# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 53rd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN RUSSELL FAGG,** on February 12, 1993, at 8:00 a.m.

### ROLL CALL

**Members Present:**

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

**Members Excused:** Rep. Angela Russell

**Members Absent:** None

**Staff Present:** John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: HB's: 482, 335, 228, 496, 499
Executive Action: HB's: 411, 499, 496, 346, 157

### HEARING ON HB 482

**Opening Statement by Sponsor:**

**REP. JOHN C. BOHLINGER, House District 94, Billings,** introduced this bill to provide for civil contempt for failure to pay child support and presented testimony describing child support problems

and issues. **EXHIBITS 1 and 2.**

**Proponents' Testimony:**

**Mary Ann Wellbank, Administrator, Child Support Enforcement Services, Department of Social and Rehabilitation Services,** presented written testimony. **EXHIBIT 3**

**Diana Wertsuk, Interdepartmental Coordinating Committee for Women**, presented written testimony. **EXHIBIT 4**

**Opponents' Testimony:**

**Wilbur Johnson, a father trying to pay child support,** presented written testimony. **EXHIBIT 5**

**Questions From Committee Members and Responses:**

**REP. BOB CLARK** asked **Ms. Wellbank** whether any other states currently have similar legislation. **Ms. Wellbank** said that Alaska, Minnesota, and Wisconsin have employer reporting laws. The occupational license restriction is in effect in many states, three of which are Massachusetts, Arizona and California. **REP. CLARK** asked if any states have a reciprocal child support agreement, and **Ms. Wellbank** said the state of Montana is required to work with all states.

**REP. KARYL WINSLOW** asked **Ms. Wellbank** to discuss the staffing that may be involved, as this is a far-reaching piece of legislation, **Ms. Wellbank** said the Department of Social and Rehabilitation Services (SRS) currently has an administrative staff in place. SRS's current budget has money for contracted services. Thirty-three contract service FTE have been requested.

**REP. ELLEN BERGMAN** asked how this bill will be enforced, and **John McCray, Staff Attorney, SRS**, said that currently 25% of children are born to single parents, and one-half of the 25% end up on welfare. The intent of this bill is to attach responsibility where it belongs, and it provides additional opportunity to require employers to report to Child Support Enforcement Services the names of people who may have previously worked with many employers. Monthly recording requirements will provide a continual flow of information, and these people will be identified in a timely manner to help make an annual payment. The heart of this bill is to allow the suspension of any state-issued license for failure to pay support.

**Closing by Sponsor:**

**REP. BOHLINGER** provided letters of testimony from single mothers

who are owed child support. **EXHIBIT 6**

## HEARING ON HB 335

**Opening Statement by Sponsor:**

**REP. HOWARD TOOLE, House District 60, Missoula**, presented written testimony. **EXHIBIT 7**

**Proponents' Testimony:**

**Mary Ann Wellbank, Administrator, Child Support Enforcement Services, SRS**, presented written testimony. **EXHIBITS 8, 9, 10 and 11.**

**Peter S. Blouke, Ph.D., Director, SRS**, presented written testimony. **EXHIBIT 12**

**George Bennett, Montana Bankers Association**, presented written testimony. **EXHIBIT 13**

**Roger Tippy, Montana Independent Bankers**, presented written testimony. **EXHIBIT 14**

**Opponents' Testimony:** None.

**Questions From Committee Members and Responses:**

**REP. WINSLOW** asked **REP. TOOLE** if this bill was the result of a study carried out by Child Support Enforcement Services (CSES). **REP. TOOLE** said the bulk of his bill is the result of an ongoing administrative review of procedures. **REP. TOOLE** offered amendments to address the privacy question.

**REP. WINSLOW** asked **Ms. Wellbank** if the CSES has done a study to explain the overall impact. **Ms. Wellbank** said that a nationwide study of 38,000 child support cases identified key problems.

**REP. DUANE GRIMES** referred to amendment number 2 of **Mr. Tippy's** amendments; he was concerned about the order for subpoena, as a subpoena comes out of the court. **REP. TOOLE** intends that these amendments implement a change to an order rather than a request. Parents will not be subpoenaed; they will be served by mail.

**REP. VIVIAN BROOKE** asked **REP. TOOLE** whether continuing to protect financial institutions will eliminate the protection of children. **REP. TOOLE** replied that, while the right to privacy is a strong right, the right to support for the benefit of children is also very strong. The intention of this bill is to implement the policy that the person who hides his assets will be obligated to

pay support.

**REP. DIANA WYATT** asked **Mr. McCray, Staff Attorney, Child Support Enforcement Services**, to discuss the study of lien effects with the committee. **Mr. McCray** said there has been a considerable number of studies in other states having to do with liens as a tool. The lien process in Montana has not been very effective. Federal programs require states to have liens upon personal property. Montana presently already has that in the system but is trying to borrow ideas from other states to make that use easier to apply.

**REP. LIZ SMITH** said the lien law is already in existence, and this bill simply enhances that opportunity. She asked **Mr. McCray** specifically what the intention of this bill is. **Mr. McCray** said there are many different opportunities for hearings, and CSES is making the lien available anytime they reduce the child support obligation to some certain amount. That's the primary emphasis. Right now, in order to get the lien, CSES must duplicate the same hearing process.

Regarding banking institutions, the right to privacy is held in very high regard, especially in law enforcement circles.

**Closing by Sponsor**: None.

## HEARING ON HB 228

**Opening Statement by Sponsor**:

**REP. HOWARD TOOLE, House District 60, Missoula**, said this bill will improve the law on reciprocal enforcement of support to be broader and closer in line with the national trend for collection of child support. **REP. TOOLE** presented amendments. **EXHIBIT 15**

**Proponents' Testimony**:

**John McCray, Staff Attorney, Child Support Enforcement Services**, said there were weaknesses in the original bill. One of those problems is that when a person moves to another state, the state is not bound by the original support order. When an individual runs from state to state, it is possible to have from 6 to 12 conflicting orders. Jurisdictional conflicts cause a tremendous amount of litigation. The Interstate Commission visited various states and state health public hearings on how to handle this problem, and this bill is the resolution. When the bill was originally drafted, it was generic in its terms, and it didn't allow for states like Montana with a dual enforcement system, a court-based enforcement system, and an administrative-based enforcement system. Several revisions and amendments have been made to the original commission rights to incorporate the

separation of the functions. Afterwards, the Uniform Commissioners reviewed the draft to make sure it used standardized language between all the states. **REP. TOOLE** has further cleanup amendments. The major change is the separation of the administration system from the court system (two parallel systems).

**Wilbur Johnson, Johnson Advocacy, Great Falls**, presented written testimony. **EXHIBIT 16**

**Opponents' Testimony**: None.

**Questions From Committee Members and Responses**:

**REP. DAVE BROWN** said most uniform laws are designed to be the same in all states. He asked **REP. TOOLE** where this one came from and whether it is exactly like the laws in effect and proposed across the country. **REP. TOOLE** said that, with the amendments, this draft is approved as being a uniform law. He conveyed that the drafting of HB 228 was done by **Greg Petesch, Legal Services Director, Legislative Council**. After that, the first draft was reviewed by the Uniform Act Commissioners. The commissioners wanted to bring the bill back to its original format, and they improved it with the amendments.

**REP. BROWN** referred to the word "tribunal" on page 7, line 25 and asked if that definition is cast in concrete. **Mr. McCray** explained why tribunal is used in the bill. He said CSES presently has interstate applications that are administratively processed.

**Closing by Sponsor**: None

**HEARING ON HB 496**

**Opening Statement by Sponsor**:

**REP. DIANA WYATT, House District 37, Great Falls**, said there are no real substantive changes in this bill. The only substantive change is replacing the term "handicapped person" to "person with a disability."

**Proponents' Testimony**:

**David M. Rusoff, Attorney, Human Rights Commission**, presented written testimony. **EXHIBIT 17**

**Opponents' Testimony**: None

**Questions From Committee Members and Responses:** None.

**Closing by Sponsor:** None.

## HEARING ON HB 499

**Opening Statement by Sponsor:**

**REP. JOHN COBB, House District 42, Augusta,** explained that HB 499 states the Supreme Court shall appoint members of the Montana Bar as an examining board to assist in conducting the examination of applicants for admission to the bar. The board may not exceed seven members. The court may release, dismiss, or remove any member of the board and appoint other members at any time.

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:** None

**Closing by Sponsor:** None

## EXECUTIVE ACTION ON HB 411

**Motion: REP. BROWN MOVED HB 411 DO PASS.**

**Discussion:**

**Janet Jessup, Gambling Control Division Administrator, Department of Justice,** offered amendments.

**Mark Staples, Attorney, Montana Tavern Association,** offered amendments.

**Motion/Vote: REP. BROWN** moved the Department of Justice's amendments. Amendments passed 16-1 with **CHAIRMAN FAGG** voting no, and **REP. RUSSELL** excused from voting. See Standing Committee Report.

**Discussion:**

**REP. BROWN** asked **Mr. MacMaster** if Amendment 5 represents **REP. BILL STRIZICH'S** position. **Mr. MacMaster** said he doesn't believe **REP. STRIZICH** feels comfortable using amendment 5. **REP. STRIZICH** preferred to add language to subsection 3a, page 17, line 20 that

states the Justice Department may also adopt rules allowing a person to bring illegal gambling devices into the state for escort from the state.

On page 18, line 12, subsection iii would be amended to say, "the licensee has notified the department that illegal gambling devices will be brought into the state for export from the state." **Mr. MacMaster** says if the state has to notify the Department of Justice who is going to bring illegal gambling devices into the state, and receive authorization, it takes away from the Department's amendment that says the state may bring illegal gambling devices into the state. To amend that, it should let the state know it's being notified that illegal gambling devices are being brought into the state, and take out the language "receive authorization."

**REP. VOGEL** asked where gambling devices are exported, and how they are kept track of. **REP. BROWN** reported that the Justice Department should be authorized to set up those rules.

**CHAIRMAN FAGG** spoke against **REP. STRIZICH'S** concept amendment, and said the Department of Justice did make some changes to his amendment. **REP. STRIZICH** preferred to take out the language and receive authorization from the Department of Justice. **CHAIRMAN FAGG** said that if somebody is going to bring illegal gambling machines into Montana, that's acceptable. But he believes the Department of Justice should be aware of that, and authorize that, so they can track exactly what's going on.

**Motion:** **REP. BROWN** moved an amendment. Page 52, section 25, is one of the areas the Gaming Industry Department disagreed with.

**Discussion:**

Page 26, section 11, lines 13, 14, 20, and 21 opposes prize limits on promotion games of chance involving live card games. The second amendment strikes the language imposing promotion games of chance involving Bingo and Keno.

**Vote:** The question was called on **REP. BROWN'S** amendment. The amendment failed 9-8 with **REP. RUSSELL** excused from voting.

**Vote:** **HB 411 DO PASS AS AMENDED.** Motion carried unanimously 17-0; **REP. RUSSELL** was excused from voting.

## EXECUTIVE ACTION ON HB 346

**Motion/Vote**: **REP. JIM RICE MOVED HB 346 DO PASS** and moved an amendment to change the statute of limitations of the bill from one to three years, and to strike section 7 from the bill. This would leave the law the way it is, which is three years.

Amendment passed unanimously 17-0; **REP. RUSSELL** was excused from voting.

**Motion:** **REP. RICE** offered an amendment to strike the cap of $250,000 and raise it to $500,000 on non-economic loss.

**Discussion:**

**REP. RICE** said he does not believe that a $250,000 cap is sufficient coverage for non-economic damages, i.e., facial disfigurement.

**REP. TIM WHALEN** presented his view of how this bill is set up. He believes the entire concept of the bill was to make it virtually impossible to put a cap on non-economic damages.

**Motion:** **REP. WHALEN** moved a substitute motion to table the bill.

**Discussion:**

**REP. SCOTT McCULLOCH** asked either **REPS. WHALEN** or **RICE** to give the committee an estimated cost of a non-economic case. **REP. RICE** said most difficult cases are based on a one-third contingency fee, and the attorney will pick up one-third of the settlement of verdict as the fee. **REP. WHALEN** explained the problem with this bill is not the specific percentages, but anytime a case is evaluated, it is based upon the risk that an attorney is undertaking. If a client has massive medical bills, and the liability is relatively clear, the attorney will take that into account and offer a contingency fee. But if somebody has non-economic damages, there's a tremendous risk. In these types of cases, a higher contingency fee recognize that it may be a part of a relatively small recovery. The reality is, from an economic point of view, an attorney may not even take the case.

**Vote:** Motion to table failed 8-10. Those voting to table the bill were **REPS. BROWN, BROOKE, McCULLOCH, RUSSELL, SMITH, TOOLE, WHALEN** and **WYATT**. Those voting not to table the bill were **CHAIRMAN FAGG, REPS. VOGEL, BIRD, BERGMAN, CLARK, GRIMES, RICE, SAYLES, TASH** and **WINSLOW**.

**Discussion:**

Further discussion on the amendment of **REP. RICE** to raise the $250,000 cap to $500,000.

**REP. RICE** said he doesn't disagree with **REP. WHALEN'S** analysis. The focus of **REP. RICE'S** amendment is to simply raise the cap.

**Vote:** Question was called on **REP. RICE'S** amendment to raise the cap from $250,000 to $500,000. Amendment passed 16-2 with **REPS. BERGMAN** and **CLARK** voting no.

**Motion/Vote:** **REP. RICE** moved to strike section 5 from the bill.

Amendment passed 16-2 with **REPS. SAYLES** and **BERGMAN** voting no.

**Motion:** **REP. BROOKE** moved to strike section 6 from the bill.

**Discussion:**

**REP. BROOKE** said section 6 victimizes women/girls who don't have the courage or financial backing for proper medical care. They should be allowed every right through the courts when delivering a pregnancy. **REP. BROOKE** would like to have in law exactly what a women has to do should a baby be delivered disfigured.

**Vote:** The question has been called on the amendment to strike section 6 from the bill. Amendment fails 7-10.

**Motion:** **REP. BROWN MOVED HB 346 BE TABLED.**

**Discussion:**

**REP. McCULLOCH** said he lost most of his voice in an operation. He said that people don't realize how vulnerable they are until they lose a function they took for granted. **REP. McCULLOCH** further pointed out that if a cap is put on these liabilities, it will increase lawyer's fees. This bill is a contradiction, and he favors the table motion of **REP. BROWN.**

**Vote:** **HB 346 BE TABLED.** Motion carried 10-8. Those voting for the table motion were **REPS. BROWN, BIRD, BROOKE, GRIMES, McCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW** and **WYATT.** Those voting against the table motion were **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, RICE, SAYLES, SMITH** and **TASH.**

## EXECUTIVE ACTION ON HB 499

**Motion/Vote:** **REP. CLARK MOVED HB 499 DO PASS.** Motion carried unanimously 18-0. Bill will be placed on the consent calendar.

## EXECUTIVE ACTION ON HB 496

**Motion:** **REP. WYATT MOVED HB 496 DO PASS.**

**Motion/Vote:** **REP. WYATT** moved to adopt the **Human Rights Commission** amendments. Motion carried unanimously.

**Motion/Vote:** **REP. WYATT MOVED HB 496 DO PASS AS AMENDED.** The motion carried 18-0. Bill will be placed on the consent calendar.

## EXECUTIVE ACTION ON HB 157

**Motion:** **REP. VOGEL MOVED HB 157 DO PASS.**

**Discussion:**

**Mr. MacMaster** explained amendments. **EXHIBIT 18**

**REP. BROWN** referred to subsection 5 of page 3 and asked if the language provides for a spouse to have the vehicle returned. **Mr. MacMaster** said in the drug forfeiture law, and also in the bill as written, there is a statement saying that the judge at forfeiture proceedings can do anything he thinks necessary to protect the rights of innocent people.

**Motion/Vote:** **REP. VOGEL** moved the amendments. The amendments passed 13-4. **REP. RUSSELL** was excused from voting.

**Motion/Vote:** **REP. VOGEL MOVED HB 157 DO PASS AS AMENDED.** Motion failed on a 9-9 tie vote. Those voting to pass the bill were **CHAIRMAN FAGG, REPS. VOGEL BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH,** and **TASH.** Those voting not to pass the bill were **REPS. BROWN, BIRD, BROOKE, McCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW** and **WYATT.**

**Motion/Vote:** **REP. CLARK MOVED HB 157 BE TABLED.** Motion carried 10-8. Those voting to table the bill were **REPS. BROWN, BIRD, BROOKE, CLARK, McCULLOCH, RUSSELL, TOOLE, WHALEN, WINSLOW** and **WYATT.** Those voting not to table the bill were **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, GRIMES, RICE, SAYLES, SMITH,** and **TASH.**

**ADJOURNMENT**

**Adjournment:** 12:00 p.m.

Russell Fagg
**REP. RUSSELL FAGG, Chairman**

Beth Miksche
BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE Feb 12, 93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | | |
| Rep. Randy Vogel, Vice-Chair | ✓ | | |
| Rep. Dave Brown, Vice-Chair | ✓ | | |
| Rep. Jodi Bird | ✓ | | |
| Rep. Ellen Bergman | ✓ | | |
| Rep. Vivian Brooke | ✓ | | |
| Rep. Bob Clark | ✓ | | |
| Rep. Duane Grimes | ✓ | | |
| Rep. Scott McCulloch | ✓ | | |
| Rep. Jim Rice | ✓ | | |
| Rep. Angela Russell | | | ✓ |
| Rep. Tim Sayles | ✓ | | |
| Rep. Liz Smith | ✓ | | |
| Rep. Bill Tash | ✓ | | |
| Rep. Howard Toole | ✓ | | |
| Rep. Tim Whalen | ✓ | | |
| Rep. Karyl Winslow | ✓ | | |
| Rep. Diana Wyatt | ✓ | | |
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# HOUSE STANDING COMMITTEE REPORT

February 13, 1993



Mr. Speaker: We, the committee on Judiciary report that House Bill 496 (first reading copy -- white) do pass as amended and be placed on consent calendar .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Page 15, line 17.
Page 16, line 14.
Following: "sex,"
Insert: "marital status,"

-END-

Committee Vote:
Yes 17, No 5.

HOUSE STANDING COMMITTEE REPORT

February 12, 1993



Mr. Speaker: We, the committee on Judiciary report that House Bill 499 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: _____
Russ Fagg, Chair

Committee Vote:
Yes , No

HOUSE STANDING COMMITTEE REPORT

February 16, 1993



Mr. Speaker: We, the committee on Judiciary report that House Bill 411 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, page 1, lines 21 through 24.
Strike: "PROVIDING" on line 21 through "CONTRACTOR;" on line 24

2. Title, page 2, lines 9 and 10.
Strike: "23-5-324," on line 9
Following: "23-5-412," on line 10
Insert: "23-5-501,"
Strike: "23-5-611," on line 10

3. Page 7, line 1.
Following: "manufacturer"
Insert: ", distributor, or route operator"

4. Page 11, line 22.
Following: "device"
Insert: "or enterprise"

5. Page 12, line 15.
Following: "manufacturer"
Insert: ", route operator,"

6. Pages 16 and 17.
Strike: line 25 of page 16 through line 2 of page 17
Insert: "consider hearsay evidence approved by the hearing examiner in a prehearing conference at which a determination is made that the evidence possesses sufficient guaranties of trustworthiness and does not involve a question of the credibility of a witness or of the credibility of a witness's subjective observations or analysis."

7. Page 13, line 12.
Following: line 11
Insert: "(iii) the illegal gambling device will be exported from the state; and"
Renumber: subsequent subsection

Committee Vote:
Yes [illegible] No [illegible]

8. Page 19, lines 11 through 13.
Strike: "if the" on line 11 through "less" on line 13

9. Page 19, lines 15 through 17.
Strike: "if" on line 15 through "$300" on line 17
Insert: "upon conviction of a third or subsequent offense"

10. Page 27, line 19 through page 28, line 12.
Strike: section 13 in its entirety
Renumber: subsequent sections

11. Page 28, lines 16 and 19.
Strike: "game"
Insert: "card"

12. Page 28, line 19.
Following: "~~award~~"
Insert: "game"

13. Page 29, line 21.
Following: line 20
Insert: "Section 14. Section 23-5-501, MCA, is amended to read:

"23-5-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Sports pool" means a gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2, of this title, in which a person wagers money for each chance to win money or other items of value based on the outcome of a sports event or series of sports events wherein the competitors in the sports event or series of sports events are natural persons ~~or animals~~.

(2) "Sports tab" means a folded or banded ticket with a face covered to conceal a combination of two numbers, with each number ranging from zero through nine.

(3) "Sports tab game" means a gambling enterprise conducted on a card to which 100 sports tabs are attached that have 100 different combinations for which consideration in money is paid by the person purchasing each tab. A person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event as provided in 23-5-503.""

Renumber: subsequent sections

14. Page 29, line 23.
Page 30, line 24.
Page 36, line 7.
Strike: "The"
Insert: "Except as provided in subsection (6), the"

15. Page 30, line 17.
Following: "waive"
Insert: "the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or route operator and may waive"

16. Page 31, line 16.
Following: "waive"
Insert: "the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or distributor and may waive"

17. Page 32, line 9.
Following: "machine"
Insert: "and to pay out prizes won by players"

18. Page 34, line 5 through page 35, line 13.
Strike: section 19 in its entirety
Renumber: subsequent sections

19. Page 37, line 11.
Following: "waive"
Insert: "the license fee provided for in subsection (2) if the applicant is licensed as a distributor or route operator and may waive"

20. Page 52, line 15.
Strike: "21"
Insert: "20"

21. Page 52, line 18.
Strike: "21"
Insert: "20"

-END-

**HOUSE OF REPRESENTATIVES**

Judiciary COMMITTEE

**ROLL CALL VOTE**

**DATE** 2-12-93 **BILL NO.** HB 157 **NUMBER** 18

**MOTION:** Motion to table carried 10-8

| NAME | AYE | NO |
|---|---|---|
| Rep. Russ Fagg, Chairman | | ✓ |
| Rep. Randy Vogel, Vice-Chair | | ✓ |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | | ✓ |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | | ✓ |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | | ✓ |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | | ✓ |
| Rep. Liz Smith | | ✓ |
| Rep. Bill Tash | | ✓ |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
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**HOUSE OF REPRESENTATIVES**

Judiciary **COMMITTEE**

**ROLL CALL VOTE**

**DATE** 2-12-93 **BILL NO.** HB 496 **NUMBER** 18

**MOTION:** Motion to pass carried unanimously 18-0

| NAME | AYE | NO |
|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
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HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-12-93 BILL NO. HB 499 NUMBER 18-0

MOTION: Motion to pass carried unanimously, 18-0

| NAME | AYE | NO |
|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | |
| Rep. Randy Vogel, Vice-Chair | ✓ | |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | ✓ | |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | ✓ | |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | ✓ | |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | ✓ | |
| Rep. Liz Smith | ✓ | |
| Rep. Bill Tash | ✓ | |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
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**HOUSE OF REPRESENTATIVES**

Judiciary **COMMITTEE**

**ROLL CALL VOTE**

**DATE** 2-12-93 **BILL NO.** HB 346 **NUMBER** 18

**MOTION:** Motion to table carries 10-8

| NAME | AYE | NO |
|---|---|---|
| Rep. Russ Fagg, Chairman | | ✓ |
| Rep. Randy Vogel, Vice-Chair | | ✓ |
| Rep. Dave Brown, Vice-Chair | ✓ | |
| Rep. Jodi Bird | ✓ | |
| Rep. Ellen Bergman | | ✓ |
| Rep. Vivian Brooke | ✓ | |
| Rep. Bob Clark | | ✓ |
| Rep. Duane Grimes | ✓ | |
| Rep. Scott McCulloch | ✓ | |
| Rep. Jim Rice | | ✓ |
| Rep. Angela Russell | ✓ | |
| Rep. Tim Sayles | | ✓ |
| Rep. Liz Smith | | ✓ |
| Rep. Bill Tash | | ✓ |
| Rep. Howard Toole | ✓ | |
| Rep. Tim Whalen | ✓ | |
| Rep. Karyl Winslow | ✓ | |
| Rep. Diana Wyatt | ✓ | |
| | | |
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Opening Statement
Rep. John Bohlinger

EXHIBIT 1
DATE 2-12-93
HB 482

MY AWARENESS OF THE NEED FOR HOUSE BILL 482 CAME ABOUT DURING MY CAMPAIGN EFFORT, AND THROUGH THE CONVERSATIONS I HAD WITH THE PEOPLE OF HOUSE DISTRICT 94. FOR THOSE OF YOU WHO DON'T KNOW THE DEMOGRAPHICS OF MY DISTRICT, LET ME TELL YOU IT IS THE NORTH EAST PART OF THE OLD PART OF BILLINGS. IT INCLUDES MUCH OF THE CENTRAL BUSINESS DISTRICT, THE HOSPITAL CORRIDOR AND EASTERN MONTANA COLLEGE. LIKE MOST OLDER PARTS OF TOWN THERE ARE NEIGHBORHOODS THAT OFFER INEXPENSIVE HOUSING, AND I FOUND THAT IN MANY OF THESE HOMES ARE SINGLE WOMEN, LIVING WITH THEIR CHILDREN, IN POVERTY, BECAUSE THEY HAVE BEEN FINANCIALLY ABANDONED BY THEIR HUSBANDS OR THE FATHERS OF THEIR CHILDREN: BECAUSE OF THIS SITUATION THEY ARE FORCED TO LIVE EITHER ON WHAT FINANCIAL HELP THEIR FAMILIES CAN PROVIDE OR THEY ARE FORCED TO RELY ON OUR WELFARE SYSTEM. IN EITHER CASE THEY HAVE LOST SOMETHING OF THEIR DIGNITY, AND SENSE OF SELF WORTH.

THE CHILD SUPPORT ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES IS THE AGENCY OF STATE GOVERNMENT THAT IS RESPONSIBLE FOR ASSISTING THESE PEOPLE IN THEIR EFFORTS TO COLLECT THE COURT ORDERED CHILD SUPPORT PAYMENTS. LAST YEAR THEY DEALT WITH 41,000 SINGLE PARENTS. IN 1988 THEY WERE DEALING WITH 15,000 PEOPLE, THAT'S AN INCREASE OF 26,000 OR 175% MORE CASES IN 5 YEARS, AND THE CASELOAD WORK IS GROWING AT THE RATE OF ABOUT 500 A MONTH.

WHEN THE COURT ORDERS A PARENT TO MAKE CHILD SUPPORT PAYMENTS, AND THE PARENT EITHER IGNORES THE COURT ORDER OR FINDS HIMSELF UNABLE TO MEET THE OBLIGATION, THE STATE OF MONTANA THEN BECOMES THE SOURCE OF SUPPORT FOR THIS FAMILY. THE PARENTS WHO AREN'T

PAYING ARE COSTING THE STATES HUNDREDS OF THOUSANDS OF DOLLARS. LAST YEAR THE 41,000 CASES THE CHILD SUPPORT ENFORCEMENT DIVISION DEALT WITH HAD A VALUE OF $100 MILLION IN MONEY'S OWED TO MONTANA CHILDREN. LAST YEAR THE CHILD SUPPORT SERVICES COLLECTED ABOUT $20 MILLION IN LATE CHILD SUPPORT, AND A LITTLE OVER ONE HALF OF THE PARENTS WHO ASK THE DIVISION FOR HELP ARE ON WELFARE.

IT HAS BECOME APPARENT THAT THE PRESENT LAWS DEALING WITH DELINQUENT PARENTS ARE NOT WORKING, AND CONSEQUENTLY THE STATE OF MONTANA HAS HAD TO PROVIDE THE FINANCIAL AID TO THESE FAMILIES.

LET ME GIVE YOU AN OVERVIEW OF THE PROVISIONS OF MY BILL.

FIRSTLY WE WANT TO ESTABLISH PATERNITY. THE ISSUE OF PATERNITY ESTABLISHMENT HAS BEEN RECOGNIZED BY THE OFFICE OF CHILD SUPPORT ENFORCEMENT AS A MAJOR CONCERN. THE SHEER INCREASE IN THE NUMBERS OF CHILDREN BEING BORN OUTSIDE OF MARRIAGE DURING THE LAST 30 YEARS HAS COMMANDED ATTENTION. NEARLY 25% OF THE CHILDREN BORN IN MONTANA ARE BORN TO SINGLE PARENTS. CHILDREN OF NON MARRIED PARENTS NEED TO KNOW WHO THEIR PARENTS ARE.

PARENTAGE DETERMINATION DOES MORE THAN PROVIDE GENEALOGICAL CLUES TO A CHILD'S BACKGROUND: IT ESTABLISHES FUNDAMENTAL EMOTIONAL, SOCIAL, LEGAL AND ECONOMIC TIES BETWEEN PARENT AND CHILD. IT IS A PREREQUISITE TO SECURING FINANCIAL SUPPORT FOR THE CHILD, AND TO DEVELOPING A HEIGHTENED EMOTIONAL SUPPORT THE CHILD DESERVES.

PARENTAGE DETERMINATION ALSO UNLOCKS THE DOOR TO GOVERNMENT PROVIDED DEPENDANT'S BENEFITS, INCLUDING HEALTH INSURANCE, INHERITANCE, AND AN ACCURATE MEDICAL HISTORY FOR THE CHILD. MORE AND MORE OF THE CHILDREN OF UNMARRIED MOTHERS HAVE BECOME VULNERABLE TO THE GRIPS OF POVERTY. WE ALL KNOW THAT IN TODAY'S

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SOCIETY IT IS DIFFICULT, IF NOT IMPOSSIBLE, TO SUPPORT A CHILD ON ONE PARENT'S INCOME.

UPON THE BIRTH OF A CHILD TO AN UNMARRIED WOMEN, AT THE TIME OF BIRTH, THE ADMINISTRATOR OR PERSON IN CHARGE OF THE HOSPITAL OR THE MIDWIFE WHO ATTENDS THE BIRTH MUST PROVIDE AN OPPORTUNITY FOR THE CHILD'S MOTHER, AND ALLEGED FATHER TO COMPLETE AN ACKNOWLEDGMENT OF BIRTH OR PARENTAGE FORM. THIS DOCUMENT WILL BE PROVIDED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, AND IT WILL DESCRIBE THE RIGHTS AND RESPONSIBILITIES OF PARENTAGE, AND THE BENEFITS OF HAVING A CHILD'S PATERNITY ESTABLISHED, AND THE CHILD'S RIGHT TO RECEIVE SUPPORT.

THE SECOND SIGNIFICANT FEATURE OF THIS BILL IS THAT IT PROVIDES THAT UPON NOTICE BY THE DEPARTMENT OF S.R.S. AN EMPLOYER OR PAYOR DOING BUSINESS IN THE STATE MUST REPORT THE HIRING OR REHIRING OF AN INDIVIDUAL. AN EMPLOYER IS NOT REQUIRED TO REPORT THE HIRING OF AN INDIVIDUAL WHO THE EMPLOYER ANTICIPATES WILL BE WORKING LESS THAN ONE MONTH OR WILL BE SPORADICALLY EMPLOYED FOR LESS THAN 350 HOURS DURING ANY 6 MONTH PERIOD. AN EMPLOYER OR PAYOR IS NOT REQUIRED TO REPORT UNDER THIS BILL IF THE EMPLOYER EMPLOYEES OR CONTRACTS WITH FEWER THAN 10 PERSONS. AN EMPLOYER OR PAYOR OR UNION REQUIRED TO REPORT UNDER THIS BILL MUST SUBMIT TO THE DEPARTMENT MONTHLY REPORTS CONTAINING THE NAME, ADDRESS AND

SOCIAL SECURITY NUMBER OF EACH EMPLOYEE THAT WAS HIRED OR REHIRED OR RETURNED TO WORK DURING THE PRECEDING MONTH. FORTUNATELY THROUGH THE ACT OF THE 1981 LEGISLATURE THE CHILD SUPPORT ENFORCEMENT DIVISION WAS ABLE TO ACQUIRE A MAJOR COMPUTER SYSTEM

APPLICATION KNOWN AS SEARCHS, OR SYSTEM FOR ENFORCEMENT AND RECOVERY OF CHILD SUPPORT. THIS SYSTEM WILL AUTOMATE FINANCIAL MANAGEMENT OF CHILD SUPPORT COLLECTIONS, AND ABSENT PARENT LOCATION, PATERNITY ESTABLISHMENT, CASE ESTABLISHMENT, ORDER MODIFICATION, CASE MANAGEMENT AND INTERNAL PROGRAM EVALUATION. IN SHORT, WE WILL NOT HAVE TO EXPAND OUR COMPUTER SYSTEM TO IMPLEMENT THE FEATURES OF THIS BILL.

THE FINAL IMPORTANT NEW FEATURE OF THIS BILL DEALS WITH THE PERSON WHO HAS BEEN ORDERED TO PAY, BUT CHOOSES NOT TO DO SO. UNDER THIS PROVISION IF A PERSON OBLIGATED TO PROVIDE SUPPORT FAILS TO PAY AS ORDERED, THE PAYEE MAY PETITION A DISTRICT COURT, OR IN THE CASES OF IV-D OR WELFARE CASES,THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES MAY ISSUE A NOTICE OF INTENT TO SUSPEND ALL LICENSES ISSUED BY THE STATE OF MONTANA. THE NOTICE MUST BE SERVED UPON THE OBLIGOR PERSONALLY OR BY CERTIFIED MAIL. THE NOTICE MUST STATE THAT THE OBLIGOR'S LICENSE WILL BE SUSPENDED 60 DAYS AFTER SERVICE OF THE NOTICE UNLESS WITHIN THAT TIME THE OBLIGOR EITHER PAYS THE ENTIRE SUPPORT DEBT OR ENTERS INTO A NEW PAYMENT PLAN OR APPEARS AND SHOWS CAUSE WHY SUSPENSION A LICENSE IS NOT APPROPRIATE.

THE STATE GRANTS MANY TYPES OF LICENSES, INCLUDING DRIVERS LICENSES, PROFESSIONAL OR OCCUPATIONAL LICENSES AND HUNTING & FISHING LICENSES. RESTRICTION OR SUSPENSION OF THESE LICENSES WILL BE AN EFFECTIVE TOOL TO USE IN ENFORCEMENT. THE CONCEPT IS THAT ONE ARM OF THE STATE SHOULD NOT GRANT PRIVILEGES TO AN OBLIGOR IF HE OR SHE HAS VIOLATED STATE LAWS OR ORDERS OF ANOTHER ARM OF GOVT. OUR INTENT IS TO MAKE IT CLEAR THAT IT IS THE

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PUBLIC POLICY OF THE STATE OF MONTANA THAT THE SUPPORT OF CHILDREN IS OF THE HIGHEST PRIORITY IN THE ALLOCATION OF A RESPONSIBLE PARENT'S INCOME. OUR GOAL IS

NOT FOR PARENTS TO LOSE INCOME THROUGH LICENSE DENIAL, BUT TO MAKE FINANCIALLY RESPONSIBLE PARENTS AWARE OF THE RISK OF LOSING THEIR CHOSEN LIVELIHOOD IF THEY DO NOT MAKE A GOOD FAITH EFFORT TO PAY CHILD SUPPORT. PRESUMABLY, ONCE THEY RE AWARE OF THIS RISK, FINANCIALLY RESPONSIBLE PARENTS WILL BEGIN COMPLYING WITH SUPPORT ORDERS. WE FEEL THAT IT IS INCONGRUOUS FOR THE STATE TO ISSUE LICENSES TO PEOPLE WHO IGNORE A STATE COURT'S ORDER. SUSPENDING A LICENSE CONTINUES UNTIL THE SUPPORT ENFORCEMENT ENTITY ADVISES THE LICENSING AUTHORITY THAT THE SUSPENSION HAS BEEN STAYED OR TERMINATED. AN OBLIGOR WHO CONTINUES TO ENGAGE IN THE BUSINESS, OCCUPATION OR PROFESSION, OR OTHER LICENSED ACTIVITY WHILE THE LICENSE IS SUSPENDED UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE PUNISHED BY A FINE OF NOT LESS THAN $250 OR MORE THAN $500, BY IMPRISONMENT FOR A TERM NOT TO EXCEED 6 MONTHS OR BOTH.

THERE SHOULD BE A POSITIVE FISCAL NOTE ATTACHED TO THIS BILL, BECAUSE IF ENACTED INTO LAW THIS BILL WILL PLACE FINANCIAL RESPONSIBILITY FOR CHILDREN WHERE IT BELONGS, AND THAT IS WITH THE CHILD'S PARENTS... NOT THE STATE. THERE ARE A NUMBER OF PEOPLE HER TO SPEAK ON BEHALF OF H.B. 482: I WOULD LIKE TO NOW PROVIDE TIME FOR THEIR TESTIMONY. IF THE MEMBERS OF THE COMMITTEE HAVE ANY QUESTIONS ABOUT THIS BILL, I WILL BE GLAD TO ANSWER THEM, AND I WOULD APPRECIATE THE OPPORTUNITY TO CLOSE.

THANK YOU.

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# A REVIEW OF HOUSE BILL 482

introduced by Representative John C. Bohlinger

**AN ACT PROVIDING FOR CIVIL CONTEMPT FOR FAILURE TO SUPPORT, AN ACT REQUIRING EMPLOYERS, PAYORS OR UNIONS TO REPORT TO S.R.S. HIRING INFORMATION, AN ACT PROVIDING A PATERNITY ACKNOWLEDGMENT PROCESS, AN ACT PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES FOR FAILURE TO PAY SUPPORT.**

## SUMMARY OF H.B. 482

| | | | |
|---|---|---|---|
| I. | SECTION 1. | page 2, line 9, | FAILURE TO PAY SUPPORT = CIVIL CONTEMPT. |
| 2. | SECTION 2. | page 6, line 21, | DEFINITIONS. |
| 3. | SECTION 3. | page 8, line 24, | PAYORS TO PROVIDE INFORMATION TO DEPARTMENT. |
| 4. | SECTION 4. | page 12, line 2, | PATERNITY ACKNOWLEDGMENT. |
| 5. | SECTION 5. | page 12, line 25, | DEFINITIONS |
| 6. | SECTION 6. | page 16, line 21, | NOTICE OF INTENT TO SUSPEND LICENSE. |
| 7. | SECTION 7. | page 17, line 20, | HEARING -- ORDER SUSPENDING LICENSES |
| 8. | SECTION 8. | PAGE 19, LINE 10, | SUSPENSION, DENIAL, AND NONRENEWAL OF LICENSES. |
| 9. | SECTION 9. | PAGE 21, LINE 9, | STAY OF SUSPENSION OF LICENSE PAYMENT PLAN -- HARDSHIP. |
| 10. | SECTION 10. | PAGE 22, LINE 21, | TERMINATION OF ORDER TO SUSPEND LICENSE. |

## Montana child support statistics

One out of every four babies born in Montana in 1991 was born to unmarried parents, up from one out of five in 1984.

The child support enforcement division's staff of 120 people is now handling 38,000 cases of unpaid child support.

Delinquent parents owe their children in Montana an estimated $100 million.

A little over half of the parents who ask the division for help are on welfare.

Of the 11,000 Montana families who receive Aid to Families with Dependent Children, only 30 percent receive child support payments from an absent parent.

Last year, child support services collected about $20 million in late child support, up from $8 million in 1989.

Nationally, about half of all absent parents who have been ordered to pay child support don't.

Montana's support division expects to be handling over 53,000 cases of unpaid child support by 1995.

95 percent of the cases handled by the collection agency are fathers who fail to pay for their children's support.

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# DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

## CHILD SUPPORT ENFORCEMENT DIVISION

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
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PO BOX 5955
HELENA, MONTANA 59604-5955

**House Bill 482**
**Civil Contempt, Employer Reporting, Paternity Establishment and State License Suspension**

**Testimony**
**Submitted by Mary Ann Wellbank, Administrator**
**Child Support Enforcement Services**
**Department of Social and Rehabilitation Services**

The sponsor, Representative John Bohlinger has been very generous in allowing the CSED substantial input on this legislation. The CSED processes outlined in HB 482 can be absorbed in the executive budget recommendation, and would substantially strengthen the Montana child support enforcement program. We believe that collections would increase as a result of this legislation.

Representative Bohlinger's bill combines the strongest recommendations of the U.S. Interstate Commission on Child Support in its Report to Congress and the best practices of other states.

$100 million in back support is owed in Montana. The fact is, many parents purposely avoid paying support, and due to the limited resources of the courts and the division, are able to get away without paying.

The bill has four main sections:

**Employer Reporting of New Hires** Many parents seeking to avoid their support obligations move from job to job too quickly for income withholding to be initiated. They often work for cash, work as independent contractors or obtain seasonal, temporary employment. They remain one step ahead of the law. Employer reporting of new hires would expedite location of absent parents, and allow the division a head start in initiating income withholding orders. Alaska, Washington and Minnesota are three states who have employer reporting laws, and who have found them very effective.

**Hospital Paternity Establishment** Out-of-wedlock births in Montana are on the rise. Currently, 25% of all births are out of wedlock. Paternity establishment right at birth benefits the child, not only from a child support perspective but from a genetic and medical perspective as well . The child can be eligible for insurance coverage, inheritances, veteran's and social security benefits, and other benefits for which the father qualifies. Early paternity establishment can save the state money for blood tests and hearings

that may be conducted later. It also can save medicaid benefits, if the father has insurance coverage, and AFDC monies, if the father can provide adequate financial support. Several states currently have or are initiating in-hospital paternity establishment programs. In-hospital paternity establishment right at birth is successful because if the father is present, he is there because he is interested in the child. Having him acknowledge paternity at that time often engenders pride and responsibility. The CSED would work with hospitals to develop a program brochures which fully explain both parents' rights and responsibilities.

In Montana, we have recently met with the Montana Hospital Association in an effort to develop a pilot project with the hospitals who are interested. Some of the hospitals have expressed preliminary interest in participating in a pilot project.

**Civil Contempt**

**The civil contempt provisions of this legislation are extremely important to Montana. Under present law, although courts have the inherent power of contempt, it is very difficult to establish. Current law offers no specific guidance as to what constitutes contempt. This leads to disparity in application of the law, and frustration by custodial parents who are trying to collect child support. Without the specific guidance this bill offers, civil contempt for failure to pay child support is ineffectual. The new provisions set forth specific circumstances under which an obligor parent must be found in contempt for failure to pay child support. The proposed statute borrows from the laws of other states which hold that the mere failure to pay support, as ordered, is "per se" contempt. The burden of proof is then on the obligor rather than the individual trying to collect support. The revisions contained in this bill would make contempt into a useful, practical and cost effective remedy for application in those cases where there are chronic delinquencies or in self-employed cases where there are few other effective remedies.**

**License Suspension**

This provision of the bill would allow for suspension of all state issued licenses including professional and occupational licenses, drivers licenses, including commercial drivers licenses, and fish and game licenses.

This provision would allow for due process of law, and would provide for a stay of suspension for reason of financial hardship. The hearing and revocation process described in HB 482 is designed to minimize adverse clerical impacts on state licensing agencies, and place the primary administrative responsibilities on the CSED. The legislation would not interfere with state authority to issue disciplinary suspensions, nor would the other state agency be party to the hearing or required to defend either the licensee or the CSED.

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Just last week I received the January 1993 publication of the Child Support Report published by the federal Office of Child Support Enforcement. It contained the results of a recent study in which Massachusetts compared its automated child support files with its income tax records.

To quote the report,

> "The result was a revealing financial portrait of 72,000 obligated parents, most of whom are delinquent in their child support payments....One major finding was that tens of thousands of Massachusetts parents who are obligated to pay support have much greater means to pay support than previously believed....Of the total 72,000 parents in the study, 5,667 earned over $50,000 a year and ONE THIRD of them had children on AFDC....Almost 8,000 parents not paying child support, one in nine in the sample, either owned their own businesses or received income from partnerships..."

These are significant statistics. Although the raw numbers would be different in Montana, the conclusions of this study are applicable. Many parents who are delinquent in support have the means to meet their legal obligations and keep their children off welfare.

You may be aware that one of the biggest problems in Montana - and nationwide - with respect to child support is the inability to enforce obligations of self-employed obligor who do not cooperate in meeting their responsibilities. A significant portion of parents who are delinquent in support have the means to meet their legal obligations and keep their children off welfare. They might be working for cash or self-employed. A significant percentage of those hold state issued licenses - particularly driver's licenses, but also professional and occupational licenses.

Ideally, government agencies such as the CSED should not be involved in enforcing fundamental parental responsibilities. But the fact remains that many parents in Montana are not supporting their children. $100 million is owed in back support. Regrettably, many parents <u>can</u> afford to support their children. Many delinquent parents have income, assets, and an adequate standard of living, yet their children are subsisting at or below the poverty level.

Thank you for the opportunity to provide this testimony. CSED staff members and I are here as resources to answer any questions about this legislation.

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*Interdepartmental Coordinating Committee for Women* — *ICCW*

**SUPPORT TO STRENGTHEN AND ENHANCE**
**THE ENFORCEMENT OF MONTANA'S CHILD SUPPORT SYSTEM**
**February 12, 1993**

The Interdepartmental Coordinating Committee for Women (ICCW) strongly supports the efforts of the Department of Social and Rehabilitation Services, the Legislature and other interested parties to strengthen and enhance the enforcement of Montana's child support system. Our support is extended to bills being presented today and throughout this legislative session that will benefit state employees who rely on child support as part of their financial income.

In today's society, we have an ever growing number of single parent families with dependent children. Some of these single parents, men and women alike, work for Montana state government. Trying to raise a family on limited income with sporadic or no financial support through the child support system can result in the loss of productivity -- a hidden expense to state government. Managers have cited increased frequency of errors and an increased use of sick leave due to the stress caused by such situations.

The challenging financial circumstances for these state employees further affect their performance in the workplace by limiting their opportunities to invest in job training. As a result of tight state budgets, more employees who desire additional training will be paying their own training costs. In these instances, state government employees who are financially burdened by a lack of child support are at an unfair disadvantage.

There are state government employees who depend on financial support from state-funded programs such as AFDC, as a result of the lack of child support. There are situations when these employees cannot accept opportunities for job advancement that would result in increased pay, because the job advancement may jeopardize their qualifications in state government assistance programs and result in less family income. We ask that you help to remedy situations like this. Strengthening and enhancing the enforcement of Montana's child support system will reduce dependence on welfare and social programs and could result in an overall reduction of expenditures for the State of Montana.

I urge you to support this bill and bills like it as a way to insure that children grow up with their basic needs met and that families' needs do not close doors of opportunities for single parents. ICCW asks that you recognize the potential benefits to Montana state government and state government employees.

Contact: Becky Shaw, 444-6594

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What I am trying to do with this testimony and purposed legislation? It is quite evident by what has happened since the child support law went into effect in August of 1985. That says, that the State of Montana can take up to 50% of your wages, that is if you owe back child support. Regardless of what you make, the State of Montana does not have to leave you anything to live on. The State of Montana's attitude was, and still remains that they do not care how many people become homeless, just as long as they get their money. By January, I hope to have enough correspondence on the issue of child support, to prove just how devastating this law has become. How many lives have become ruined, and to show just how many families have been broken up over the issue of child support enforcement. I know first hand, what some of the circumstances are, as I have went through some of the same things myself. Do any of you know what degradation that we have to go through? Do any of you really care? Just as long as it does not effect you personally. It is my opinion that the State of Montana, in fact does not care in the least, as we are only low-income or working poor people.

What am I trying to do with my purposed legislation? I am trying to keep a lot of people from needlessly becoming homeless. First, if a man becomes homeless because he can not pay his child support. What becomes of his ex-wife and children? Usually, the ex-wife and children end up on AFDC. Or the worse kind of scenario possible, the family ends up on the street homeless, along with the man that could not pay his child support. So, all in all the law creates more problems than it solves, in some cases. Most of us fathers and mothers that pay child support are not dead beats. We want to pay child support, but due to circumstances beyond our control in some cases, we do not make enough money to live on, let alone pay child support. Most of us fathers and mothers try to live up to our obligations of paying child support. Granted, there are some fathers and mothers that are dead beats.

Good morning, Mr. Chairman and members of the committee.

My name is Wilbur Johnson. I reside at 400 4th Avenue North, Apt. # Great Falls, Montana, 59401. My mailing address is Post Office Box 617, Gre Falls, Montana, 59403.

I am a Low-Income Advocate and lobbyist. I stand before you today as former street person. Ah! You ask what this has to do with the issue before u Well, I am going to tell you, and it is quite relevant to this issue, I can assu you.

I was working for the City of Great Falls, Park and Recreation Departmen Park Maintenance Division. My position was light clean-up. I was working f $4.28 per hour, no medical coverage, only sick and vacation pay. I went to m supervisor, and ask him if there was any chance of getting medical coverage c more money. I was told "No way". He further told me that I was in a dead en job, and that I should look for a different job. My take home pay for two week was $134.00, after Child Support Enforcement got through taking their 50% c my check. So on the Second (2nd) of June, I resigned in front of the full Cit Commission. I then went to work for Hardee's in Great FAlls, at $4.35 pe hour. With only part time hours until a full time position became available. was going to work my way up to a supervisors position. I could of worked m way into a supervisors position in about one year, or a year and one-half. The after I had been with Hardee's for one year, I would be eligible for thei insurance. My first check was something like $95.00 for two weeks. I calle the Great Falls office of Child Enforcement, and told them what had happened I was told by that office and I quote "Mr. Johnson, we don't care if you have t live on the streets, that if you are working we will take 50% of your check. Yes, you guessed it. I had to quit my job, as I could not pay rent for m apartment.

I ended up on the streets from the First of July until about the tenth o August, when I got on General Assistance. I am now trying to get on SSI.

About two years ago, I had almost the same thing happen to me. Except, I did not wind up on the streets. I talked to a supervisor in the office of Great Falls Child Enforcement and she told me, and I quote "Mr. Johnson, we don't give a damn if you have to live in the Rescue Mission. If you are working we wil take 50% of your money".

I ask you now, Mr. Chairman, and ladies and gentlemen, What can be accomplished by making us street people? How many more men and in some cases women are going to become homeless over the issue of Child Enforcement? I know of at least 25 men and 4 women, yes, I said women that have become homeless over this issue.

Now, Mr. Chairman, and members of this committee, I ask you is this indeed the attitude of the state? Most of us fathers, and in some cases mothers are not dead beats. We admit that we owe the money and want to pay it. But at least have the common courtesy to leave us enough dignity, to at least maintain a roof over our heads.

On the eighth of September, being in deep depression and I mean deep

depression. I tried to commit suicide, by walking out in front of a car in Great Falls. I was so shaken by what I had tried to do, that I went to the emergency room of the Montana Deaconess Medical Center in Great Falls. I had a nervous breakdown and I spent one week in Two South.

After being released from the hospital, I started to lobby local legislators proposing legislation as follows:

A single man or woman should be allowed $500.00 per month, before anything is taken out of their check.

A person that has remarried and has children should be allowed $850.00 before anything is taken out of their check by Child Support Enforcement.

I feel bad that I can not give my daughter the money that she so badly needs.

I had a beautiful lady that was going to marry me until she found out that I was only clearing $134.00 for two weeks, was one of the major reasons that she called off the wedding. The part that really hurts is that I still love her so very much. Thanks to the state, I more than likely will never remarry. The state has taken my life and shattered it. The state has taken my health and shattered it, causing me to almost kill myself. How many more lives are going to be shattered? How many families will be broken up over this issue?

Place Insert

And in closing, Mr. Chairman, and ladies and gentlemen, I would like to ask you the question that I have been asked in a lot of correspondence that I have received on this issue and that is, and I quote, "What gives some of you people the right to play God with other people's lives?"

I thank-you for allowing me to appear before you to testify on this issue. I know that I have been a little long. I believe that these issues have to be brought to your attention.

Thank you,

Wilbur L. Johnson

Wilbur L. Johnson

Insert

Mr. Chairman, I would like to include something that is not in my original testimony.

I have a guaranteed student loan that I have not been able to pay on for two years, because of this child support issue. Will I end up by going to jail? Just because I can not pay on the loan.

I would like to offer a challenge to any legislator in the state, and that is. Sometime when you want a real startling experience, sit down and take off your shoes,and step into the shoes of a low-income, or working poor person, that has to deal with child support enforcement. I guarantee you, it will be a rude awakening to some. And to some, it will literally scare the hell out of you, finding out some of the conditions that we have to live under..

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Sue La Mere
2204 9th Avenue North
Billings, Mt. 59101

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In [illegible] I was divorced from James Roger [illegible] in Yellowstone County. My attorney was paid for by the county although I was not at that time on the welfare system. I had three children from that marriage. My oldest son Michael Dean [illegible] was born in [illegible], a daughter Jamie Kay [illegible] born in [illegible] and an infant daughter born just one month prior to the divorce in [illegible]. The attorney ordered a sum of [illegible] per month to be paid by him who did not show up for the divorce hearing. As I was a battered wife I did not persue the support from my ex-husband at the time of the divorce.

I worked two jobs trying to support and care for the children for the next year. Finally in frustration I gave up and applied for welfare. I was told in order to receive help from the state I had to sign a statement giving permission to the system to go after the father for child support and if any was collected the state would keep it to repay the amounts I received for welfare and food stamps. I signed the [illegible] [illegible] frustration or understanding. However the medical bills were piling up and keeping two jobs was beginning to take its toll on me. The only way a person could get help with medical then was to be on A.D.C. I learned very quickly how much I could work and still stay on the benefits given by the state. I turned down promotions and longer hours in order to meet state guidelines because even though the job advancements would have provided more money, it still would not have been enough to house, feed, cloth and pay the necessary medical expenses for three children. [illegible]

[illegible]

When the children were in high school the stigmatism of being on welfare in a small town (I was living in Red Lodge) became an issue. I persued and was successful in obtaining a job with the State of Montana. [illegible] because of a decent pay scale and medical insurance.

[illegible]

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good income Mr. Kendall was unable to force collection of any funds or force sale of property. Consequently I again learned to use the system within the limits of the law and began to educate the children. It took effort with both myself and them going to great lengths to stay in school. We did not get any welfare but used the financial aid system and the do without anything that isn't necessary to keep body and soul together system. My son dropped out of school and is a laborer, my oldest daughter graduated from Hay School with an associate degree in business and is now married, living in California and working for the Yurok Indian tribe as their office manager making $25,000 a year. My youngest daughter graduated from [illegible] with a degree in English and is working for [illegible] Bank in Billings. [illegible]

In 17 years all has [illegible] to point out some of the ramifications of this situation. First, my children were robbed of a carefree childhood. Each one went to work the summer before they entered highschool and worked through both high school and college. We never had a vacation. My children are very bitter towards their father. My son has changed his name from Birosky to Hammerel, my maiden name. It was extremely painful to watch as others their age got new clothing for school, had cars, (I didn't even own a car for those years), and took part in normal social events that my children did not have the money or time for. Three years before my youngest daughter graduated from high school I was hurt on the job and was unable to continue with the state. I [illegible]

What has all this done to me? Well I have been so busy trying to get the children a decent start in life that I have pretty well put my own situation in the back burner. [illegible] to provide for my retirement.

I hope this story of my struggle will have some bearing on the legislation [illegible]

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as I did, a way to use the system, or they choose to abuse the system, each of which is a far greater burden on the budget than finding and forcing the fathers to carry their own responsibilities. Children are raised either to believe fathers have no responsibility or to be bitter because they did. These same children are the victims of this crime as they struggle with self esteem and the financial impact of being abandoned.

Mary (Sue) LaMere

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DATE 2-12-93
HB 335

**House Bill 335**

**CHILD SUPPORT ENFORCEMENT DIVISION**
**SOCIAL AND REHABILITATION SERVICES**

**Sponsor: Representative Howard Toole**

The Child Support Enforcement Division (CSED) submits this composite bill as part of an overall plan to improve or enhance services offered to the children of Montana. The individual components of the proposal bill are as follows:

1. PROVIDING FOR ADDITIONAL FEES

Section 14 proposes to amend MCA Section 40-5-210 to broaden existing provisions for when and under what circumstances the CSED may collect a fee for services rendered. That is to say, under existing law a fee may only be charged to an obligor when the obligor's fault caused the CSED action. However, the CSED provides numerous services where the obligor's fault is not an issue. An example would be when a parent, either obligor or obligee, wants to modify a support order. Because there is no fault, the CSED is unable to charge a fee. A second example occurs when either an obligor or obligee requests CSED services such as immediate income withholding. In immediate income withholding cases, there is no delinquency. Therefore there is no fault, and consequently no chargeable fees. In short, with the rising costs of state provided services, it is not unreasonable to expect the person wanting a specialized service such as the CSED provides to pay, at least in part, for the costs of that service. Therefore, Section 14 provides for allocation of fees between obligor and obligee based either on fault or a request for services where no fault is an issue. For similar reason, Section 14 also provides for application fees, handling fees and late payment fees.

2. REQUIRING NOTICE TO CSED WHEN NOTICE REQUIRED TO DEPARTMENT. Section 11 and Section 25 respectively amend MCA Sections 40-5-202 and 53-2-613 to clarify where a person is required to give notice. Under existing law, those statutes require parents under some circumstances to give notice to the Department. The problem is that notice to the department is too general. Notice is often given to other divisions within the department but not specifically to the CSED. By giving such notice the parent is technically correct, however, the CSED is unaware of the notice and is unable to take timely action based on the notice. This problem is corrected by providing that the notice to the department is accomplished by giving notice to the CSED.

3. DEFINING SUPPORT ORDER TO INCLUDE TRIBAL COURTS. Section 10 amends MCA Section 40-5-201 to redefine "support order" to include orders issued by tribal courts. At present there is some ambiguity as to whether the CSED can enforce a tribal court order. Should

the courts decide this ambiguity against the CSED, children with orders entered by a tribal court could not receive CSED services.

4. EXTENDING SERVICES TO CHILDREN OVER AGE 18. Section 10 amends MCA Section 40-5-201 to redefine "child" to include 19 year old children plus any other child, regardless of age, if the child is mentally or physically handicapped and such incapacity began prior to the child reaching the age of 18 years. The intent of the amendment is to conform the definition of "child" to the powers of the District Court under MCA Section 40-4-208(5) to order support for children over age 18 years. Without the amendment, the CSED continues to be unable to enforce orders for support after the child attains age 18 even though the court order continues past that age.

5. REQUIRING PRIVATE BUSINESS TO SHARE INFORMATION. Section 12 amends MCA Section 40-5-206 to require all persons, businesses, unions and other private entities to cooperate with the CSED in locating absent parents and the absent parent's assets and income. Under present law, only governmental units are required to provide such cooperation. Without this amendment, the CSED, in many cases, will be unable to locate the absent parent or his or her assets. The information is there but the CSED has no way to compel it. Therefore, many children go without support because the CSED is limited in it's ability to obtain information that is readily available.

This proposed amendment also requires the CSED to maintain confidentiality of the information received.

6. ALLOWING CHILD SUPPORT TO FOLLOW CHILD. Sections 8 and 24 respectively amend MCA Section 40-6-117 and 40-4-204. The purpose of these changes is to clarify the law that child support payments are to follow the child. To explain, at present most support orders require child support to be paid to a specifically named person. If the child later goes to live with a third party, for example, a grandparent or aunt, or goes into foster care, many courts have held that support does automatically go to the third party . A modification or new support order is necessary. This is a time consuming and labor intensive procedure which can be made unnecessary by the proposed amendments and new statute.

7. ENHANCING EXISTING CHILD SUPPORT LIENS ON REAL AND PERSONAL PROPERTY. Section 27 creates a new law. Sections 19 and 20 amend MCA Section 40-5-242 and 40-5-247 respectively. Section 28 repeals MCA sections 40-5-241, 40-5-245 and 40-5-246. The purposes of these changes are to enhance existing procedures for imposing child support liens on an obligor's real and personal property. Such liens are required by federal regulations and the existing procedures do comply. However, existing procedures are limited to use of a process that is redundant to other remedies available to the CSED. By contrast, the proposed amendments create the lien whenever the CSED reduces a support order to a sum certain judgment. Unlike existing procedures, the lien would also apply,

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without further processing, to sum certain child support judgment entered by a District Court.

Under existing procedures there is a general judgment lien created by the support order. The lien applies to any real property owned by the obligor in the county in which the judgment is filed. If there is real property in another county, the CSED can file a transcript of the judgment from the original county to the other county where the property is located. This transcript creates the lien on the real property in the new county. The problem with this process is the CSED either has to know where real property exists and file the transcripts accordingly, or file a transcript in all 56 counties to get a blanket lien on any possible real property.

In contrast to this system, the proposed child support liens create a blanket lien against all real property wherever it lies in this state. To enable title researchers and other interested parties in discovering the existence of any liens, the bill also creates a central lien registry with the CSED.

In many cases, the easy imposition of liens will motivate a parent to keep a support obligation current. In other instances where there is a delinquency, the routine imposition of liens will result in eventual payment of support when the obligor attempts to sell or transfer the encumbered real or personal property.

The proposed amendments also provide for streamlining the "warrant for distraint" process which permits the CSED to more effectively enforce the support liens.

Additionally, for bankruptcy purposes, the lien has the priority of a "secured creditor" from the date the lien is perfected. The lien, however, is subordinate to any previously perfected lien, mortgage or later purchase money mortgage.

8. PROVIDING ADMINISTRATIVE CONTEMPT AUTHORITY. Section 16 amends MCA Section 40-5-226 to give the CSED the authority to enforce its own orders. Currently, the only remedy for enforcement of administrative orders is to take the matter to District Court. With only five attorneys available state wide, with 56 possible District Courts, and with the overall extent of the problem, the CSED does not have the resources to enforce its own orders. As a result, many obligors have ignored the administrative process to the detriment of children.

This amendment corrects the problem by giving the CSED the ability to enforce its orders through contempt powers. That is, if a person fails to obey an administrative order that person may be fined in an amount of up to $500 until he or she obeys. Although this procedure is denominated as "contempt", it is not the same as judicial contempt. Rather, the procedure comes under the administrative remedy known as "civil monetary penalty or (CMP)". This is not unprecedented in Montana. For example, the Board of Oil and Gas Conservation may levy a CMP from $5,000.00 per day up to $125,000.00 to enforce its orders. The Department of Justice

may enforce its gambling control orders by levying a CMP up to $10,000.00 for each violation.

9. CONSOLIDATING AND STANDARDIZING STATUTES OF LIMITATIONS FOR CHILD SUPPORT. Section 2 through 7 and section 21 respectively amend MCA Sections 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211 and 40-5-255. The purposes of the amendments are to consolidate and standardize all the various limitations which apply to child support into one uniform period. At present, limitation periods are different for each aspect of child support. For example, each installment of child support is an individual judgement upon which there is a statute of limitation of 10 years. Thus, when a child is 11 years old, the first year of unpaid support is lost due to the limitation period. There is a six year limitation on writs of execution to collect support except when there is a special permission of the Court. This is inconsistent with the foregoing 10 year limitation period. In short, the various limitation periods encourage obligors to avoid paying support. The longer they hold out, the more they benefit. Meanwhile the child goes without support he or she is entitled to receive. Under the proposed amendment, the uniform limitation period on child support actions would be 10 years from termination of the support order.

10. ALLOWING THE DEPARTMENT TO DISTRIBUTE INCOME WITHHOLDING PAYMENTS BETWEEN MULTIPLE OBLIGEES OF THE SAME OBLIGOR. Section 22 amends MCA Section 40-5-415 to give the CSED authority to distribute income withholding funds between obligees of the same obligor. Under present law, in multiple family cases, distribution of proceeds from income withholding is distributed to the first income withholding case. If the obligor has sufficient income, distribution goes to the second case, and so forth. The problem is that many obligors do not have sufficient income to provide for all former families. Consequently, only one family will receive support to the detriment of others. The amendment permits the CSED to develop rules which will permit distribution between all of the cases so that each obligee may receive some support.

11. ELIMINATING OBSOLETE PROVISION OF LAW. Section 9 amends MCA Section 40-5-118 to eliminate obsolete provisions of law. These provisions were supplanted by other law requiring the CSED to set up a central clearinghouse for all Title IV-D cases. This amendment was recommended by the Legislative Auditors office.

12. CORRECTING INCONSISTENT PROVISIONS.

A. Section 18 amends MCA Section 40-5-232 to conform to MCA Section 40-5-236. The latter statute provides that a blood test result fails to exclude an alleged father, if he continues to deny paternity the matter is referred to the District Court for ultimate trial. However, the wording of subsection (5)(F)(iii) of 40-5-232 makes it appear that referral for trial can occur before blood tests are taken. The proposed amendment conforms this statute with the obvious intent of the process, that is, to give the CSED an

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administrative method of ordering blood tests.

B. Section 11 amends MCA Section 40-5-202 to conform with MCA Section 40-5-203. The latter statute provides that the CSED will offer services to any person who applies for such services. "Any person" includes obligors as well as obligees.

The ability to provide services to both obligors and obligees is required by federal regulations. The problem is that the powers and duties enumerated in 40-5-203 are worded as if services are only provided to obligees. The proposed amendment clarifies those powers to include cases in which the obligor has applied for services.

13. CONFORMING INCOME WITHHOLDING TO OBLIGOR PAY PERIODS

Sections 8 and 23 amend MCA Section 40-4-204 and 40-6-117 by permitting the support obligation to be annualized and withheld on a weekly or bi-weekly basis to conform to the employer's payroll system. Without this change, employers will continue to have difficulty complying with income withholding orders.

14. PAYMENT OF DEBTS DUE THE DEPARTMENT

Section 28 creates a new statute to correct a problem experienced by the division. When submitting a check for child support payments to the division, some obligors write "paid in full" on the back. This is an attempt to compromise a larger arrearage. Since the division processes a large number of checks, the language on the back of the check is often missed and the division endorses the check. The endorsement can be interpreted to mean that the division has accepted the terms imposed by the obligor, and that the division agrees that the debt has been paid in full.

This statute provides that the division must enter into a separate legal agreement with the obligor to compromise any debt.

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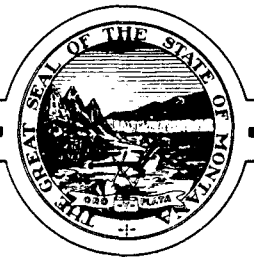
# DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

## CHILD SUPPORT ENFORCEMENT DIVISION



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**House Bill 335**
**An Act to Improve the Effectiveness and Efficiency of Child Support Enforcement Services**
**(CSED Omnibus Bill)**

**Testimony**
**Submitted by Mary Ann Wellbank, Administrator**
**Child Support Enforcement Services**
**Department of Social and Rehabilitation Services**

House Bill 335 is the Child Support Enforcement Division's omnibus bill. The purpose of this bill is to make child support enforcement in Montana more effective, and to enable more children to obtain the financial support of both parents. Enactment of this legislation will provide more effective resources to help locate absent parents or their assets and will facilitate collecting and distributing money to children.

With significant welfare cuts under consideration, increasing burdens on Montana taxpayers and the limited resources available to this state, the need for a strong child support enforcement program has never been greater. Nor has the demand for services ever been higher. The division caseload is skyrocketing at a rate of 500 new cases per month. The Child Support Enforcement Division currently handles 39,000 cases, and our caseload is expected to increase to 54,000 by the end of the 94-95 biennium. Last year, we collected $20 million in child support. Of this, $7.3 million was returned to the state and federal governments to help offset AFDC payments made to families, and $12.1 million was forwarded to custodial parents who do not receive AFDC.

In addition to its collections, the CSED actually saves Montana taxpayers money. National statistics show that for every $5.00 of child support collected for families who aren't on AFDC, $1.00 in public welfare benefits is saved. For last year, this cost avoidance translated to a savings for Montana citizens of $2.42 million. Additionally, the division achieved savings of $1,000,000 in medicaid costs by identifying private insurers responsible for childrens' medical coverage. The division also collects parental contributions on behalf of the Department of Family Services for children in foster care.

A major cause of children in poverty in the United States is an absent parent who is not paying support. In Montana, over $100 million in back support is owed. Think of what collection of

thatoutstanding debt would do to help our children attain a better standard of living and a brighter future.

I have prepared a hand-out to explain the major provisions of the bill and why they are needed. The first page of the hand-out is a very brief "at a glance" overview; the remaining pages describe the bill in greater detail. I would like to take a few moments of your time to explain the key provisions:

**(REFER TO HAND-OUT)**

Representative Toole has also submitted amendments, which are primarily to satisfy some concerns expressed by banking organizations with respect to sharing information with the CSED. ?

The 53rd Legislature has the unique opportunity to implement a major revitalization of the Montana child support enforcement system to recoup more AFDC, foster care and medicaid dollars, and to help more children obtain the support they deserve. The limited state resources and the public outcry for better, more efficient services make child support legislation necessary.

Strengthening the Montana Child Support Enforcement system will allow more families to make the transition from welfare dependency to self-sufficiency. House Bill 335 bill is crucial to that effort. Regular child support income can make the difference for many families.

Thank you for the opportunity to provide testimony on this legislation. CSED management and attorney staff members are here to answer your questions. We want you to be comfortable supporting this important legislation for Montana, and will provide any additional information you may need to make your decision.

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# HB 335 "AT A GLANCE"

**An Act To Improve Efficency and Effectiveness of Child Support Enforcement**

1. **Providing for Additional Fees, Statutorily Appropriating Fees & Penalties**
Section 14: Expands CSED ability to develop regulations to charge fees to both obligors, and obligees, when appropriate

2. **Requiring Notice to CSED when Notice Required to Department**
Sections 11 and 25: Requires legal notices to be served on CSED rather than Department in general

3. **Defining Support Order to Include Tribal Courts**
Section 10: Clarifies ambiguity in law to allow CSED to continue to enforce orders of tribal courts in cases where CSED has jurisdiction

4. **Extending Services to Children Over Age 18**
Section 10: Redefines child to include 19 year olds, plus mentally or physically handicapped children over 18. Many support orders go beyond the age of 18 for students or handicapped children, yet the division cannot enforce them.

5. **Requiring Private Businesses to Share Information**
Section 12: Requires businesses to provide information to assist the CSED in the location of an obligor or the obligor's assets

6. **Allowing Child Support to Follow Child**
Sections 8 & 24: Physical custody of some children frequently changes from a mother to a grandparent to an aunt. Allows support to follow child when physical custody changes without need for modification of order.

7. **Enhancing Existing Support Liens on Real and Personal Property**
Sections 19, 20 & 27: Simplifies administrative procedures, creates centralized record of liens in CSED

8. **Providing Administrative Contempt Authority**
Section 16: Gives the CSED authority to enforce its own orders by providing for fines of up to $500 for obligors who ignore orders to pay support.

9. **Consolidating and Standardizing Statutes of Limitations**
Sections 2 - 7, & 21: Current statutes of limitations vary and provide incentive for obligor to evade payment until limitation is reached. Will standardize statutes to uniform period of 10 years after support order is terminated

10. **Distribute Income Withholding Payments between Multiple Obligees**
Section 22: Allows the division to develop rules to distribute collections from an obligor's income to all the obligor's children of multiple obligees

11. **Eliminating Obsolete Provisions**
Section 9: Housekeeping. Should have been repealed when other law was enacted.

12. **Correcting Inconsistent Provisions**
Section 18: Conforms two contradictory statutes with intent of law

13. **Conforming Income Withholding Periods to Obligor Pay Periods**
Sections 8 & 23: Makes it easier for employers to comply with withholding requirements by permitting weekly or bi-weekly withholding of monthly ordered amounts.

14. **Payment of Debts due the Department**
Section 28: Requires written agreement of the department before a debt can be considered paid in full. Protects department. Simple (accidental) endorsement on back of check won't suffice as agreement.

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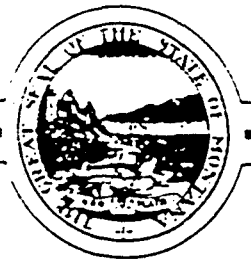
DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES



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**CHILD SUPPORT ENFORCEMENT DIVISION**

Mary Ann Wellbank, Administrator

**OPTIONS TO STRENGTHEN CHILD SUPPORT ENFORCEMENT SERVICES IN MONTANA**

OPTIONS TO STRENGTHEN CHILD SUPPORT ENFORCEMENT SERVICES

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Social and Rehabilitation Services
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Options to Strengthen Child Support Enforcement Services

LEGISLATION

**Hospital Paternity Establishment**

Early paternity establishment greatly reduces, if not eliminates the costs involved with locating alleged fathers, genetic testing, and hearings costs related to paternity establishments. Additionally, if the father has medical insurance through his employer, medicaid costs can be reduced. And the earlier paternity is established, the earlier a child support obligation can be established to help keep children off welfare. Additionally, paternity establishment has benefits to the child, including genetic history, and eligibility for medical insurance, eligibility for inheritances, veterans' benefits, social security and medical benefits.

Some states, including West Virginia and Washington require by law that hospitals have a program to establish paternity at the time of birth. Hospital staff meets with the parents, explains the rights and responsibilities of both parents, and asks the father to sign a voluntary acknowledgement of paternity. The hospital staff explains that the voluntary acknowledgement is sufficient documentation to begin child support order proceedings should the need arise. The Child Support office, and the Vital Statistics Bureau at the Department of Health work with the hospitals to train hospital staff, answer questions and develop appropriate forms and procedures. Both parents have been receptive to the process, and it seems to develop a bond between the father and child.

In some states hospitals receive a fee for each paternity established, in others they don't. Federal regulations permit a maximum reimbursement to hospitals of $20.00 per paternity established.

It is our understanding that Representative Bohlinger, is developing legislation which will include paternity establishment.

**Employer Reporting**

Often parents who successfully elude paying their child support change jobs frequently, work intermittently or work in seasonal or cyclical employment. Clearly, using wage withholding and other enforcement methods with this group is, at best, difficult. The parent's employment often terminates before the order to withhold income reaches the employer. Information obtained from quarterly reports to the state's employment security division is

frequently outdated.

The states of Washington and Alaska have each designed, and are currently testing, employer reporting programs to address this problem. Minnesota has been operating an employer disclosure program since 1987.

The Washington program, which began in July 1990, requires targeted industries to report all new hires and rehires to the state child support agency within 30 days of hiring. Washington considers its program to be cost effective, since for every dollar spent on it, $22 were collected.

The targeted industries are those which typically employ individuals on a seasonal or cyclical basis, hire and lay off as needed for projects, or have rapid turnover. They are: building construction, and other construction trades (highways, bridges, tunnels, sewers and power lines), manufacturing of transportation equipment, business services and health services. Several methods of reporting are available to those industries including: W-4 forms, employer designed forms, or using a toll-free telephone number.

After 18 months of operation, over 12,000 employers submitted over 216,000 reports of new hires and rehires. Eight percent of these matched with open cases of parents obligated to pay support, and of these, 87% had made no support payments during the previous year. Collections were successful among 43% of those who were non-payers the previous year, averaging $1,200 per parent over an eighteen month period.

It is our understanding that employer reporting is being included in Representative Bohlinger's legislation.

**Restrictions or Suspensions of State Issued Licenses**

The state grants many types of licenses, including drivers licenses, professional and occupational licenses, hunting and fishing licenses, general business licenses, liquor licenses, etc. Restriction or suspension of these licenses would be an effective tool for states to use in enforcement. The concept is that one arm of the state should not grant privileges to an obligor if he or she has violated state laws or orders of another arm of the government.

Several states, including California, Arizona and Vermont, tie the issuance or renewal of an occupational license to a positive child support payment history. The U.S. Commission on Interstate Child Support Laws recommends all states adopt such laws.

The Commission recommends that the licensing agency not issue a license to anyone who is wanted for failing to appear in a child support or parentage case as a result of indifference to a court

order or summons. Additionally, an obligor who is delinquent in his or her support duty should be required to work out a payment plan approved by a court or hearings office before a license is renewed or approved.

The CSED is proposing legislation, LC495, which would restrict occupational licensing. The proposal is designed to compel those license holders to meet their legal obligations to pay state ordered child support. The bill allows the CSED, after the licensee has opportunity for an administrative hearing, to issue non-disciplinary suspensions of professional and occupational licenses for failure to pay support owed <u>if</u> the license holder does not enter into, or fails to honor, a payment agreement. The legislation allows for consideration of financial hardship in determining whether or not to suspend a license. The legislation would not interfere with a board's authority to issue disciplinary suspensions, nor would the board be party to the hearing or required to defend either the license holder or CSED actions.

Our intent is to make it clear that it is the public policy of the State of Montana that the support of children is of the highest priority in the allocation of a responsible parent's income, and that licensees who fail to support their children should not enjoy the privileges and benefits granted by this state. Our goal is not for parents to lose income through license denial, but to make financially responsible parents aware of the risk of losing their chosen livelihood if they do not make a good faith effort to pay child support. Presumably, once they are aware of this risk, financially responsible parents will begin complying with support orders.

Other states have laws that mandate that motor vehicle departments may not issue or renew driver's licenses or vehicle registrations of non-custodial parents who have not paid child support or who fail to appear at proceedings involving child support issues. Additionally, some states have laws which require the licensing division to place liens against vehicles whose owners fail to pay child support.

The concept is that most people in the U.S. own one or more vehicles, which frequently represents the highest value asset a person owns. Vehicles provide necessary transportation for job hunting and chore-running. Sometimes the owner is extremely attached to the vehicle. With vehicles playing such an important role in the lives of Americans, controlling their use through licensing power gives the state a potent tool for child support enforcement. The U. S. Commission on Interstate Child Support recommends that drivers' licenses be suspended or not renewed if a parent has been found to be delinquent in paying support, or if he or she has failed to appear at a proceeding involving child support issues.

In Montana, an effective enforcement tool could extend to restriction of hunting and fishing licenses for failure to pay support.

It is our understanding that Representative Bohlinger, Billings, is including drivers' license and other licensing restriction legislation in his bill.

**Estate Liability**

The U.S. Commission on Interstate Child Support has recommended that states have laws providing that the estate of a deceased obligor will be liable for all child support past due and for all support due in the future with an appropriate discount for present value.

**Lottery Winnings, Lawsuits and Other Lump Sum Payments**

In Montana, the Montana Lottery is not required to report winnings to the CSED. Sometimes, the Montana CSED becomes aware of lump sum awards, and is able to issue a writ of execution for past due support owed. Insurance companies are not required to report settlements or policy payouts to the CSED, nor are settlements from lawsuits required to be reported. Oftentimes, settlements are made to parents who owe back support.

The U.S. Commission on Interstate Support recommends that payers of these types of lump sums be required to report winnings or settlements to the CSED and hold them until the CSED allows release. In cases where past due support is owed, the payor would be required to turn that amount over to the child support agency for repayment of past due support.

**Attachment of Retirement Funds**

Many parents have substantial savings intended for retirement. However, current needs of the child should supersede needs of the future. Parents should not be able to fund their future at the current expense of their children. Pensions and other retirement funds should be accessible to satisfy child support duties. Federal and state law should make it simple to garnish these funds.

In Montana, although the CSED can garnish wages, unemployment benefits and workers' compensation benefits, state law does not allow it to garnish Public Employee Retirement or disability benefits or Teacher's Retirement or disability benefits, even as they're being paid to the obligor.

**Grandparent Responsibility for Minor Children who are Parents**

In many cases, minor children have children. Some states have laws requiring the grandparents to support their grandchildren, if the

parents are minors and do not have adequate means of supporting their children. The grandparents' obligation to do so would terminate at the time the parents attain the age of majority.

**Seek Work Requirements**

Some parents do not pay child support because they are either unemployed or underemployed. Parents who in good faith have failed to find employment may need help from the government in locating a job. This would benefit unemployed parents, the parent's child and the taxpayer. Any legislation on this issue would need to be developed carefully, and coordinated with other SRS divisions and departments. Under the present CSED funding structure, the CSED could not administer this type of program.

Many courts use a work-release program for parents who are found in contempt. The contemnor must stay in jail or under "house arrest" during the time he or she is not working, but is allowed to work at a job during the day. This allows the contemnor to keep his job and continue to pay support.

**Collections/Withholding from Arrears**

Sometimes in the course of regular business, a custodial parent who is not on AFDC receives too much money. The CSED currently have no effective means of recovery. Examples are as follows:

When a Voluntary Payment Agreement is signed by an AFDC recipient who later stops receiving aid, the CSED can utilize only the Bad Debts offset process to recover as long as the individual receives no public assistance.

After a federal or state income tax refund has been held for 6 months the CSED is required by law to release it to the NAFDC Custodial Parent. In the case of federal refunds, the payor has 3 years to file an "injured spouse" claim and receive an adjustment, which is automatically withheld from funds being sent to the state for later offsets. The CSED is out the money and has to try and recover it from the custodial parent.

When the CSED has issued money to a N-AFDC Custodial parent from the other parent's personal check and that check is later returned for non-sufficient funds, we must try and recover the amount from the payee.

**Upgrade Criminal Non-support Laws**

In other states, criminal non-support laws have been upgraded to increase the penalties and to make application of the law easier for prosecutors. At the present time, Montana law is relatively ineffectual in the area of criminal non-support, and few county prosecutors will prosecute criminal non-support except in extremely

aggravated situations.

The law could be upgraded to make the crime a felony rather than a misdemeanor whenever arrearages exceed a specified amount.

**Clarify Contempt of Court**

Many states have specific laws governing what constitutes contempt in a child support case. Their laws hold that the mere failure to pay support as ordered is "per se" contempt. It is then up to the parent owing support to prove that he or she has not acted contemptuously. States which have this type of law have found it to be a very effective and useful remedy, particularly in cases with chronic delinquencies and for self-employed cases where there are few effective remedies.

At present, Montana law gives no statutory guidance to courts on this matter, and the burden of proof is put upon the proponent

**Administrative Contempt Authority**

The CSED Omnibus bill amends MCA Section 40-5-226 to hive the CSED the authority to enforce its own orders. Currently, the only remedy for enforcement of administrative orders is to take the matter to District Court. With only five attorneys available state wide, with 56 possible District Courts, and with the overall extent of the problem, the CSED does not have the resources to enforce its own orders. As a result, many obligors have ignored the administrative process to the detriment of children.

This amendment corrects the problem by giving the CSED the ability to enforce its orders through contempt powers. That is, if a person fails to obey an administrative order that person may be fined until he or she obeys. Although this procedure is denominated as "contempt", it is not the same as judicial contempt. Rather, the procedure comes under the administrative remedy known as "civil monetary penalty or (CMP)". This is not unprecedented in Montana. For example, the Board of Oil and Gas Conservation may levy a CMP from $5,000.00 per day up to $125,000.00 to enforce its orders. The Department of Justice may enforce its gambling control orders by levying a CMP up to $10,000.00 for each violation.

**Provide for Additional Fees**

The CSED Omnibus bill amends MCA Section 40-5-210 to broaden existing provisions for when and under what circumstances the CSED may collect a fee for services rendered. That is to say, under existing law a fee may only be charged to an obligor when the obligor's fault caused the CSED action. However, the CSED provides numerous services where the obligor's fault is not an issue. An example would be when a parent, either obligor or obligee, wants to modify a support order. Because there is no fault, the CSED is

unable to charge a fee. A second example occurs when either an obligor or obligee requests CSED services such as immediate income withholding. In immediate income withholding cases, there is no delinquency. Therefore there is no fault, and consequently no chargeable fees. In short, with the rising costs of state provided services, it is not unreasonable to expect the person wanting a specialized service such as the CSED provides to pay, at least in part, for the costs of that service. Therefore, Section 9 provides for allocation of fees between obligor and obligee based either on fault or a request for services where no fault is an issue. For similar reason, Section 9 also provides for application fees, handling fees and late payment fees.

**Require Private Businesses to Share Information**

The CSED Omnibus bill amends MCA Section 40-5-206 to require all persons, businesses, unions and other private entities to cooperate with the CSED in locating absent parents and the absent parent's assets and income. Under present law, only governmental units are required to provide such cooperation. Without this amendment, the CSED, in many cases, will be unable to locate the absent parent or his or her assets. The information is there but the CSED has no way to compel it. Therefore, many children go without support because the CSED is limited in it's ability to obtain information that is readily available.

**Enhancing Existing Child Support Liens on Real and Personal Property**

The CSED Omnibus Bill creates a new law, Section 11 and 12 amend MCA Section 40-5-242 and 40-5-247 respectively. Section 26 repeals MCA sections 40-5-241, 40-5-245 and 40-5-246. The purposes of these changes are to enhance existing procedures for imposing child support liens on an obligor's real and personal property. Such liens are required by federal regulations and the existing procedures do comply. However, existing procedures are limited to use of a process that is redundant to other remedies available to the CSED. By contrast, the proposed amendments create the lien whenever the CSED reduces a support order to a sum certain judgment. Unlike existing procedures, the lien would also apply, without further processing, to sum certain child support judgment entered by a District Court. In many cases, the easy imposition of liens will motivate a parent to keep a support obligation current. In other instances where there is a delinquency, the routine imposition of liens will result in eventual payment of support when the obligor attempts to sell or transfer the encumbered real or personal property.

**Consolidate Statutes of Limitations for Child Support**

The CSED Omnibus bill amends MCA Sections 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211 and 40-5-255. The purposes of the amendments are to consolidate and standardize all the various limitations which apply to child support into one uniform period. At present, limitation periods are different for each aspect of child support. For example, each installment of child support is an individual judgement upon which there is a statute of limitation of 10 years. Thus, when a child is 11 years old, the first year of unpaid support is lost due to the limitation period. There is a six year limitation on writs of execution to collect support except when there is a special permission of the Court. This is inconsistent with the foregoing 10 year limitation period. In short, the various limitation periods encourage obligors to avoid paying support. The longer they hold out, the more they benefit. Meanwhile the child goes without support he or she is entitle to receive. Under the proposed amendment, the uniform limitation period on child support actions would be 10 years from termination of the support order.

**Fraudulent Conveyance**

One problem in child support enforcement occurs when people owing child support transfer their assets to someone else. For example, a parent owing child support can transfer all assets to the spouse's name or to a trusted friend. It is very difficult for a parent seeking support or the child support agency to prove fraudulent transfer when it is suspected that the parent has transferred his or her assets to evade child support.

Child support collections could be improved if proving fraudulent transfer was made simpler for parents and agencies to use.

Social and Rehabilitation Services
Child Support Enforcement Division

Options to Strengthen Child Support Enforcement Services

BUDGET MODIFICATIONS

**Request to Reinstate Targeted (5%) FTE and Position Vacant as of 12/29**

The first modification of approximately $202,000 each fiscal year relates to restoring 7.42 FTE targeted for elimination if SFY94. One of the positions is a vacancy that was advertised and accepted in good faith prior to 12/29.

The other 6.42 positions are desperately needed to handle the skyrocketing caseload. Three of the positions are regional office caseworkers, the backbone of this program. Another two positions are clerical positions which have since been reclassified to strengthen two critical areas of support: administrative hearings, and budgeting. The two remaining targeted clerical positions are important links in supporting caseworking staff: one is responsible for locating absent parents, the other is a hearing assistant. All positions but one are currently filled by experienced incumbents.

**Request for Replacement 52nd Session Approved 14 Contract Staff with 14 State FTE**

This modification is cost neutral and relates to moving funding ($278,849 in SFY94 and $279,107 in SFY95) from Contracted Services (2100) to Personal Services and replacing 14 contracted staff authorized by the 1991 Legislature with State FTE. In the 1991 session, the legislature approved additional resources by allowing the CSED to contract for additional staff with the private sector, however we have had difficulty attracting and retaining qualified contracted workers. Constant turnover and retraining wastes both money and time. This modification is entirely cost neutral. Funding is already in the current level budget. It is just a matter of replacing contracted personnel with State FTE.

**Request to Fund Increased Communication Charges**

This modification of 45,000 and $49,000 respectively relate to costs necessitated by new federal regulations requiring increased communications with parents to advise them of amounts owing and amounts paid or collected, and the need to utilize a Voice response Unit for this requirement and to assist the public in timely response to routine questions.

EXHIBIT #10
DATE 2-12-93
HB-335



**Request for Replacement of Special Session II Approved Contract Staff with State FTE (33 in FY94, 45 in FY95) - Cost Neutral**

During Special Session II, the Legislature authorized $1.2 million for contracted services in the CSED budget. This appropriation has been carried forward in the SFY94 and SFY95 current level budgets as $1.2 million, and $1.45 million respectively. The purpose of this appropriation was to provide additional resources to the CSED to meet its continually growing caseload and stringent federal requirements. No additional FTE were requested, nor was a request for additional FTE included in the SFY94-95 executive budget request.

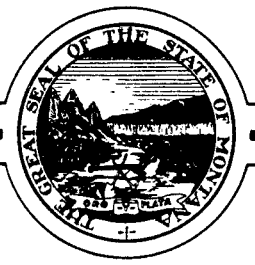
With the change of administration, SRS has reevaluated its original request, and is now requesting authorization to hire 33 new FTE in SFY94, and 12 additional FTE (45 Total) in SFY95. This request is entirely cost neutral and would only involve a transfer of $1,101,095 in SFY94 and $1,468,680 in SFY95 from Contracted Services (2100) to Personal Services, Operating, and Equipment.

Exhibit #11
February 12, 1993
HB 335

Exhibit #11 is information provided by the Child Support Enforcement Division of the Dept. of Social and Rehabilitation Services in support of HB 335. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT # 12
DATE 2-12-93
HB 335

# DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210

**HB 335**

**An Act Generally Revising Child Support Laws to Improve the Efficiency and Effectiveness of Child Support Enforcement Services (CSED Omnibus Bill)**

**Testimony of Peter S. Blouke, Phd.**
**Director, Social and Rehabilitation Services**

The purpose of HB 335 is to improve the efficiency and effectiveness of child support enforcement services in Montana. The need for this legislation has never been greater. The Child Support Enforcement Division caseload is growing at a rate of 500 new cases per month, and state resources are limited. With cuts in state welfare programs on the horizon, it is essential that we intensify our efforts to find alternatives to keep families, and children, out of poverty.

Many parents have the financial resources to support their own children, however they continue to evade their responsibilities. Tighter legislation is needed to locate these negligent parents and bring them into compliance with their legal and moral obligation to support their children. The fact is that in Montana alone, $100 million is owed in back support. Not only do parents break the law by failing to support their children, these parents force their children onto welfare, public assistance and medicaid - all at the taxpayer's expense, and to the detriment of people who are truly destitute without any other alternatives.

HB 335 incorporates several provisions necessary to make the Montana child support enforcement system work better. I urge you to support this important legislation.

Submitted by: Peter S. Blouke, Phd., Director
Department of Social and Rehabilitation Services

EXHIBIT # 13
DATE 2-12-93
HB 335

WITNESS STATEMENT

NAME GEORGE T. BENNETT BILL NO. HB335

ADDRESS 111N.Main, Arcade 3-I, Helena, MT 59601 DATE 2/12/93

WHOM DO YOU REPRESENT? MONTANA BANKERS ASSOCIATION

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: PLEASE SEE ATTACHED.

EXHIBIT # 14
DATE 2-12-93
HB 335

Amendments to HB 335
Proposed by Montana Independent Bankers

1. Page 23, line 16
   Following: "and"
   Insert: ", except as provided in (6),"

2. Page 25, line 16
   Following: line 15
   Insert: "(6) If a financial institution defined at 31-1-111 as a regulated lender possesses any information described in (2) (i), (j), or (k) with reference to a person who is the subject of inquiry by the department, the financial institution must respond only that it possesses such information. The department may then apply for an investigative subpoena under 46.4-301, setting forth in its prosecutor's affidavit the possible existence of assets or resources of the obligor and that the administration of justice requires the financial institution to disclose such information."

3. Page 62, line 3
   Following: line 2
   Insert: "and the clerk and recorder of the county in which real estate in which the obligor has an interest is located"

Explanation: Nos. 1 and 2 set up a procedure where the bank, etc. would tell a CSED investigator that it has information about the obligor's assets. CSED would then go to a court to obtain an investigative subpoena. The court would determine the existence of the compelling state interest and whether it outweighed the privacy interest of the depositor.

No. 3 would require a support lien on real estate to be filed for record with the county where the real estate is located, in order to facilitate title searches.

Roger Tippy
Feb. 15, 1993

# TESTIMONY OF
# MONTANA BANKERS ASSOCIATION

## HOUSE BILL 335

FEBRUARY 12, 1993

The Association recognizes that child support enforcement is a significant problem and that the Department should have strong enforcement powers.

Three features of this bill are of concern to us:

(1) Sections 2 through 7 give judgments for child support, as to the lien thereof, more time for enforcement, renewal, suit on, etc, thus more preferential treatment than judgments obtained by the Department of Revenue for taxes. Is this good public policy?

(2) Section 12 would give the Department, without a subpoena, the right to "request" certain information from any person or entity doing business in Montana.

Under Section 40-5-202(10) MCA the Department has subpoena power; we suggest that this is the tool to be used to reach financial information?

What about Montana's unique "Right of Privacy" under Article II, Section 10 of the Montana Constitution? Under this provision financial records dealing with electronic funds transfers can be obtained from financial institutions only by court order; Sections 32-6-105 and 106 MCA.

The federal government protects the privacy of financial records under the "Right to Financial Privacy Act", Public Law 95-630, 12 USC 3401 et seq. ; see attached sections.

(3) Sections 19, 20 and 27 will give the Department a new and different "lien" which is created by a filing, not in a public record, such as the judgment roll of the clerk of court, or the records of

EXHIBIT #14
DATE 2-12-93
HB-335

the Secretary of State, but internally with the Department itself.

The Department already has, under existing law, the power to issue a "Warrant of Distraint" and to file it with the clerk of court giving it the effect of a judgment; or if directed to the sheriff or other officer it has the effect of a writ of execution or garnishment.

The Association has always worked in the Legislature for centralized lien filing with electronic search so that all parties have easy access to lien information. Therefore we oppose allowing the Department to exercise, in addition to its "Warrant of Distraint" a lien which it creates by a filing with itself.

EXHIBIT #14
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§ A(7)—DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES (§ 205.4(d)(6))

(a) *Account information disclosure*

We will disclose information to third parties about your account or the transfers you make:

(1) where it is necessary for completing transfers.

or

(2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant.

or

(3) in order to comply with government agency or court orders.

or

(4) if you give us your written permission.

[*Note:* The Board of Governors of the Federal Reserve System adopted 12 C.F.R. Part 205, effective March 30, 1979.]

## ¶ 8.17 RIGHT TO FINANCIAL PRIVACY

### STATUTE

By Title XI of the Act of November 10, 1978 (Public Law 95-630), Congress enacted the "Right to Financial Privacy Act" for the purpose of limiting the right of a governmental agency to obtain and of a financial institution to provide information contained in a customer's records. Pursuant to Section 2101 of Public Law 95-630, this title takes effect on the expiration of 120 days after November 10, 1978, its enactment date.

**12 U.S.C. § 3401 Definitions.**

For the purpose of this title, the term—

(1) "financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a finan-

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this title.

(b) No such authorization shall be required as a condition of doing business with any financial institution.

(c) The customer has the right, unless the Government authority obtains a court order as provided in section 3409, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

(d) All financial institutions shall promptly notify all of their customers of their rights under this title. The Board of Governors of the Federal Reserve System shall prepare a statement of customers' rights under this title. Any financial institution that provides its customers a statement of customers' rights prepared by the Board shall be deemed to be in compliance with this subsection.

[Pub.L. 95-630, Title XI, § 1104, Nov. 10, 1978, 92 Stat. 3698.]

**12 U.S.C. § 3405 Administrative subpoena and summons.**

A Government authority may obtain financial records under section 1102(2) pursuant to an administrative subpoena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

EXHIBIT #14
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"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and to protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice of fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 have been complied with.

[Pub.L. 95-630, Title XI, § 1105, Nov. 10, 1978, 92 Stat. 3699.]

**12 U.S.C. § 3406 Search warrants.**

(a) A Government authority may obtain financial records under section 3402(3) only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose:
You may have rights under the Right to Financial Privacy Act of 1978."

(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which

EXHIBIT # 15
DATE 2-12-93
HB 228

Amendments to House Bill No. 228
First Reading Copy

Requested by Representative Toole
For the Committee on Judiciary

Prepared by Greg Petesch
February 9, 1993

1. Title, line 11.
Following: "SECTIONS"
Insert: "40-4-210,"

2. Title, line 13.
Following: "40-5-142,"
Insert: "40-5-202, 40-5-226, 40-5-231, 40-5-263,"
Following: "40-5-272,"
Strike: "AND"

3. Title, line 14.
Following: "40-5-431,"
Insert: "AND 40-6-109,"

4. Page 1, line 20.
Following: line 19
Insert: "WHEREAS, the United States Commission on Interstate Child Support and the National Conference of Commissioners on Uniform State Laws intend [section 21] to require a state support enforcement agency, in a Uniform Interstate Family Support Act (UIFSA) proceeding, to provide locator services upon the request of any individual; and

WHEREAS, the Department of Social and Rehabilitation Services is charged under [section 21] with providing locate services and does not receives a state general fund appropriation for providing locator services; and

WHEREAS, in enacting [section 21] the Legislature of the State of Montana intends the Department of Social and Rehabilitation Services to establish a fee schedule under 40-5-210 for locator services provided to an individual under [section 21]."

5. Page 3, lines 21 and 22.
Following: "<u>part</u>" on line 21
Strike: remainder of line 21 through "⊥" on line 22

6. Page 3, line 24.
Strike: "<u>or</u>"

7. Page 3, line 25.
Following: "<u>Act</u>"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

8. Page 4, line 22.
Strike: "."
Insert: "or"

9. Page 4, line 24 through page 5, line 1.
Following: "obligee" on page 4, line 24
Strike: remainder of page 4, line 24 through "Act" on page 5, line 1

10. Page 5, line 4.
Following: "individual"
Strike: remainder of line 4

11. Page 5, lines 6 and 7.
Following: the first "child" on line 6
Strike: remainder of line 6 through "Act" on line 7

12. Page 5, lines 19 through 21.
Following: "." on line 19
Strike: remainder of line 19 through line 21 in their entirety

13. Page 6, lines 6 through 8.
Following: "part" on line 6
Strike: remainder of line 6 through "Act," on line 8

14. Page 6, line 9.
Strike: "or"

15. Page 6, line 10.
Following: "Act"
Insert: ", or a proceeding initiated by the department of social and rehabilitation services under 40-5-263"

16. Page 7, line 22.
Strike: "health insurance,"

17. Page 8, lines 5 through 11
Following: "." on line 5.
Strike: strike remainder of line 5 through line 11 in its entirety

18. Page 11, lines 9 through 13.
Strike: subsection (3) in its entirety

19. Page 12, lines 7 and 8.
Following: "state" on line 7
Strike: remainder of line 7 through "with" on line 8
Insert: "pursuant to a law substantially similar to"

20. Page 12, lines 20 and 21.
Following: "has" on line 20
Strike: remainder of line 20 through "has" on line 21

EXHIBIT #16
DATE 2-12-93
HB-228

21. Page 13, lines 15 through 18.
Following: "(2)" on line 15
Strike: remainder of line 15 through "." on line 18

22. Page 14, lines 2 and 3.
Following: "(3)" on line 2
Strike: remainder of line 2 through ", a" on line 3
Insert: "A"

23. Page 14, line 4.
Following: "state"
Insert: "that lacks continuing, exclusive jurisdiction over a spousal support order"

24. Page 16, lines 1 and 2.
Following: "~~person~~" on line 1
Strike: remainder of line 1 through "to" on line 2

25. Page 16, lines 6 and 7.
Following: "~~person~~" on line 6
Strike: remainder of line 6 through "to" on line 7

26. Page 19, line 9.
Strike: "obligee"
Insert: "individual"

27. Page 20, line 8.
Following: "~~the~~"
Insert: "(1)"

28. Page 20, line 16.
Strike: "(1)"
Insert: "(a)"

29. Page 20, line 21.
Strike: "(2)"
Insert: "(b)"

30. Page 21, line 4.
Following: "."
Insert: "(2) The department of social and rehabilitation services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4[, and 5]. In all other cases, the district court is the initiating tribunal."

31. Page 21, lines 9 through 12.
Following: "shall" on line 9
Strike: remainder of line 9 through "," on line 12

32. Page 23, line 4.
Following: "."
Insert: "(6) The department of social and rehabilitation services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided

in 40-5-263. In all other cases, the district court is the responding tribunal."

33. Page 24, line 2.
Following: "tribunal,"
Insert: "promptly"

34. Page 24, line 5.
Following: "attorney,"
Insert: "promptly"

35. Page 24, line 9.
Following: "create"
Insert: "or negate"

36. Page 24, line 13.
Following: line 12
Insert: "(4) For purposes of this part, the department of social and rehabilitation services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4[, and 5]. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

37. Page 25, line 3.
Strike: "<u>and</u>"

38. Page 25, line 6.
Following: "states"
Insert: ";"

39. Page 25, line 12.
Strike: "."

40. Page 26.
Following: line 7
Insert: "(3) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security."

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41. Page 26, line 24.
Strike: "obligee"
Insert: "individual"

42. Page 27, line 3.
Strike: "obligee"
Insert: "individual"

43. Page 27, lines 4 and 5.
Strike: "obligee"
Insert: "individual"

44. Page 27, lines 23 and 24.
Following: "a" on line 23
Strike: remainder of line 23 through "Act" on line 24
Insert: "support enforcement"

45. Page 28, lines 9 through 11.
Following: "(1)" on line 9
Strike: remainder of line 9 through "40-5-210" on line 11
Insert: "The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part"

46. Page 28, line 12.
Strike: "In all other cases, if"
Insert: "If"

47. Page 29, line 6.
Following: line 5
Insert: "(4) The standardized schedule of fees established by the department of social and rehabilitation services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

48. Page 29, lines 8 and 9.
Strike: "finally" on line 8
Insert: "previously"
Following: "determined" on line 8
Strike: remainder of line 8 through "or" on line 9

49. Page 29, lines 18 and 19.
Following: "forms" on line 18
Strike: remainder of line 18 through "agencies" on line 19

50. Page 30, line 15.
Strike: "an appropriate"
Insert: "a"

51. Page 31, line 25.
Strike: "authorized by law to receive support payments"

52. Page 32, line 2.
Following: "order"

Insert: "as directed under this part"
Following: "or"
Strike: "appropriate"

53. Page 33, lines 2 through 4.
Following: "(1)" on line 2
Strike: remainder of line 2 through ", a" on line 4
Insert: "A"

54. Page 33, line 7.
Strike: "the department"
Insert: "a support enforcement agency of this state"

55. Page 33, line 8.
Strike: "department"
Insert: "support enforcement agency"

56. Page 33, lines 16 and 17.
Strike: "department" on line 16
Insert: "support enforcement agency"
Following: "to" on line 16
Strike: remainder of line 16 through "4" on line 17
Insert: "this part"

57. Page 34, line 22 through page 35, line 1.
Following: "state" on page 34, line 22
Strike: remainder of line 22 through "cases" on page 35, line 1
Renumber: subsequent subsections

58. Page 35, line 2.
Strike: "clerk of"
Insert: "department of social and rehabilitation services pursuant to 40-5-263 or to"
Following: "the"
Insert: "district"

59. Page 44, line 15.
Strike: "and enforce"

60. Page 44, lines 16 and 17.
Strike: "request or" on line 16
Following: "registration"
Strike: remainder of line 16 through "part" on line 17
Insert: ", for the purpose of enforcement"

61. Page 45, lines 4 through 9.
Following: "law" on line 4
Strike: remainder of line 4 through "1" on line 9

62. Page 45, line 10.
Following: line 9
Insert: "(3) A proceeding to determine parentage directed to:
(a) the department of social and rehabilitation services from an initiating state pursuant to 40-5-263 and this part is

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subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

63. Page 45, line 25.
Following: ";"
Insert: "or"

64. Page 46, lines 2 through 5.
Strike: line 2 through "order" on line 5
Insert: "40-5-231"

65. Page 48, line 15.
Following: line 14
Insert: "**Section 52.** Section 40-4-210, MCA, is amended to read:

"**40-4-210. Child support jurisdiction -- nonresident ~~parent~~ individual.** A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident ~~parent~~ individual or the individual's guardian or conservator in a child support determination in the initial or modification decree if:

(1) the ~~nonresident parent has resided with the child in~~ individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(2) ~~(a)~~ the ~~nonresident parent maintained a marital domicile in this state from which the child was conceived or adopted; and~~

~~(b) the other party to the marital relationship or~~ individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(3) the individual has resided with the child ~~resides~~ within this state;

~~(3)~~ (4) the child was ~~conceived or~~ adopted within this state when at least one parent was a resident; ~~or~~

(5) the individual resided in this state and provided prenatal expenses or support for the child;

(6) the child resides in this state as a result of the acts or directives of the individual;

(7) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

~~(4)~~(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction."

**Section 53.** Section 40-5-202, MCA, is amended to read:

"**40-5-202. Department of social and rehabilitation services -- powers and duties regarding collection of support debt.** (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ensure that the parent or other person responsible pays for the care, support, or maintenance of a child if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part. ~~No~~ An obligee may not act to prejudice the rights of the department while ~~such~~ services are being provided.

(5) If child support enforcement services are being or have been provided under this part, ~~no~~ an agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may not act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any

administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation **is in addition to and independent of the assignment under 53-2-**613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment **made under 53-2-613 and applies to the lesser of:**

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

**Section 54.** Section 40-5-226, MCA, is amended to read:

"**40-5-226. Administrative hearing -- nature -- ~~place --~~ time -- determinations -- failure to appear -- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) ~~At the discretion of the hearing officer, the administrative hearing may be held:~~

~~(a) in the county of residence or other county convenient to the obligor or obligee; or~~

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~~(b) in the county in which the department or any of its offices are located.~~

~~(3)~~ If a hearing is requested, it must be scheduled within 20 days.

~~(4)~~(3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such~~ the determination.

~~(5)~~(4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

~~(6)~~(5) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.

~~(7)~~(6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

~~(8)~~(7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

~~(9)~~(8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

~~(10)~~(9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

~~(11)~~(10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

~~(12)~~(11) For the purposes of income withholding provided for in subsection ~~(11)~~ (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's

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current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

**Section 55.** Section 40-5-231, MCA, is amended to read:

**"40-5-231. ~~Establishment of paternity -- jurisdiction~~ Jurisdiction and venue.** (1) For purposes of an administrative action brought under ~~40-5-231 through 40-5-237~~ this part, personal jurisdiction is established in the department over any ~~person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father~~ individual or the individual's guardian or conservator if:

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of

intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the ~~persons~~ individuals described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under ~~40-5-231 through 40-5-237~~ this part may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located."

**Section 56.** Section 40-5-263, MCA, is amended to read:

"**40-5-263. Central clearinghouse -- interstate enforcement services -- powers and duties of the department.** (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status

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and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor

resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or ~~his~~ the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter."

**Section 57.** Section 40-6-109, MCA, is amended to read:

"**40-6-109. Jurisdiction -- venue.** (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over ~~any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure~~ an individual or the individual's guardian or conservator, if:

(a) the individual is personally served within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering an general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided

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prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of ~~his~~ the father's estate have been or could be commenced.""
Renumber: subsequent sections

66. Page 49, line 3.
Following: line 2
Insert: "
NEW SECTION. **Section 60. Coordination.** If neither Senate Bill No. 217 nor __ Bill No. __ [LC 969] is passed and approved, then the bracketed language in [section 18(3) and section 21(4)] is void and the code commissioner shall make necessary changes in grammar."
Renumber: subsequent section

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What I am trying to do with this testimony and purposed legislation? It is quite evident by what has happened since the child support law went into effect in August of 1985. That says, that the State of Montana can take up to 50% of your wages, that is if you owe back child support. Regardless of what you make, the State of Montana does not have to leave you anything to live on. The State of Montana's attitude was, and still remains that they do not care how many people become homeless, just as long as they get their money. By January, I hope to have enough correspondence on the issue of child support, to prove just how devastating this law has become. How many lives have become ruined, and to show just how many families have been broken up over the issue of child support enforcement. I know first hand, what some of the circumstances are, as I have went through some of the same things myself. Do any of you know what degradation that we have to go through? Do any of you really care? Just as long as it does not effect you personally. It is my opinion that the State of Montana, in fact does not care in the least, as we are only low-income or working poor people.

What am I trying to do with my purposed legislation? I am trying to keep a lot of people from needlessly becoming homeless. First, if a man becomes homeless because he can not pay his child support. What becomes of his ex-wife and children? Usually, the ex-wife and children end up on AFDC. Or the worse kind of scenario possible, the family ends up on the street homeless, along with the man that could not pay his child support. So, all in all the law creates more problems than it solves, in some cases. Most of us fathers and mothers that pay child support are not dead beats. We want to pay child support, but due to circumstances beyond our control in some cases, we do not make enough money to live on, let alone pay child support. Most of us fathers and mothers try to live up to our obligations of paying child support. Granted, there are some fathers and mothers that are dead beats.

Good morning, Mr. Chairman and members of the committee.

My name is Wilbur Johnson. I reside at 400 4th Avenue North, Apt. #
Great Falls, Montana, 59401. My mailing address is Post Office Box 617, Gre
Falls, Montana, 59403.

I am a Low-Income Advocate and lobbyist. I stand before you today as
former street person. Ah! You ask what this has to do with the issue before u
Well, I am going to tell you, and it is quite relevant to this issue, I can assu
you.

I was working for the City of Great Falls, Park and Recreation Departmen
Park Maintenance Division. My position was light clean-up. I was working f
$4.28 per hour, no medical coverage, only sick and vacation pay. I went to m
supervisor, and ask him if there was any chance of getting medical coverage o
more money. I was told "No way". He further told me that I was in a dead en
job, and that I should look for a different job. My take home pay for two week
was $134.00, after Child Support Enforcement got through taking their 50% o
my check. So on the Second (2nd) of June, I resigned in front of the full Cit
Commission. I then went to work for Hardee's in Great FAlls, at $4.35 pe
hour. With only part time hours until a full time position became available.
was going to work my way up to a supervisors position. I could of worked m
way into a supervisors position in about one year, or a year and one-half. The
after I had been with Hardee's for one year, I would be eligible for thei
insurance. My first check was something like $95.00 for two weeks. I called
the Great Falls office of Child Enforcement, and told them what had happened
I was told by that office and I quote "Mr. Johnson, we don't care if you have t
live on the streets, that if you are working we will take 50% of your check.
Yes, you guessed it. I had to quit my job, as I could not pay rent for m
apartment.

I ended up on the streets from the First of July until about the tenth o
August, when I got on General Assistance. I am now trying to get on SSI.

About two years ago, I had almost the same thing happen to me. Except,
did not wind up on the streets. I talked to a supervisor in the office of Great
Falls Child Enforcement and she told me, and I quote "Mr. Johnson, we don't
give a damn if you have to live in the Rescue Mission. If you are working we wil
take 50% of your money".

I ask you now, Mr. Chairman, and ladies and gentlemen, What can be
accomplished by making us street people? How many more men and in some
cases women are going to become homeless over the issue of Child
Enforcement? I know of at least 25 men and 4 women, yes, I said women that
have become homeless over this issue.

Now, Mr. Chairman, and members of this committee, I ask you is this
indeed the attitude of the state? Most of us fathers, and in some cases
mothers are not dead beats. We admit that we owe the money and want to pay
it. But at least have the common courtesy to leave us enough dignity, to at least
maintain a roof over our heads.

On the eighth of September, being in deep depression and I mean deep

depression. I tried to commit suicide, by walking out in front of a car in Gre Falls. I was so shaken by what I had tried to do, that I went to the emergenc room of the Montana Deaconess Medical Center in Great Falls. I had a nervou breakdown and I spent one week in Two South.

After being released from the hospital, I started to lobby local legislato proposing legislation as follows:

A single man or woman should be allowed $500.00 per month, be anything is taken out of their check.

A person that has remarried and has children should be allowed $850.( before anything is taken out of their check by Child Suppo Enforcement.

I feel bad that I can not give my daughter the money that she so badly needs.

I had a beautiful lady that was going to marry me until she found out that was only clearing $134.00 for two weeks, was one of the major reasons that sh called off the wedding. The part that really hurts is that I still love her so ver much. Thanks to the state, I more than likely will never remarry. The stat has taken my life and shattered it. The state has taken my health and shattere it, causing me to almost kill myself. How many more lives are going to be shattered? How many families will be broken up over this issue?

Place Insert

And in closing, Mr. Chairman, and ladies and gentlemen, I would like to ask you the question that I have been asked in a lot of correspondence that I have received on this issue and that is, and I quote, "What gives some of you people the right to play God with other people's lives?"

I thank-you for allowing me to appear before you to testify on this issue. I know that I have been a little long. I believe that these issues have to be brought to your attention.

Thank you,

Wilbur L. Johnson

Wilbur L. Johnson

Jmsen

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DATE 2-12-93
HB-328

Mr. Chairman, I would like to include something that is not in my original testimony.

I have a guaranteed student loan that I have not been able to pay on for two years, because of this child support issue. Will I end up by going to jail? Just because I can not pay on the loan.

I would like to offer a challenge to any legislator in the state, and that is. Sometime when you want a real startling experience, sit down and take off your shoes,and step into the shoes of a low-income, or working poor person, that has to deal with child support enforcement. I guarantee you, it will be a rude awakening to some. And to some, it will literally scare the hell out of you, finding out some of the conditions that we have to live under..

EXHIBIT # 17
DATE 2-12-93
HB 496

**TESTIMONY OF DAVID M. RUSOFF**
**IN SUPPORT OF HB 496**

The Human Rights Commission requested HB 496 to amend the Montana human rights laws to achieve some consistency between the language of state law and the Americans with Disabilities Act. Because Legislative Council felt the bill could also be used for some editorial corrections of the language of the human rights laws, we have also proposed to include some minor amendments which are necessitated by the inconsistencies between two bills enacted in 1991. Unfortunately, in the drafting process, only one of the three needed changes to correct the inconsistencies was picked up. I have proposed some amendments to the bill to correct this oversight.

The amendments add the phrase "marital status" to two subsections of § 49-2-305, MCA, which prohibits housing discrimination. During the 1991 session, the legislature enacted two bills affecting this section. One bill added "marital status" to the list of factors for which housing discrimination is prohibited. The other amended § 49-2-305, MCA, more broadly, including a substantial revision of subsection 1(c) and the inclusion of new subsections 7 and 8. In the last minute amendments to coordinate the two bills at the end of the session, we failed to add the marital status language to some of the new provisions of § 49-2-305, MCA. These amendments correct that oversight.

Thank you and I will be happy to answer any questions you may have on the bill or the amendments.

EXHIBIT 18
DATE 2-12-93
HB 157

Amendments to House Bill No. 157
First Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
February 8, 1993

1. Title, line 5.
Following: "DRUGS"
Insert: "AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE"

2. Title, line 8.
Following: "DRUGS"
Insert: "OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE"
Strike: "SECTION"
Insert: "SECTIONS"

3. Title, line 9.
Following: "61-8-714"
Insert: "AND 61-8-722"

4. Page 4, line 9.
Strike: "sections 2 through 9"
Insert: "section 3"

5. Page 7, line 16, through page 14, line 22.
Strike: sections 2 through 9 of the bill in their entirety
Insert: "**Section 2.** Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3)(a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited as provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or

omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

EXHIBIT #18
DATE 2-12-93
HB-157

NEW SECTION. **Section 3. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-714 or 61-8-722 must be seized by the county sheriff within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the county sheriff within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests, and next to the sheriff in the amount of the costs of the forfeiture proceedings, and the remainder to the department of corrections and human services to fund alcohol information courses and treatment programs referred to in 61-8-714 and 61-8-722.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section, but is found by the court to be without fault."

6. Page 14, line 24.
Strike: "Sections 2 through 9] are"
Insert: "Section 3] is"

7. Page 15, line 2.
Strike: "sections 2 through 9"
Insert: "section 3"

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 228

DATE Feb. 12, 1993 SPONSOR(S) H Toole

PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|
| [illegible] | CSED | X | |
| Linus Carleton | SRS/CSED | X | |
| Wilbur Johnson Box 617 Great Falls | Johnson Advocacy Great Falls Service | | |
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Judiciary COMMITTEE BILL NO. HB 335

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|
| GEORGE BENNETT | MONT. BANKERS ASS'N | amend | |
| JOHN McROY | DEPT OF SRS / CSED | | |
| Linus Carleton | SRS / CSED | | |
| [illegible] | CSED | | |
| [illegible] | MT Council Mtl + Child Health | | |
| William F. Gowen | Montana Land Title Assn | amend | ~~Op~~ |
| Pati Conway | ACES | | |
| Wilbur Johnson BOX 617 | Johnson Advocacy Services Great Falls | | |
| TOCK ANDERSON | MT. League of Savings Inst's | Amend | |
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Judiciary COMMITTEE BILL NO HB 496

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|---|---|---|---|
| Jim Edgcomb | State Personnel Div. | | |
| David Rusoff | Human Rights Commin | ✓ | |
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Judiciary COMMITTEE BILL NO. HB. 482

DATE Feb. 12, 1993 SPONSOR(S) Bohlinger

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|
| Bkgs. MT. Dianna Schroeder, 1212 O'Malley Dr. | Montana's Kids | X | |
| Linus Carleton | SRS / CSED | X | |
| [illegible] | CSED | X | |
| Paulette Kohman | MT Council Maternal & Child Health | | |
| Patti Conway | ACES | | |
| Ann-Marie Ontiveros | ICCW | X | |
| Wilbur F. Johnson BOX 617 Great Falls | Johnson Advocacy Service | | X |
| Heather Madsen | KIDS | X | |
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