by the Department of Revenue Child Support Enforcement Bureau from the obligor's claims regarding custody and visitation. In such a case, a district court would order provisional enforcement

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243. The Department of Revenue Child Support Enforcement Bureau may also represent the obligee to establish or modify the initial support order. However these issues are beyond the scope of this comment.

244. An obligor may not raise visitation and custody issues in order to defeat a valid support order. However, where both the obligor and obligee appear at an enforcement proceeding, the obligor's raising these issues may lead to a modification of the support order.

245. This situation is further exacerbated due to problems the obligee faces in obtaining private counsel, especially in AFDC cases. Frequently attorneys associated with Montana Legal Service may be the only available and affordable counsel. Unfortunately, even though the Montana Bar has a high rate of cooperation with Legal Services, there are simply not enough lawyers to handle all the cases.

246. The term "resolution" is used even though MONT. CODE ANN. § 40-4-219 (1987) recognizes that the court granting the decree of dissolution has continuing jurisdiction over child custody matters.

247. One practical exception to this severance of issues would be establishing paternity in expedited administrative hearings. Currently Montana law does not permit the Department of Revenue to conduct an expedited paternity proceeding. Inclusion of this area of child support enforcement in the Department's jurisdiction would simplify procedures and reduce the case load in the court system.
of the existing order until final determination of all the issues. The Department's separate action would thus cover the obligor's non-enforcement defenses. If the court's later hearing reaffirmed the original order, the provisional enforcement would continue. If the court found the original order regarding custody flawed, it could modify the order to eliminate problems in the provisional order.

C. Inclusion of Attorney Fees and Court Costs in Support Awards

The foregoing changes could greatly aid the Department of Revenue Child Support Enforcement Bureau in enforcing future child support orders. However, a backlog of non-AFDC child support enforcement cases presently exists. Since the Department of Revenue Child Support Enforcement Bureau offers free services to all clients, many obligees begin their actions with the Department. Unfortunately, obligees using the Department often must wait long periods for action while child support arrearages continue to accrue.

The legislature could partially remedy the problem by imposing mandatory attorney and court costs on the obligor in successful support enforcement actions. Where the obligor has the financial capacity to pay both child support payments and the costs of litigation, private attorneys would then have an incentive to represent obligees who otherwise could not afford to pay for litigation. Such a remedy would help to reduce the burden on the Department of Revenue Child Support Enforcement Bureau. Imposition of litigation costs would also provide an economic disincentive to obligors who neglect child support duties or use delay tactics in enforcement cases.

VII. Conclusions

Obligees have many available techniques to enforce child support orders. However, not all of these enforcement options function well in every case. In many situations, liens are very ineffective methods, as obligors may not have sufficient property to pay both an arrearage and the costs of execution. Of course, in situations where the obligor is self-employed or unemployed but owns property, a lien may be the only practicable solution. However, state

248. Title IV-D agencies have federally mandated time schedules in which to complete the child support action. These time schedules do not apply to non-AFDC cases, however. Consequently, Montana's Title IV-D agency faces pressure to make AFDC cases a higher priority. See 45 C.F.R. § 303.101 (1987).
and federal tax offsets and complete collection by the Internal Revenue Service may be ineffective against obligors who have no property and little withholding surplus at tax time. Careful analysis of the obligor's economic situation will yield the best method of fulfilling a child support obligation.

The new federal legislation should also provide some relief to obligees. Changes such as mandatory wage withholding in all cases and extension of the Title IV-D agency's resources allow more avenues to reach the obligor. However, the Montana Legislature can always improve child support enforcement mechanisms.

The unfortunate fact remains that if an obligor chooses, he or she may frustrate even the most diligent enforcement attempt. Perhaps few obligors voluntarily give up employment and property to spite their child or children, yet this occasionally occurs. More often an obligor simply allows child support obligations to slide. In this latter case, the private attorney, county attorney, or Title IV-D agency attorney can generally take effective action using the battery of enforcement techniques available through both administrative and judicial avenues.