MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chair Yellowtail, on March 18, 1993, at 10:00 a.m.

ROLL CALL

Members Present:
Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
David Martin, Committee Secretary

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

Committee Business Summary:
Hearing: HJR 22, HB 335, HB 228, HB 638
Executive Action: HB 638

HEARING ON HJR 22

Opening Statement by Sponsor:
Rep. Brown, District 72, said he was contacted by representatives of the Paul Clark/Ronald McDonald House in Butte. The Clark House provides housing for persons having ill relatives in nearby medical institutions. The house was originally built by William Clark in memory of his son Paul. The house was built for homeless and orphan children. A trust of approximately $350,000 was established in a New Jersey bank to fund the home after William Clark's death. After the last Clark died, the will was left to the Supreme Court to administer as was customary in the

1930s. He said Chief Justice Turnage said the Supreme Court does not administer wills anymore and the Court feels uncomfortable in this role.

Proponents' Testimony:
Don Hutchinson, Board Member and Treasurer of the Paul Clark Home, supported HJR 22.

Gretchen Leipheimer, Vice President of Paul Clark Foundation, supported HJR 22.

Lowell Bartels, owner of McDonalds in Butte, supported HJR 22. He said money raised for a recent renovation came from donations and not the trust fund. The budget for the home is $65,000 each year. The trust does not fully fund this amount. Other fund raisers are held to make up the difference.

Pat Chenovick, Administrator for the Supreme Court, supported HJR 22.

Opponents' Testimony:
None

Questions From Committee Members and Responses:
Sen. Blaylock asked if Chief Justice Turnage requested this resolution so the Supreme Court will feel comfortable continuing administering the will. Rep. Brown said since the Supreme Court no longer administers wills, and the last heir may soon pass away, the Supreme Court may again be asked to administer the will. The Supreme Court was asking for the Legislature's approval to continue this function.

Sen. Towe asked if the trust fund contained $350,000. Ms. Leipheimer replied yes. Sen. Towe said the provisions in the bill say the purpose of the Paul Clark Home is for supporting and continuing as a home for orphan and homeless children. He asked if the current purpose was that of a "Ronald McDonald House". Ms. Leipheimer replied yes. Sen. Towe asked if the purpose now was now a little different than previously intended. Ms. Leipheimer replied yes. Sen. Towe asked if that could create a problem. Ms Leipheimer said no, Mr. Clark's sole purpose was to create a home for those persons less fortunate than himself.

Ms. Leipheimer said upon the death of the final heir the trust in New Jersey would be transferred to a brokerage house in Montana. Sen. Towe asked if the trust principal would be continued and use the interest income to continue the funding, which is not sufficient to fund the home. Ms. Leipheimer said over $30,000 a year is raised plus grants to make up the difference.

Closing by Sponsor:
Rep. Brown said the interest from the trust should be moved from New Jersey to a Montana account. He said the interest is approximately $26,000 each year. The annual budget of the home is in the $60,000 range, the difference is made up by the Ronald McDonald Foundation and fund raising efforts. He asked the legislature to support the Supreme Court, so the will can be properly administered.

Rep. Brown said Sen. Lynch would carry HJR 22 in the Senate.

HEARING ON HB 335

Opening Statement by Sponsor:
Rep. Toole, District 60, said he was carrying HB 335 for Child Support Enforcement Division (CSED). He said HB 335 accomplished many things and was important legislation. He handed out a fact sheet for HB 335 (Exhibit #1) which contained a summary on page 2. He said the most important feature of HB 335 was the establishment of a centralized lien system for child support. Liens will follow the property of the debtor regardless of the residence of the debtor. CSED will have access to all debt information in the state. He referred to sections 19, 20, and 27. He said this registry would be similar to the registry in the Secretary of State's office for other types of debt which centralizes lien information. Rep. Toole said there would be a child support lien on the property in the county where a child support order was filed but there was not a similar lien except when a warrant of destraint has been filed in a particular county for a back child support.

Rep. Toole said in section 12, page 23, there was reference to a state information system. This section requires lenders to supply information to the CSED in regards to assets that they may be holding or to give financial information about debtors as requested by CSED. He said this section had been amended in the House Judiciary Committee. The financial institution need only tell CSED they possess the information. The CSED may then obtain a subpoena which would require the lending institution to provide that information. He said the financial institutions support HB 335 with the amendment. The financial institutions are concerned with privacy for customer accounts.

Rep. Toole said HB 335 addresses statutes of limitations. Under existing law, the statute of limitations on child support expires as time passes. HB 335 allows for a 10-year statute of limitations for child support. He said the obligation will continue ten years after the original obligation expires. This is explained on page 6 line 15-18 of the bill. He said this section will be a tool for collecting outstanding child support debt.

He said HB 335 has some less significant features: 1) Annualization and conversion of child support debt to the pay period of the obligor so the exact amount can be determined from the employer; 2) An administrative contempt provision, including a $500 fine by CSED for failing to pay child support; 3) Extension of support to 19-year olds and handicapped children over the age of 18; and 4) Provide enforcement of tribal court child support orders.

Rep. Toole concluded by saying HB 335 was an important child support bill, a flagship bill of the session.

Proponents' Testimony:
Mary Ann Wellbank, Administrator of the Child Support Enforcement Division of the Department of SRS supported HB 335. She referred to page 1 of Exhibit 1, saying that legislation concerning child support was not overlapping and that each bill served a different purpose. She said HB 335 was the "omnibus" bill by cleaning-up and making more efficient provisions of existing law.

Non-payment of child support is an increasing problem with 38,000 cases currently existing in Montana that will grow to 54,000 cases by the end of the biennium. Last year CSED collected $20 million dollars in child support and $25 million will be collected this year. She said more tools are needed to collect child support payments. Of the $20 million collected last year, $7.3 million was returned to the state and federal governments to repay AFDC and $12.1 million was forwarded to custodial parents. In addition, its collection saved the state money by decreasing the cost of insurance, for example; a $1 million savings on medicaid. She said, concerning families that are not on AFDC, for every $5 collected $1 is saved, amounting to $2.42 million dollars in savings. She said a major cause of poverty is an absent parent who is not paying support. HB 335 would allow more families to be self sufficient by enforcing child support laws.

Rosemary Hertel supported HB 335. She said there are 40,000 child support cases in arrears that owe over $100 million dollars mostly to he taxpayers of Montana. She said most people assume that this problem is being taken care of, and Legislation passed 10 years ago had not addressed this situation. She said people who do not pay child support, do so, not because they cannot afford it, but because they are not required to. She said a bounced check for $76 dollars would be a felony, while the average amount owed to a family for past due child support is $5,000. She discussed situations under which obligors do not pay their child support. She said obligors may continually try to change the amount of their child support through the court system. She said most families that receive child support are headed by women, who received less pay for the same type of work. These women cannot support a family on this income and are forced to go on welfare. She said non-custodial parents need to understand the state is serious about child support obligations. For every dollar collected enforcing child support payments the

state receives 6 1/2 cents of federal dollars, thus making the program self-funding.

Kendra Kawaguchi, Montana Land Title Association (MLTA), supported HB 335. She MLTA supported the thrust of HB 335, however, they were concerned with lien provisions under section 27 of the bill. She said the concern was that creation of the lien registry with department would not require the liens to be filed with County Clerk and Recorder where the real property exists. The effect would be to force the title industry to place a general exemption in all title policies, excepting from coverage liens which are created under section 27. This would make these loans unattractive to secondary markets.

Bill Gowen, MLTA, supported the general aspects of HB 335, but objected to the central registry. He said it would be difficult for remote counties to access the proposed registry in Helena thus making it difficult to obtain timely information. Mr. Gowen said the department has the authority to file liens in individual counties where the title companies go to receive those records. The title companies would have to receive a release from the department which may cause a delay in processing loans.

George Bennett, Montana Banker's Association, supported HB 335, but objected the central registry created by section 27. He said the department could already issue a warrant of destraint with Clerk of the Court which has the effect of a judgement. Warrants of destraint, along with writs of execution or garnishment, can be used to go after personal property. He said SRS already has that power. He said the department was asking to create a statewide lien on all property by filing a lien with themselves, with the liens dating back to the support obligation. He said this would clog the system for transferring real and personal property and for the extension of credit. He said HB 335 would not directly affect bankers, but would affect consumers, because of the necessity for a title search with the SRS with every transfer, would cause delays. He had not seen the fiscal note, but asked what would be required to set up this lien system, how many employees, and what information was available in the Secretary of State's office. He asked if SRS was really ready to respond to requests for lien information. He said he doubted SRS would be able to meet this task and suggested section 27 should be stripped out of HB 335. He said there should not be a proliferation of lien filing methods.

Bob Pyfer, Montana Credit Unions League, supported HB 335. He said HB 335 has 2 problems, the privacy aspects and the lien problem. He said the privacy issue had been dealt with in the House, but the lien issue had not been fully addressed. He said loan processes may be slowed down for everyone not just deadbeat dads. Any person filing for a nonpurchase money lien, i.e. vacations or college loans, would also be affected. He discussed the difficulties of setting up a centralized lien system and said SRS probably "doesn't want to find that out either". He said

even if the system was set up correctly and efficiently there would be a cost to it and would require a fiscal note. He said the only way this system would work was if the lien was filed with every reporting officer in the state, including the motor vehicle division for vehicles, the Secretary of State for property, and with the Clerk and Recorder for real estate and consumer debts. He said it would be difficult to specify if there was a support lien on the loan.

Mr. Pyfer made specific suggestions concerning HB 335. He said page 62, lines 14-17, is an amendment added in the House which is as an attempt to deal with the lien problem but does not go far enough. He said 1) The department must be required to send information, 2) A recording officer would be required to record information, for a Clerk and Recorder it would be in the real estate records and personal property records for consumer goods, 3) Add Secretary of State's Office to the subsection, and 4) The effective date of the lien should be the date it is entered into the record.

Mr. Pyfer said page 61, lines 6-8 would need to be amended to clarify that it refers to the date of record. He said page 63, lines 6-15, are the provisions relating to motor vehicles. Snowmobiles, boats, and ATVs were left out, and that was probably an oversight. If SB 373 passes this oversight would be resolved.

Chair Yellowtail asked Mr. Pyfer to write his suggested amendments down and give them to the legislative counsel.

Jock Anderson, Montana League of Savings Institutions, supported HB 335. He said SRS could receive over 100,000 requests concerning lien information if HB 335 passed in its current form. He said it would create a significant impact on lending institution and SRS. He said SRS already had letters of destraint at its disposal.

Roger Tippy, Independent Bankers, supported HB 335 and agreed with the previous testimony of lending institutions.

Opponents' Testimony:
None

Questions From Committee Members and Responses:
Sen. Doherty said Mr. Bennett made a very persuasive argument for the proliferation of liens. He asked if there was any way to accomplish the same objectives without involving the SRS in the lien business. He also asked how much a centralized lien system would cost. Mr. John McRae, CSED, said general judgment liens already existed, either administrative or judicial. The problem with those liens was they exist only in the county where the judgment was registered. HB 335 would remedy this by including all counties. As to liens for personal property, no new liens would be created since they fall under warrants of destraint.

The warrant of destraint would still be an essential part of HB 335. He said the ability to "get those liens" would be expanded. He said there are other statutes to collect child support such as income withholding. He said it was difficult to obtain other liens since a hearing process would be repeated. He submitted a document explaining the techniques for liens (Exhibit #2).

Sen. Doherty asked how many new people would HB 335 require and how much would it cost, could it be done with existing staff, and would it require more people. Ms. Wellbank said it could be done with existing staff, because CSED would no longer have to look in 56 counties for different liens, and the same staff would be involved.

Sen. Bartlett asked about the "liens filed in the 56 counties". Mr. McRae said the liens are filed in all 56 counties and the liens must be searched in all counties for real property.

Sen. Bartlett said Mr. Mcrae said the liens were created by filing, but the liens are created by law upon conclusion of certain departmental actions. She said it is completed by filing the lien with the department's register and a judgement is not required. She said the title companies and the lenders were saying there was no public notice, no constructive notice readily available as to the existence of the liens. She said the liens would not be in the Clerk of Court's office or the Clerk and Recorder's Office, but would be in the SRS office. A purchaser of real property would look in the county records. In relation to that information she asked what Mr. McRae would suggest to provide better public notice of the existence of liens. Mr. McRae said the issue was covered by the House amendment to make the information known to the county.

Sen. Bartlett referred to page, 62, line 14 - 17 and asked how that information would be made available to the Clerk and Recorder. Rep. Toole said the lien was created on page 62, line 4-7. The lien would be applicable to all real and personal property owned by the obligor in the state. A central lien registry and central filing would be created in this section and referenced in sections 19 and 20 as well. He said the lien would be in effect as the information was in the registry. The counties who requested that the information be sent to the Clerk and Recorder of the counties where there is real estate are not changing the effect of the lien. He said the lien would exist at a central location. Those who wish to obtain information will have to have access to the central registry to find out if there is a lien on a particular piece of property based upon a child support debt.

Sen. Bartlett said she had a number of questions concerning liens, but would hold them due to time limitations.

Sen. Towe asked how important the lien provisions to HB 335. Rep. Toole said there are different areas within the bill that

needed to be passed, regardless of the lien provisions. Sen. Towe asked if HB 335 should be passed, possibly excluding the lien procedures. Rep. Toole said passage without the lien procedures would be acceptable, if necessary. He said, however, he would like to work with Sen. Bartlett and the Committee to work on the lien procedure, since HB 335 provides a significant enforcement tool.

Sen. Towe said other creditors do not have this type of authority and why should that authority be given to the SRS. He said "We don't ask them to go to a court to get a judgement like every other creditor and we don't make a lien on any other personal property, but HB 335 would do that". He said, for example page 62 at the bottom, if someone sold me property, and the purchaser did not have any idea they were in arrears, the department would serve a notice saying you are holding that person's property you better turn it over. There would be no opportunity to go to court, no opportunity to challenge it. He asked Rep. Toole if he thought that was right. Rep. Toole said every creditor in the state would be able to avail themselves of the secured transaction laws that enable people to use a centralized lien registry to record the amount of their debt, to give them free position to recover the property as collateral, and to be made whole using the property they hold as collateral. Unfortunately the women of this state do not have that right. They do not have the ability to trace property moved from one county to another. The women must rely on attorneys who have no access to the information that the secured creditors have. Women are gradually being empowered to acquire information and get at property that should be subject to execution. Rep. Toole said a centralized system, or something like it, would be needed for the department to get at the obligor that has untitled property, and is hiding that property.

Sen. Towe asked Mr. Tippy about the bottom of page 25 and the top of page 26. He said an investigative subpoena system was created under 46-4-301 which was a criminal code. He asked if the SRS would then become a criminal justice agency. Mr. Tippy said title 46 is a criminal procedure; which was the main reference for obtaining an investigative subpoena by a judge without discovery going on without a lawsuit being filed. He said the department did have criminal powers under the child support laws. The intent of the amendment was for the division to have the status of a prosecutor for the purpose of submitting an affidavit through the district judge.

Sen. Blaylock said HB 335 was enormously complex and controversial and the Committee had more questions. He suggested a subcommittee to further explore the matter. Chair Yellowtail said he would consider that as the Committee approached executive action.

Closing by Sponsor:
Rep. Toole said HB 335 needs to pass. He said the statute of limitation changes, tribal court jurisdiction, extending the period of disabled people to receive support, all need to be addressed.

Rep. Toole addressed the lien issue. He said there is a trend in law toward centralized liens. In 1991, the Uniform Commercial Code was revised, moving away from county filing toward centralized state filing to provide accessibility towards information regarding debts. He said economic decisions can then be made about property located in counties located other than where the request for information originates. He said $100 million of child support debt remains unpaid, and HB 335 would be one of the single most important tools to address this problem. He supported Sen. Blaylock's request for a subcommittee to look at this issue. He invited the bankers who did not testify in the House to participate in that process. He said he did not want to abandon the lien portions of HB 335.

HEARING ON HB 228

Opening Statement by Sponsor:
Rep. Toole, District 60, said HB 228 was a uniform act. He said the Uniform Reciprocal Enforcement Support Act (URESA) would be replaced by Uniform Interstate Family Support Act (UIFSA). HB 228 would allow counties to collect interstate child support debt. URESA, initiated in the 1970s, was no longer effective. URESA no longer dealt with multiple court orders issued from various courts in more than one state. No formal method exists to determine which states' court order should be enforced, or what credits should be given to the judgments issued in another state. He said the county attorneys of Montana have gradually stopped using URESA, since it is ineffective. The Conference of Commissioners on State Laws recognized it was a national problem and came up with UIFSA.

Proponents' Testimony:
Mary Ann Wellbank, Child Support Enforcement Division (CSED), supported HB 228. She said it would resolve a lot of the jurisdictional conflicts which are encountered where the obligor moves from state to state. A new order can be issued in each state and it is difficult to determine which order is in effect.

Opponents' Testimony:
None

Questions From Committee Members and Responses:
Sen. Towe asked how many states had adopted the new code. Mr. John McRae, SRS staff attorney, said it was finished during the past summer and that many states were looking at it, as was Montana. He did not give a specific number. He said there was a federal bill in Congress mandating that states adopt this act.

Sen. Towe asked if there were comments from the Uniform Code Commission that were available. Rep. Toole provided a letter from the National Conference of Commissioners on Uniform State Laws (Exhibit #3).

Closing by Sponsor:
Rep. Toole closed.

HEARING ON HB 638

Opening Statement by Sponsor:
Rep. Grimes, District 75, presented HB 638 on behalf of the Department of Family Services. He said HB 638 would limit the sentencing of youth to determinate lengths of time. He said most other states sentence youths to indeterminate sentences. Assigning youths to determinate lengths of time was important because: 1) From the youth's standpoint it allows more personal and independent approach concerning specific needs for that youth. A youth may be assigned to 10 months, but a drug rehab program may take 11 or 12 months, and 2) A youth may complete rehabilitation early and not be able to be shifted to a different program because of the determinate sentence; that is a disservice to the youth. He said determinate sentences would also help in the budgeting process. He said HB 638 dealt with problems that were not widespread, but significant nonetheless.

Rep. Grimes said HB 638 could avoid possible future litigation concerning sentencing mentally ill youth to Pine Hills. He said there were more appropriate ways to deal with mentally ill youth.

Proponents' Testimony:
Al Davis, Administrator, Juvenile Corrections Divisions, supported HB 638 by distributed testimony (Exhibit #4) and synopsized the findings.

Ann Gilkey, Department of Family Services (DFS), submitted an amendment (Exhibit #5).

Jim Smith, Montana Juvenile Probation Officers Association, supported HB 638 in its current form, as amended in the House, and approved the DFS amendment.

Opponents' Testimony:
None

Questions From Committee Members and Responses:
Sen. Halligan asked about striking subsection 6, page 6. Ann Gilkey said the language was unnecessary and redundant. She said page 3, line 12, allows the judge to order evaluations, however, in title 53 the agency is to bill counties for evaluations. She said that procedure was not used until last July. Since the counties have been billed there have been virtually no evaluations. She said status offenders are no longer being sent to correctional facilities for evaluation. She said another clean-up section of the bill, page 4, lines 21-24, attempts to clarify to which correctional facilities status offenders may not be sent. She said DFS would not object to the reinsertion of the language. Sen. Halligan said that may need to be done because a youth in need of supervision could be a status offender who violates an aftercare agreement, or something, which then triggers the intent that gets him into the facility.

Sen. Rye said if seriously disturbed youth should not be placed in a correctional facility, then where should they be placed. Mr. Davis said it was a good question. He said the Division of Juvenile Corrections has taken the position they are inappropriately placed in a correctional facility. He said that does not mean the DFS should not come up with an adequate placement for those youngsters. He said both agencies are divisions of the same department. If disturbed youths are not being helped under the current system, then the system may need to be redesigned so that these youths can get the help they are not receiving in correctional facilities.

Sen. Rye asked where offenders committing violent crimes would be kept since they could not be placed in general society. Mr. Davis said that was accurate. He said the key was to determine who is seriously mentally ill and not responsible for their actions, the same as the adult system. He said the DMS 3 classification of mentally ill kids and 99% of youths in a correctional facility fall into that category. The high psychiatric-need kids that fit into the violent category.

Closing by Sponsor:
Rep. Grimes said HB 638 would eliminate the punitive warehousing of non-dangerous youths and avoid future litigation in that area.

He submitted testimony from John McRae (Exhibit #6) who was unable to testify.

EXECUTIVE ACTION ON HB 638

Motion/Vote: Sen. Harp MOVED TO AMEND HB 638 WITH THE GILKEY AMENDMENT ON LINE 10, PAGE 4. The motion CARRIED UNANIMOUSLY.

Motion/Vote:
Sen. Halligan MOVED TO AMEND HB 638 TO RESTORE LINES 22-25, PAGE 6 AND LINE 1, PAGE 7. The motion CARRIED UNANIMOUSLY.

Motion/Vote:
Sen. Harp MOVED HB 638 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

Sen. Halligan said he would carry the bill.

ADJOURNMENT

Adjournment: Meeting adjourned at 11:56 a.m.

Wm Yellowtail
SEN. BILL YELLOWTAIL, Chair

David Martin
DAVID MARTIN, Secretary

BY/dm

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-18-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	✓		
Senator Doherty	✓		
Senator Brown	✓		
Senator Crippen	✓		
Senator Grosfield	✓		
Senator Halligan	✓		
Senator Harp	✓		
Senator Towe	✓		
Senator Bartlett	✓		
Senator Franklin	✓		
Senator Blaylock	✓		
Senator Rye	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 18, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 638 (first reading copy -- blue), respectfully report that House Bill No. 638 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 4, lines 10 through 12.
Following: "~~time~~" on line 10
Strike: remainder of line 10 through "TREATED" on line 12
Insert: "to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127"

2. Page 7, line 2.
Following: line 1
Insert: "(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206."
Renumber: subsequent subsections

3. Page 7, line 23.
Strike: "(9)"
Insert: "(10)"

4. Page 8, line 4.
Strike: "(11)(b)"
Insert: "(12)(b)"

5. Page 9, line 15.
Strike: "(10)"
Insert: "(11)"

-END-

Amd. Coord.
Sec. of Senate

HALLIGAN
Senator Carrying Bill

611515SC.San

CHILD SUPPORT ENFORCEMENT DIVISION OF SRS
Mary Ann Wellbank, Administrator

The Child Support Enforcement Division urges "DO PASS" on the following legislation, which will significantly improve child support enforcement in Montana and help us fill the gaps in services we provide to Montana children who depend upon us.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-18-93
BILL NO. HB 335

BILLS:

HB 228	Toole
HB 335	Toole (On behalf of SRS)
HB 482	Bohlinger
SB 150	Bartlett (On behalf of SRS)
SB 217	Nathe (Grosfield) (On behalf of SRS)
SB 392	Waterman

SUMMARY:

HB 228 - Uniform Interstate Family Support Act - resolves numerous interstate jurisdictional problems- may interstate cases have multiple child support orders issued by different states at different times. The bill specifies which order is enforceable.

HB 335 - CSED "Omnibus Bill". Has many necessary clean-up and efficiency provisions. See attached summary. Codification instruction coordinates amendment of 40-5-118 with HB 228.

HB 482 - 3 of the 4 main provisions are recommended by U.S. Interstate Commission on Child Support in its report to Congress - employer reporting of new hires, hospital paternity establishment, suspension of state issued licenses. Identical process for license suspension as SB 217, although covers more state issued licenses. Bill also improves Civil Contempt and makes it a more useful and effective tool.

SB 150 - Necessary legislation to achieve conformity with fed regs.

SB 217 - CSED bill to suspend professional and occupational licenses for delinquencies. Has built in due process and other safeguards which opportunity for hearing, repayment agreement, or "stay" of suspension in cases where suspension would cause financial hardship. Should be a very effective tool for enforcement of obligations of self-employed professionals who can afford to pay. Purpose is not to hurt person's ability to earn income, but to motivate repayment. HB 482 has identical license suspension process, although HB 482 encompasses all state licenses. If HB 482 is enacted, SB 217 becomes void.

SB 392 - Seek work requirements, lottery lien and most important, enhances criminal non-support to make laws more effective

HB 335 "AT A GLANCE"

DO PASS

An Act To Improve Efficiency 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 or when neither party is "at fault"

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. Assures that CSED receives notices promptly.

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. Does not expand 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: Creates centralized record of liens in CSED, but amended language neuters this.

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. Part of section 9 amending 40-5-118, MCA becomes void if HB 228 (Uniform Interstate Family Support Act) passes.

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.

EXHIBIT 1
DATE 3-18-93
HB 335

CHILD SUPPORT ENFORCEMENT DIVISION
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Facts about the Division to Support Budget and Legislation

- Montana's Child Support Enforcement program is an important cornerstone of welfare reform. Shifting the burden for supporting dependent children away from taxpayers and back to financially able parents sends a clear and responsible message as well as raising needed revenue for this department and the state. The program permits repayment of monies spent on AFDC benefits, and helps keep borderline non-AFDC families off welfare. Once child support income becomes regular, many families are able to make the transition from welfare dependency to self-sufficiency.

- The division generates sufficient income through collections and federal matching funds to fully support its operations. For the most part, division funding is 66% federal; and 34% state special revenue. The division currently handles 38,000 cases, and cases are growing at a rate of 500 new cases per month. Caseload is projected to reach 53,356 cases within the next two and a half years. Greater efficiencies and legislative enhancements are needed to address the growing demand for services.

- The program receives no general fund dollars. In fact, last year the program raised and returned $800,000 to the general fund. Better services and more collections help offset rising general fund costs of welfare programs, and will allow more children to be supported by their parents.

- Last year, the CSED collected nearly $20 million from parents responsible for paying child support, representing a $12 million increase in collections since 1989. 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. Currently, $100 million in past due support is owed in Montana!

- 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 of $2.42 million for Montana citizens. 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

- Out-of-wedlock births continue to grow. Currently 25% of all Montana births are out-of wedlock.

Child Support Notes

Issue No. 8—July 1988

Property Liens—An Underutilized Collection Technique

The utility of liens for child support enforcement was characterized during congressional deliberations on the Child Support Enforcement Amendments of 1984 as "simple to execute and cost effective...and a catalyst for an absent parent to pay past due support in order to clear title to the property in question" (H.R. Rep. No. 527, 98th Cong., 1st Sess. 37 (1983).) Congress envisioned that liens would compliment the income withholding provisions of the new law and be particularly helpful in enforcing support payments owed by obligors with substantial assets or income but who are not salaried employees.

Based on this conviction, the Child Support Enforcement Amendments of 1984 required States to enact laws and implement "procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State." This can apply to such things as land, vehicles, houses, antique furniture, livestock, etc. The law further requires States to develop guidelines which are generally available to the public to determine whether a case is inappropriate for application of the lien procedures. Beyond this, the law and regulations are not prescriptive because lien practice is dependent upon State law and procedure.

Generally, a lien for delinquent child support is a statutorily created mechanism by which an obligee obtains a nonpossessory interest in property belonging to the obligor. The interest of the obligee is a "slumbering" interest which allows the obligor to retain possession of the property, but affects the obligor's ability to transfer ownership of the property to anyone else. When the obligee creates a legally enforceable lien it is called 'perfecting' the lien. A child support lien converts the obligee from an unsecured to a secured creditor. As such, it gives the obligee priority over unsecured creditors and subsequent secured creditors. In most States, this initial step in the lien procedure is by far the easiest—requiring minimal resources. In fact, in some States a lien is established automatically upon entry of a support order and the first incidence of noncompliance by the obligor. Frequently, the mere imposition of a lien will motivate the delinquent parent to do whatever is necessary to remove the lien (i.e., pay past due support.) When this is not the case, it may become necessary to 'enforce' the lien. Liens are not self executory. They merely impede the debtor's ability to convey property. If a lien exists, a debtor must satisfy the judgment before the property may be sold or transferred. An important point to stress here is that creditors need not wait for such a conveyance; they may enforce their judgment by execution and levy against the property if they believe that the amount of equity in the property justifies execution.

(Note: In Chapter 5, "REMEDIES UNDER THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984" by Horowitz, Dodson and Haynes of National Legal Resource Center for Child Advocacy and Protection, American Bar Association, there is a detailed discussion of the principles and mechanics of liens procedures.)

While all States had, or since 1984 have established, lien provisions in compliance with Federal requirements, too few of these States have actively pursued the widespread use of this collection method for child support payments. Until recently, many States looked at the utility of liens with skepticism—assuming that the return did not justify the necessary investment of resources. As a matter of fact, OCSE audits of State operations indicate that, in far too many instances, States are not in compliance with the requirement to have child support specific liens procedures and guidelines. Furthermore, OCSE program reviews conducted in 1987 indicated that many others were not using the procedures and guidelines that they did have. Fortunately, an increasing number of States are now taking a second look; some States are taking the lead by trying or planning to try innovative approaches, projects and studies. For those who have progressed far enough along to have developed "a track record," the results are quite impressive.

To encourage other States to look at their current liens activities and consider aggressive ways to use this valuable tool on a large scale, we have asked some of the more active States to share information on what they are doing in this area. One of the most efficient ways of improving the liens process—and other procedures for that matter—is to network with States who have already initiated an approach you are considering. Find out how they got started, problems encountered, what worked well, etc. By using this information in conjunction with other techniques such as Project 1099, you should be in a better position to establish your own successful liens program. Project 1099 is an agreement between the Internal Revenue Service (IRS) and the Office of Child Support Enforcement (OCSE), allowing OCSE access to information on the IRS Wage and Information Document Master File. This file contains valuable locate and asset information culled from documents submitted to the IRS from a variety of sources, such as financial institutions, State unemployment insurance agencies, stock brokerage houses, gaming commissions and selected private employers. (For more information see Action Transmittal OCSE-AT-87-12, CHILD SUPPORT REPORT, April/May, 1988 and March 1986).

$$$$$$$$ WHAT SEVEN STATES ARE DOING WITH LIENS $$$$$$$$

California

In fiscal year 1988, PriceWaterhouse was awarded a contract by the Department of Social Services to analyze ways in which real property liens could best be used in California to maximize child support collections in a cost-effective manner. In addressing this question, the contractor was to identify estimated costs and benefits of each approach presented and to assess the impact on real estate transactions and the consumers involved in those transactions.

A primary objective was for the contractor to evaluate the feasibility of implementing a statewide lien registry for the purpose of recording each Title IV-D child support order/judgment, which would then constitute a lien against any real property owned by the judgment/debtor anywhere in California. (Currently it is necessary to file a lien in each of the State's fifty-eight counties to accomplish this.)

While one consideration in studying the various approaches to changes in the lien procedures was the program structure in California (the IV-D Program is supervised by the State Department of Social Services (DSS) and is locally administered by the Family Support Division (FSD) within each county District Attorney's Office), the primary consideration was to find a way to improve the current requirement of the county-by-county filing process. This process is further complicated by the fact that there are no uniform procedures for such filings.

For other States considering central registries, it would be valuable to keep in mind California's configuration—especially regarding program organization, the enormous population and the number of counties. Because of these factors, some of the problems which surfaced here may or may not be pertinent elsewhere.

The current lien system in the State collected $5.6 million from 4,328 cases in 1986-87. This is only 1.3% of total collections, with less than one-half of one percent of the caseload affected, so there is obviously room for growth in this area.

Five alternatives for possible enhancements were considered as part of the contract study. These were: standardization of current practices; enhanced State support; establishment of a statewide centralized lien registry database; establishment of a statewide microfilm lien system; and establishment of a statewide real property database. Of the five alternatives, only one, the microfilm, was projected to have better cost benefit ratios than the current system.

The statewide lien registry, microfilm system, and real property database were all eliminated as viable options.

The centralized lien registry database was eliminated because it would involve significant changes in both title industry liability and practices, involve significant start-up and maintenance costs and administrative complications. Further, the fact that child support liens are only one element in a variety of different types of judgement liens that may affect individuals had to be considered. Any change in the practice of recording judgements for only child support would have broader implications for the use of statewide liens for all types of judgements and tax liens and might trigger much wider impacts than those studied in this project. It was concluded that there is currently insufficient data on real property ownership among the noncustodial parents to determine if the potential collections would justify the increased risks and costs attendant to the adoption of a comprehensive statewide registration system.

The establishment of a statewide microfilm lien system was also dismissed as a short term option, even though the projected cost benefit was over 225% higher than the current system. Reasons included a significant increase in title industry liability and potential triggering of impacts beyond the scope of the study without data to judge potential collection increases.

A central database of all real property ownership in the State was not thought to be viable in the short term due to the constraints of the Privacy Act on obtaining and utilizing Social Security Numbers (SSNs) of property owners, which would be essential. Furthermore, the increase in workload involved in obtaining SSNs and substantial start-up and maintenance costs were cited as problems.

The two primary recommendations which did result from the study were to:

—Standardize county lien practices; and

—Provide enhanced State program support.

Standardizing county lien practices would require all counties to record judgments in all cases and to follow consistent practices in using liens as an enforcement tool. Enhanced State Program support generally involves DSS (and the California Parent Locator Service) taking a more proactive role by utilizing currently available data to aid counties in identifying potential real property interests of obligors.

The contractor concluded that if these goals are accomplished, it would seem reasonable for DSS or another agency within the State to once again consider some style of central registry to further enhance the liens program. An important consideration is ensuring the definition and gathering of data to enable the determination of potential collections which may be realized from utilization of a central registry, thus enabling an objective cost/benefit analysis.

It would be valuable for other States considering central registries to look into the California liens study and related findings in more detail. An important consideration in deciding the feasibility of merging data into one central source is the condition, availability and uniformity of existing information, as well as legal restrictions, etc., currently in your State.

Connecticut

While the liens procedures in Connecticut described below are fairly standard, that State's increased collections in 1987 is a good example of the advantage of directing resources in the use of this collection procedure.

The Connecticut Bureau of Child Support (BCS) is empowered to place liens on real and personal property belonging to delinquent child support obligors under Section 52-362(d) of the Connecticut General Statutes. Liens may be initiated when past due support arising from a court or support agreement order totals $500 or more. They apply to a wide range of personal property (chattels), including vehicles and financial instruments, in addition to real estate. Once BCS files a notice of lien, obligors have 60 days in which to request an administrative hearing. If the decision to seek a lien is not reversed by the end of the 60-day period, the appropriate certificate of lien is filed.

As of December 30, 1987, a total of 897 child support liens were in effect in Connecticut, of which the majority (887) involved AFDC-related cases. For the twelve-month period ending June 30, 1987, proceeds from 202 successful lien actions filed in Connecticut child support cases totaled $914,973 (a 268% increase over the previous year!)

Florida

In order to use its laws more effectively in child support enforcement cases, the Florida State Legislature is currently considering amendments to their lien laws. The proposed changes would create a central Statewide clearinghouse of all property and the names of its owners. It is anticipated that the clearinghouse would be maintained in the office of the Secretary of State. Some delay in beginning operations is anticipated by the proposal in order to provide funding for the clearinghouse and to allow time to develop the processes needed to provide information in a useful fashion to those needing access. Once the clearinghouse is operational, the clerks of each court in the State would transmit the required information (i.e., identity of property and owner's name) to the Secretary of State. Currently, the clerks of court automatically place a lien against any absent parent's property if that parent is more than 30 days late in making his/her child support payment. The notices to absent parents of liens procedures were issued in late July and August 1987. There is not enough data available yet to estimate the collection increase which could result from these changes.

Indiana

The Marion County Child Support Division is the test site for implementation of Indiana's new motor vehicle lien statute. Although previous law allows for the imposition of liens against real and personal property of delinquent child support obligors, the new law provides an automated mechanism for recording such child support liens on titles to motor vehicles acquired in Indiana. Working with representatives from the Bureau of Motor Vehicles, Prosecutor Stephen Goldsmith's office proposed the State enabling legislation that was passed by the 1987 Indiana General Assembly and became effective September 1, 1987. A computer tape match between the Child Support Division and the Bureau of Motor Vehicles' records of registered vehicles and obligors' names will be done twice weekly to identify delinquent obligors who have applied for certificate of title to a motor vehicle. The immediate effect of getting the child support lien recorded on the title is that the owner/obligor is unable to sell or trade the vehicle (or use it as collateral for a loan) until the child support delinquency is paid and the lien is released. In appropriate circumstances, the prosecutor's office may also choose to execute the lien (force a sale of the vehicle) to satisfy the delinquent support obligation. Such execution on a lien requires further court action and would prove most beneficial for those cases in which there is no prior lien holder to claim the proceeds of sale. Not only will this new motor "vehicle lien procedure provide another valuable tool for Indiana's child support enforcement effort, but it will also assist the State in its continuing efforts to gain greater public recognition of the child support problem and to promote the passage of stricter legislation to address it.

Maine

Maine is another State which has realized collections by exercising their lien procedures. In Maine, non-exempt* real and personal (cars, boats, farm vehicles, etc.) 'titled' property is subject to the lien process after a child support debt has been established. Such debts are established by either administrative or Court decisions or by a "notice of debt." The Notice of Debt is issued when the Department of Human Services (DHS) certifies that the responsible parent owes a debt accrued under a Court order. Twenty-one days after issuance of the administrative/Court decision or the Notice of Debt, a Certificate of Lien is filed against the responsible parent's property. If DHS suspects that collection of the debt may be in jeopardy (i.e., if there are indications the debtor is actively trying to sell property), it may seek a "Forthwith" lien filing, which waives the 21-day waiting period. A hearing process is available for obligors who disagree with the DHS finding.

Maine law gives DHS the option to seize property once a lien has been filed if it can be done without "breach of peace." In practical terms, DHS only seizes property in child support cases when it has reason to believe the debt collection is in jeopardy.

According to DHS records, during FY 1987, Maine filed 1,477 child support-related liens, of which 650 were settled. The State collected $1,272,862 on these liens, an average of $1,958 per settlement.

(*Maine law provides for certain exemptions ($7,500 homestead/$400 personal) from all lien/levy procedures.)

Massachusetts

The Commonwealth of Massachusetts recently enacted legislation (Chapter 490) which empowers the Department of Revenue (the State IV-D Agency) to place liens and levies on property without court involvement. The following are highlights pertinent to these provisions:

Upon determination by the IV-D Agency of the amount of an arrearage, the IV-D agency will issue notice to the absent parent/obligor, provide opportunity for administrative review and demand payment (including interest).

The written notice must state the Agency's intent to make a determination of delinquent child support, be sent by first class mail, be issued 30 days in advance of the date on which the determination will be made, specify the amount unpaid, indicate the dates on which such amounts were due and inform the obligor of the right to request an administrative review.

When the obligor does not request an administrative review the Agency determines the amount of delinquent child support by a review of its records. This determination constitutes an assessment and interest accrues from the date of the assessment. The obligor then has thirty days to pay the assessed amount plus interest.

When the obligor requests an administrative review, the Agency schedules and conducts the review and determines the amount of delinquent child support. The determination constitutes an assessment. Following the final decision, the obligor has 30 days to pay the assessed amount plus interest.

If the obligor neglects or refuses to pay within 30 days after the demand, the Agency places a lien on the obligor's property and rights to property valid for 6 years.

If the obligor neglects or refuses to pay within 10 days after the expiration of the 30 day period (afforded by the

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demand), the Agency may collect the unpaid child support and any additional costs. The methods for collection could include levy/seizure and sale of obligor's property.

If IV-D finds that that collection is in jeopardy, notice and demand for immediate payment may be made.

A levy shall extend only to the property possessed and obligations existing at the time the levy was issued.

In any case in which the Agency may levy, it may seize and sell the property or rights to the property, whether real or personal, tangible or intangible.

When the obligor refuses to pay, the Agency may make demand on an organization such as a bank or life insurance company.

If the organization refuses to pay, that organization shall be liable for the amount assessed.

* * * * * * * *

According to a March 23, 1988, article in the Quincy, Massachusetts PATRIOT LEDGER, "A Quincy man who owes thousands of dollars in child support payments yesterday became the first person in Massachusetts to have his car seized under the state's tough new child support law. Under a month-old law allowing the state to seize...." "It was the ninth time Leone has been arrested and brought to court for failing to make court-ordered child support payments for his 5-year old son...." The article went on to give the philosophy and expected impact of the new law and stated "The Revenue Department will sell Leone's (1986) car....proceeds will go toward the $6,000 Leone owes the State Department of Public Welfare...."

New Jersey

New Jersey has developed an innovative project which is proving to be both an effective and efficient method in collecting past due child support and, equally important, one that can be easily transferred to other jurisdictions.

With technical assistance provided by the OCSE Regional Office in New York City, a model "seizure of assets" project is currently being piloted in Mercer County (Trenton) which, combined with the State's successful upward modification program and their efforts to fully implement wage withholding, should significantly increase child support in that State. (The upward modification program is a concerted effort to increase support obligations in AFDC cases so that they are in line with State support guidelines. It has resulted in well over a 100% increase in obligations in the cases affected. For more information, see CHILD SUPPORT NOTES, Issue No. 5, March, 1987.)

New Jersey anticipates that the outcome of this "seizure of assets" effort will be a standardized process that will permit the implementation of similar projects in every county throughout the State following project completion in late Spring of 1988. It is anticipated that activities in other jurisdictions will begin immediately thereafter.

The project strategy calls for targeting cases with overdue support, entering child support judgments and recovering arrears through the use of liens. A key to the project is the asset information provided by Project 1099. The data thus made available (after verification in accordance with IRS safeguards) has enabled the State and counties to quickly identify bank accounts and other liquid assets and then take immediate steps to execute a lien to recover arrears. In fact, although the process will not be completely standardized until the completion of the Mercer County pilot program, several counties have already been successful in executing against bank accounts. One county, Camden, has also attached and collected on two IRA accounts, resulting in substantial cash payments.

The three counties currently entering judgments and seizing assets (particularly bank accounts) have processed a total of 207 cases, entered $559,692 in judgments and received $268,518 in cash payments.

For further information or the names and telephone numbers of the appropriate OCSE Regional Office contacts concerning the above practices, call Evelyn Shepard, Child Support Enforcement Specialist, OCSE, Washington, D. C. (202) 245-1720.

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John M. McCabe
Legislative Director

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-18-93
BILL NO. HB 228

February 2, 1993

Mr. John McCray
BY FAX
406-728-9245

Dear Mr. McCray:

RE: Uniform Interstate Family Support Act

I have been trying to put together a reasonable and rational approach to your concerns about the Uniform Interstate Family Support Act in Montana. To that end I had a telephone conference Saturday with Allen Rogers, who chairs the Uniform Law Commissioner Standing Committee on the Uniform Interstate Family Support Act. He agrees with me that the proposed amendments raise many significant problems and will create much mischief with interstate child support enforcement. At the same time, we agree that certain amendments to smooth over the interface between the Uniform Act and existing state law make sense in certain instances.

It would be a mistake to regard the Uniform Interstate Family Support Act as simply a replacement for URESA in whatever form it now exists in Montana. URESA merely bound the states into a system of reciprocating enforcement jurisdictions for child and spousal support orders. The new act does much more. It establishes fundamental jurisdiction for issuing a support order, however denominated. It provides some fundamental rules for sorting out jurisdiction to modify, with the end benefit of residing the power to modify in only one jurisdiction at a time. It then describes a system whereby states can initiate and respond to all kinds of actions pertaining to child support, including establishing initial orders, modifying initial orders, and establishing parentage. It creates a kind of export-import system for all these kinds of actions that is far broader than anything envisioned before. It then establishes some minimum procedures for handling the export-import of these actions and for support orders. Lastly, it continues the rendition provisions that are part of URESA.

If there is to be improvement in interstate child support enforcement practice in the United States, there will have to be real commitment to uniformity in every state. I think, for example, the fundamental rules for taking jurisdiction over these matters, and the rules for sorting out which jurisdiction may entertain modification, and when, must be absolutely uniform. On the procedural side, there must be sufficient uniformity for states to be able to work with each other, even with differing systems of

administering and adjudicating child support actions. However, resolution of conflicts or misfits with existing procedural law that is already in place in a jurisdiction does not necessarily defeat uniformity. Such an approach is likely to conform to whatever standards of compliance Congress deems essential when it passes the next round of mandates.

I have looked at Title 40, chapter 5, and I do not perceive any serious conflicts, although there are some reconciliations that appear to me to be in order. To assure fit, between interstate and local law, we also have the annotations available to us to explain how they fit together.

Much is accomplished by existing provisions. The bill clearly designates the Department and the District Court as tribunals. So the Department, clearly, can act as an initiating and responding tribunal - it participates in the broad interstate reach of this act. Section 502 (Section 34 in H.B. 228) preserves local administrative law. Given these sections, I suggest the following:

1. Section 304 (Section 18 in H.B. 228) governs the duties of an initiating tribunal. I suggest this new paragraph:

"(4) The Department is the initiating tribunal for any action or proceeding that may be brought under 40-5-201 through 40-5-273. Otherwise, the District Court is the initiating tribunal.

2. Section 305 (Section 19 in H.B. 228) of the Uniform Act describes the powers of a responding tribunal. I have specific language to suggest:

"(4) A petition or comparable pleading directed to the Department of Social and Rehabilitative Services from an initiating state is subject to 40-5-263."

This language avoids the ambiguity that exists in the language that you suggest. Title IV-D of the Social Security Act, itself, does not produce petitions or pleadings of any kind. Either state courts or administrative agencies, or both, produce the petitions or pleadings. Much of the state law under which petitions or pleadings are generated is there because of the federal mandates embodied in Title IV-D, but the state courts or agencies produce the proceedings and orders under state law.

Although Title 40, Part 5 uses the terminology of IV-D referral, that term is never defined. The closest any provision comes to defining such a referral is 40-5-263, itself. In that provision, referrals that are administrative and that are URESA petitions are essentially equated. Either or both can be filed with the Department. This paragraph, itself, does not recognize

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the dichotomy implied in the use of this language. Actually, there is no child support award that is not in some way subject to the federal mandates.

The language I suggest uses the UIFSA terminology of initiating state and petitions or comparable pleadings that appear in Montana, as the responding state. It makes it clear that such petitions or comparable pleadings are to be administered in accordance with the Department's obligations as set out in 40-5-263. This specific language conforms to the general requirements of Section 502 (Sec. 34 of H.B. 228).

3. Section 307 (Sec. 21 of H.B. 228) governs duties of a support enforcement agency. It is in this section that I would declare the Department's status under UIFSA. I would add this paragraph:

"(4) For the purposes of this Part, the Department of Social and Rehabilitative Services is the support enforcement agency for this state as provided in 40-5-201 through 40-5-273. All the provisions of this part must be interpreted as supplemental to and cumulative with the powers and duties of the Department of Social and Rehabilitative Services under those provisions. Otherwise, the county attorney in the county in which an action must be filed is the support enforcement agency."

The major reason for providing this language is to settle completely, the Department's role in Montana with respect to this legislation. The Department has a dual role, actually, as a tribunal and as a support enforcement agency in 40-5-201 through 40-5-273. Its status as a tribunal is established in Section 102 (Sec. 3 of H.B. 228) for the purposes of UIFSA. It makes sense to me to establish it, also, explicitly, as a support enforcement agency for Montana in UIFSA. By doing that we wash away any concern about who directs what to whom under UIFSA in Montana.

County attorneys are also support enforcement agencies in cases in which they are involved. However, they are not tribunals. The District Court is.

4. Section 310 (Sec. 22 of H.B. 228) provides for the duties of a state enforcement agency. The Department also has obligations under both 40-5-206 and 40-5-263, although I do not see any patent conflict between Section 310 and either of the existing Montana provisions. For that reason, I would suggest a Montana comment to be placed in the Annotations, as follows:

"This section continues and supplements the obligations of the Department under 40-5-206 and 40-5-263. These provisions require the Department to maintain a central unit to act as a registry for information used in child support enforcement, and as

a registry for support orders and other proceedings directed to the Department from out-of-state, for which there is Montana jurisdiction over a party. Included is the explicit requirement that the Department locate obligors in interstate proceedings. The obligations of this section have been adopted to provide a uniform scheme of fulfilling these obligations, and to provide some common obligations between states, as part of the Uniform Interstate Family Support Act. This section under this part, and 40-5-206 and 40-5-263 should then be read as consistent with each other, and as cumulative provisions."

5. Section 313 (Section 27 in H.B.228) governs fees and costs in proceedings under UIFSA. I do not detect any patent conflict with 40-5-210. The Department, however, is required to maintain a standardized schedule of fees, which appear to be applicable to all child support proceedings. I suggest adding this paragraph to Section 27:

"(4) The standardized schedule of fees established by the Department under 40-5-210 shall be conclusive in any action under this section. Any fees or costs recoverable under paragraph (2) that are not included in the standardized schedules are recoverable under paragraph (2)."

This language should clarify any problems that might arise in reading these two sections together.

6. Section 602(a) (Sec. 37 in H.B. 228) should read, as follows:

"A support order or income-withholding order of another state may be registered in this State by sending the following documents and information to the Department of Social and Rehabilitative Services, pursuant to 40-5-263, or to the District Court in this State:"

This amendment makes it clear that registration can take place in either tribunal, exactly as is the case under current Montana law. The advantage under this provision is that registration requirements are the same for each tribunal. If there are different registration requirements in the same jurisdiction, that will simply raise the cost and delay of enforcement and hinder out-of-state efforts to enforce child support in Montana.

7. Section 701 (Sec. 48 in H.B. 228) governs the flow of parentage proceedings. Allen and I did not have any conceptual problem with the idea of amending this section to clarify the direction parentage proceedings must take in Montana, but we did have trouble with your language. Therefore, I suggest substituting this language:

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"(3) A proceeding to determine parentage directed to the Department of Social and Rehabilitative Services from an initiating state pursuant to this part and 40-5-263 is subject to 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable, and a proceeding to determine parentage directed a District Court from an initiating state is subject to Title 40, chapter 6, part 1."

The problem with your proposed language, aside from the ambiguous use of the IV-D language, is that it provides conflict between this section and the parentage provisions in 40-5-231 through 40-5-237. A literal reading of your amendment would raise the possibility that an alleged father could continue to deny paternity in an action under these sections, which would require a petition to the District Court under Title 40, chapter 6, part 1, which is the Uniform Parentage Act. Could he then use your language to assert that Title 40, chapter 6, part 1 would not apply to him? There is no sense in inviting patent conflict. It is better to be specific and give precise traffic directions.

8. I would strongly recommend that 40-5-272(2)(b), the jurisdictional provisions of Title 40, chapter 6, part 1 (I apologize for not having the precise cite on hand), and 40-4-210, all be amended to incorporate Section 201 (Section 5 of H.B. 228). These are all jurisdictional sections pertaining to child support and parentage. 40-4-210 is the long arm precursor to Section 201. It comes from the Uniform Marriage and Divorce Act. Section 201 is broader than any of these jurisdictional provisions, and there ought to be consistency between all of them. There are no conflicts to be resolved here. Section 201 incorporates the relevant jurisdictional concepts in all these sections. But achieving consistency between all these provisions is desirable.

These seem to me to be the major concerns in reconciliation of the Uniform Act with existing law. Having said that, let me give you our collective thoughts on the amendments that you have proposed:

1. Section 2(7). This amendment does not appear to make any substantive difference, but we view it as unnecessary. This is a definition, and is meant to assure identification of the term consistently with local law. You can add the rest, but it does not appear to disturb the basic meaning, unless there can be a wage withholding order in another jurisdiction that is not consistent with local law.

2. Section 2(8). The language as used does not make sense, and you are already aware of my objection to the IV-D language, but those objections could easily be remedied by this alternative, "including any proceeding initiated by the Department of Social and Rehabilitative Services under 40-5-201 to 40-5-273." However, with

the proposed amendments to clarify the role of the Department, this language is not necessary.

3. Section 2(13)(b) and (c). Allen pointed out to me that this makes the Department an obligee in every case, even when there is no legitimate basis to make the Department a party. It could include a case in which the Department is merely asked to help find an obligor. Even the existing statutes contemplate no such status for the Department. This is overreaching on the part of the Department. Also, does a child receive services or the custodial parent? The uniform definition describes accurately the justifiable position of an administrative agency providing child support services.

4. Section 2(15). Does this mean that the county attorney cannot bring a rendition action when an initiating tribunal petitions the Department for any purpose? Also, since Title IV-D has a relationship to almost every child support action, does this mean that the county attorney has no responsibilities under this act? This is a general definition, and is applicable in those sections of the act in which the term is used. There is nothing in this act that allows county attorneys to bring actions under the provisions of law pertaining to the Department, and vice versa. This amendment merely muddies and confuses a perfectly clear term. I should also note that the term "prosecuting attorney" is the operative term in the Montana's URESA. I doubt there has been any confusion during the many years URESA has been used in Montana.

5. Section 2(18). Same comment as 2. above.

6. Section 22(b). I think that my proposed amendments take care of this problem.

7. Section 2(23). It seems clear to us that, in this general definition, that "monetary support" and "health care" are enough to signify the contents of a support order. Nobody is going to be able to claim that a document identified as a support order is going to be denied that status if it contains provisions relating to health insurance, just because health insurance is not specifically in this definition. Again, this is a general definition, sufficient as it stands.

8. Section 3. I think this is covered in my proposed amendments.

9. Section 8(3). This does no harm, but adds nothing substantive. This states the obvious.

10. Section 9(3) and (4). These amendments are serious and damaging distortions of the principles of continuing, exclusive jurisdiction. These amendments invite collateral attack upon

support orders on the basis of arcane questions of jurisdiction, not in the state in which jurisdiction is at issue, but in an entirely different state. This is a good way to make sure that every modification will be contested, if there is an effort to enforce the modified order in a state other than the issuing state.

The only proper standard under paragraph (3) is modification in a state with a law substantially similar to this act, and continuing, exclusive jurisdiction in a state with a law substantially similar to this act for paragraph (4).

These are provisions that require absolute uniformity if the interstate system is to function.

11. Section 10(2). This amendment misstates the case. A tribunal does not have to have continuing, exclusive jurisdiction to enforce a support order. It only needs to have continuing, exclusive jurisdiction to modify an order. The restatement of the uniform act language tends to make enforcement possible only if there is continuing, exclusive jurisdiction. That would cripple efforts to enforce out-of-state orders in Montana. We need to have uniformity with respect to this section.

12. Section 10(3). The same as above.

13. Section 13(a) and (b). The addition of the word "a child" in these two paragraphs appears to do no harm, but is merely redundant. "Obligee" is already defined as someone to whom a duty of support is owed.

14. Section 15(4). Substituting "obligee" for "individual" takes away obligor rights. That is a serious constitutional and policy problem, one that violates federal law. This is a provision which must remain uniform.

15. Section 19. Already covered in my proposed amendments.

16. Section 21(2). Sections 307 (b)(4) and (5) have been omitted. These are notice and communications requirements to petitioners for whom the Department as support enforcement agency is providing support services. The Department ought to be embarrassed about refusing these simple communications with the people that are allegedly being served.

17. Section 21(3). We cannot fathom why anybody would take out "or negate" in this paragraph. The objective here is to leave the question of attorney-client and fiduciary relationships absolutely neutral. Why is that not appropriate? It would be unconscionable to have an interpretation of this section that abrogated an existing relationship.

important to have specific enforcement of orders. The use of the word "appropriate" here, again, has the same effect as noted above.

27. Section 34(1). There is a serious and embarrassing problem in the language limiting this section to persons receiving services from the Department. Any out-of-state obligee trying to enforce an order against an obligor in the state of Montana would be virtually cut off from using this provision. The issue, again, is access to enforcement. The Department ought to be a little embarrassed to suggest this limitation.

28. Section 37. I have suggested alternative language in my proposed amendments.

29. Section 47. I think that the change here was motivated by the changes in Section 9. Those changes are unacceptable, and the amendatory language here is totally unnecessary.

30. Section 48. I have other suggested language, above.

These are my comments. Thanks for your kind attention.

Sincerely,

John M. McCabe
Legislative Director

cc: Allan G. Rodgers
James E. Vidal

DEPARTMENT OF FAMILY SERVICES

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SENATE JUDICIARY
EXHIBIT NO. 4
DATE 3-18-93
BILL NO. HB 638

February 17, 1993

DEPARMENT OF FAMILY SERVICES
FACT SHEET IN SUPPORT OF H.B. 638

Submitted by Al Davis, Administrator
Juvenile Corrections Division

Approximately 400 youngsters are committed to juvenile correctional institutions in Montana each year. A total of 135 secure-care beds are available for these referrals. (80 beds at Pine Hills School and 55 beds at Mountain View School) In order to appropriately respond to Youth Court referrals, the Juvenile Corrections Division must be reshaped in an effort to adequately react to the needs of referred youth and the state's juvenile justice system.

Major effort has been devoted to examining the Montana system as well as researching national trends in juvenile corrections programs. Assistance has been solicited from nationally recognized juvenile corrections consultants, other state's juvenile corrections leaders, as well as from Montana experts in corrections in an effort to devise a corrections system that responds more appropriately to the state's needs.

Redefining existing corrections division components, enhancement of classification procedures, development of community based opportunities for corrections youth, and networking with existing support programs are actively being pursued. A pilot project involving 6 judicial districts is nearing implementation to test modified programs.

H.B. 638 modifies current statutory language allowing for a more sophisticated and responsive corrections system. Most of the suggested changes are proposed to clarify currently practiced procedures. Two of the changes are considered to be critical in the successful implementation of the corrections system reform movement.

Determinate Sentencing:

Committing youngsters to specific programs for specific periods of time restricts the ability of the Department to best utilize its assets. Programs are being designed based on assessed needs and public safety issues. The type and duration of placement is dependent on each youth's needs which oftentimes not positively corresponds with a court-ordered determiate period of confinement.

The national trend and statistics suggest that an indefinite period of confinement responsive to each individual's need will allow the division to provide a more meaningful impact on referred youth - as well as insure that public safety issues are not jeopardized.

Seriously Mentally Ill:

Juvenile correctional institutions are not staffed, trained, or physically designed to respond to the needs of mentally ill youth. Treatment required for mentally ill youngsters is significantly unlike what is required of delinquent youth. Confining SED youth with non-SED delinquent youth places the well-being of the SED youngster, other youth and institution staff at risk. Potential law suits resulting from mentally ill youth being placed in a correctional facility environment are currently pending. There is an increased potential for serious incidents (suicides, assaults, etc.) when mentally ill youngsters are placed in our juvenile institutions.

The incidence of mentally ill youth being committed to correctional institutions is not great. (historically about 12 each year) Their presence, however, has major impact on the total facility program.

H.B.638 clearly states that seriously mentally ill youngsters as defined in 53-21-102 are inappropriate for placement in a juvenile correctional facility. The result of passing H.B.638 would be to reduce the institution's liability, allow for the afflicted youth to receive appropriate treatment, and enhance the quality of the treatment programs at the institutions.

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January 25, 1993

DEPARTMENT OF FAMILY SERVICES
TESTIMONY IN SUPPORT OF H.B. 638

Submitted by Al Davis, Administrator
Juvenile Corrections Division

Montana is in the process of re-shaping its juvenile corrections system. The increased number of referrals to Juvenile Corrections Division programs and a dire need to enhance the quality of service provided to referred youth, demands immediate attention.

The current status of Montana juvenile corrections programs does not provide an array of opportunities for adjudicated delinquents evolving from the state's Youth Courts. The Department of Family Services emphasis at this time is to devote major attention to the development of placement options. The goal is that a full range of options be made available to responding to youth's needs while recognizing public-safety issues.

Acquired assistance of nationally recognized technical advisors (The Center for the Development of Youth Policy and the American Correctional Association) has provided the state with an objective placement guideline that suggests appropriate placement of court referred youngsters. This guideline relies heavily on the seriousness of offense, chronicity, and the most serious prior offense on record. Placement decisions are based on a weighing system that correlates with Montana criminal statutes.

Accompanying the placement guideline review is the need to provide a needs risk assessments for each youth committed to the Department. Once assessments are done for each youth, an objective determination can be made relative to suggested placement. The Youth Court would then be given information to assist in determining disposition.

Statutory amendments as proposed in H.B.638 will allow for a more meaningful corrections continuum to exist.

Determinate Sentencing - Shaping a continuum of youth corrections options is one of the major policy challenges facing states today. Montana Juvenile Corrections Division staff are examining

the role of institutional care - especially secure care - in the youth corrections system. Different sentencing options are being examined as well as wrestling with the thorny issue of defining the appropriate dispositions for specific offenses.

States are reviewing the degree of discretion juvenile courts should be given regarding sentencing. In the quest to determine how best to deal with youths in trouble, Montana is looking for efficient, effective and affordable youth corrections options.

The Department is intent upon designing specific programs in its various components to respond to determined needs of referred youth. These programs will require specific periods of time in which to accomplish satisfactory results. Longer periods of incarceration will be required for youth who fall on the serious offender end of the scale and shorter periods for those classified as lower risk offenders. The institution program design will take this into consideration as well as develop transition and enhance community program availability for youngsters exiting training schools.

In order to comply with the indicated needs of youth referred to juvenile correctional programs, it is necessary to have the ability to require periods of incarceration consistent with the youths needs, public safety, and program duration.

Thirty-nine states currently have legislation committing youth to correctional facilities for indefinite periods of confinement. These states have shifted the responsibility of making secure-care placement decisions from the court to youth corrections officials.

<u>The National Conference of State Legislators; State Legislative Report</u> (July 1988) reports that...."States generally provide juvenile justice decision-makers with a wide range of dispositional options from which to fashion the most appropriate treatment plan for delinquent youth. There is no one dominant model for deciding the type or duration of a disposition, but states clearly have moved toward commitment procedures that limit the discretion of the juvenile courts to shift placement, sentence, and discharge decisions to others."

A discussion with American Correctional Association staff has revealed that even those states that have enacted determinate sentencing legislation in the past are in the process of moving back to an indeterminate model. (The state of Washington is a typical example)

Committing of Mentally Ill Youth to a Correctional Facility - Seriously mentally ill youth are not considered appropriate for placement in a correctional institution.

Correctional facility staff are not qualified or trained to deal

with youngsters who are determined to be seriously emotionally disturbed (SED). Providing for this population requires additional clinical staff, specialized training for all staff and a modified physical environment. The number of youth currently meeting a SED classification does not justify the total renovation of existing secure-care institutions to provide an appropriate treatment environment for SED youth.

The failure to respond appropriately to youth in correctional facilities who are determined to be seriously mentally ill has let to serious incidents in correctional institutions and has set the stage for potential law suits. The Montana Advocacy Program and the United States Department of Justice are voicing criticism for the states failure to provide appropriate services for this classification of youth found in the institution's population.

Other:

Other statutory changes in H.B.638 are proposed in an effort to clarify and provide a means of enhancing a corrections continuum. Justification of these changes are as follows:

Substitution of "youth" in place of "his" throughout the Bill removes gender influence.

Page 4, line 16 - 18:.... or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult - This amendment clarifies that status offenders (ie. truants, ungovernable, etc) are not appropriate referrals to secure-care facilities.

Page 5, line 7 - 11:... or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126....by the department, the youth court, or the youth court's juvenile probation officer...This clarifies that the Department will provide supervision to youth who are placed in a youth correctional facility or other program operated by the Department. Youth who are placed in any other placement are supervised by the court's juvenile probation department rather than the Department.

Page 6, line 17 - 21: This language is intended to reduce inappropriate evaluations conducted at the youth corrections facilities. Evaluations are now billed to the county requesting the evaluation and there is no longer a problem with inappropriate evaluations being ordered. The ability to refer a youth for evaluation is permitted in subsection (i) on page 3.

Page 7, line 6 - 7: reports, social history material, education records, - This addresses specific information that is necessary in order to develop a treatment plan for

youth upon entering a correctional facility.

Page 10, line 15 - 20: This clarifies that the department will remain responsible for anyone on aftercare who is committed to a mental health facility from a youth correctional facility. This responsibility will remain intact until such time that a more appropriate placement can be found for the youth.

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DETERMINANT SENTENCING FOR JUVENILE DELINQUENTS
Most Common State Patterns

Indeterminate Period of Confinement	Indeterminate Period of Confinement Up to a Maximum period	Minimum/Maximum Sentence Set for Some or All Offenses
Alabama	Arizona	Delaware (e)
Alaska (a)	California (c)	Georgia (a)
Arkansas	Colorado (d)	Kentucky (g)
Idaho	Connecticut	Louisiana
Indiana (a)(b)	Florida (b)	Maine (h)
Kansas (a)	Hawaii	Nebraska
Massachusetts	Illinois	New Jersey
Minnesota (a)	Iowa (b)(i)	Ohio
Mississippi	Maryland	Washington (j)
Missouri (a)	Michigan	
Nevada	New Hampshire (b)	
New Mexico	New York	
Oklahoma (a)	North Carolina (b)(j)	
Rhode Island	Oregon (b)	
South Carolina (a)	North Dakota (a)	
South Dakota	Pennsylvania (a)(b)	
Tennessee (a)	Utah	
Vermont (a)	West Virginia (b)	
Virginia (a)		
Wisconsin (a)		
Wyoming (a)		

This chart describes the general sentencing practice followed by a state in confining a delinquent child in a youth corrections facility. Several states combine sentencing features from all three categories, but an attempt has been made to identify the category which best reflects the state's approach.

(a) Courts are required to review periodically all cases of youth in confinement.

(b) The maximum sentence may not exceed the maximum adult sentence for the same offense.

(c) Commitments to the California Youth Authority are for two years or until a person reaches age 21, or age 25 for certain offenses.

(d) Sentences are for a determinate period not to exceed two years but with the provision that they may be extended an additional two years.

(e) A minimum six-month sentence is mandated for certain repeat offenders or youth who escape from confinement.

(f) Commitments are for an indeterminate period with court review until the age of 18. For youth 17 1/2 or older, a commitment cannot exceed the length of an adult criminal term.

(g) A minimum six-month commitment is required with the maximum term not specified. Weekend or evening detention is limited to a maximum number of days.

(h) Commitments to the Department of Human Services do not extend beyond 18. Commitments to the Department of Mental Health and Corrections are for an indeterminate period but not less than one year nor beyond age 21.

(i) Maximum sentences may be reduced by up to 25% for good behavior.

(j) The Juvenile Dispositions Standards Commission sets sentence ranges based on a point system. The court may go beyond the ranges only by following certain procedures and making specific findings.

EXHIBIT 4
DATE 3-18-93
HB 638

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JUVENILE SENTENCING SYSTEMS IN THE UNITED STATES

A snapshot of juvenile sentencing practices in the United States that focuses on the extent of judges' authority after commitment and the amount of determinacy in periods of confinement shows that the stay in custody for most juveniles is indeterminate in length. It reveals that the executive branch authorities have discretionary authority to make most of the decisions in placement, treatment, and length-of-stay matters. The following state descriptions summarize national current practice.

Legend:

Extent of Judges' Authority	Amount Of Determinacy
Class 1 - Little or no authority	Class A - none
Class 2 - Mixed	Class B - mixed
Class 3 - Total authority	Class C - total

JURISDICTION

ALABAMA - Judge has authority to order a particular placement when committing to agency, but this occurs infrequently. Agency evaluates and if disagrees attempts to negotiate with judge. **Terms are indeterminate.** Agency has release review committee that can discharge at any time, or request court to provide aftercare. (Classification - 2A)

ALASKA - Judge commits to agency. No authority to order to specific program or facility, but recommendations are considered. **Indeterminate length of stay with commitment not to exceed two years.** Agency makes release decision. (Classification - 1A)

ARIZONA - No authority to order treatment or placement, but can make recommendations. Judge retains authority to recall a commitment. **Determinate terms, in that duration is established at the beginning of incarceration based on guidelines, but agency makes final release decision.** (Classification 1B)

ARKANSAS - No authority of Judge to order specific plan. Agency

dispositions, but usually bases decision on agency recommendations. **Indeterminate lengths of stay, but judge makes decisions. Agency recommends.** (Classification 3A)

ILLINOIS - Judge does not have the authority to assign to a specific facility or recommend a treatment modality, location, or set the determination of term. Department seriously considers recommendations of judge. Judge can commit for evaluation. Indeterminate terms for adjudicated juveniles, but determinate sentences for sentenced juveniles, with internal release guidelines and a prisoner review board. (Classification 1B

INDIANA - Judge gives up authority over the child when committing a delinquent offender to the department. The judge may make recommendations., but department makes the final decision concerning treatment and placement. **Indeterminate stay.** (Classification 1A)

IOWA - Judge has considerable authority in placement and treatment decision. **Indeterminate length of stay.** Judge has say in release matters only if agency release decision is contested by a party in the case. (Classification 3A)

KANSAS - Judge has no power to direct a specific placement after commitment to the agency, but can make recommendations. The agency must notify the court in writing of the initial placement. Judge can order drug evaluation, but county must pay. **Indeterminate length of stay,** with release decisions made by agency when commitment is to state youth center. (Classification 2A)

MISSOURI - Court has little authority to make placement, treatment, and release decisions. Agency can return jurisdiction if requested by court. **Indeterminate terms.** Agency releases. (Classification 1A)

MONTANA - (PROPOSED) - UNDER SPECIFIC CIRCUMSTANCES AND FINDINGS, JUDGE CAN DESIGNATE A SECURE FACILITY IN COMMITMENT ORDER. AUTHORITY IS LIMITED BY STATUTE. IF NOT SPECIFIED, WHICH IS THE GENERAL RULE, AGENCY HAS DISCRETION. LENGTH OF STAY IS INDETERMINATE BUT, IN SOME CASES, DETERMINED BASED ON GUIDELINES RECOMMENDING PLACEMENTS IN PROGRAMS WITH SPECIFIC TIME CONSTRAINTS. AGENCY RELEASES BUT IN THE CASE OF SECURE-CARE PLACEMENTS, NOTIFICATION IS PROVIDED TO THE YOUTH COURT PRIOR TO RELEASE. (CLASSIFICATION 1A)

NEBRASKA - Judge does not have authority to prescribe specific treatments, programs, or housing locations. **Indeterminate stays.** Agency releases by discharge or parole, but court maintains jurisdiction and can return to custody. (Classification 1A)

NEVADA - Judge has wide discretion to order treatment for committed juveniles, but not to a specific facility or program. Agency determines placement. **Indeterminate stay, with release**

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decision made by superintendent. (Classification - 2A)

MASSACHUSETTS - Prior to adjudication, judge has considerable resources and treatment authority. **After adjudication, agency makes placement and treatment decisions, but judge can make recommendations.** Agency can order release under supervision at any time. (Classification - 1A)

MICHIGAN - Judge does not have authority to order a specific placement or treatment, but often does. Agency views as recommendations and will appeal if disagrees. **Stay is indeterminate, but judge has release authority.** Judge can release without recommendation of agency, or can turn down agency's release recommendation (Classification 1B)

MINNESOTA - After commitment, agency has discretion except that judge can order restitution, which becomes part of treatment plan. **Length of stay is indeterminate to age 19.** Correctional agency makes parole decision, but releases guidelines add determinacy to process. (Classification 1A)

MISSISSIPPI - Judge has range of options before commitment, which is to a training school, but no say in treatment and release decisions. Agency personnel provide probation and aftercare supervision. **Indeterminate terms.** Training school superintendent determines parole date. (Classification 1A)

NORTH CAROLINA - Court has range of options before commitment to agency. Institutional option is restricted to extraordinary situations where no alternative is available, but after commitment, agency has discretion. Two tracks, both indeterminate. Regular adjudication, where agency has parole discretion. Serious offender designation, where agency can reduce sentence (maximum of two years) by 25% and judge can reduce an additional 25%. (Classification 2B)

NORTH DAKOTA - Agency has discretion after commitment. Judge can place temporarily and order evaluation. Agency reports rehabilitation programs to court and informs court of disposition. Law requires court to make available all pertinent data. **Length of stay is indeterminate**, but cannot exceed two years. Agency makes release decision. (Classification 1A)

OHIO - Commitments only for felony offenses. Law provides for six or twelve month minimum in most cases, but judge can release early and often does. Judge also can rescind commitment., but authority not often used. After minimums, agency has discretionary authority to release. Institutions and regional parole have to concur in decision. Judges make recommendations and agency tries to accommodate. Agency has implemented release guidelines, which add considerable determinacy. (Classification 2B)

NEW HAMPSHIRE - Judge makes decisions. Agency has little or no

discretion in treatment and classification matters. **Term is indeterminate.** Agency has internal parole board and recommends parole on a case by case basis. (Classification 3A)

NEW MEXICO - After commitment, agency determines appropriate placement, supervision and rehab program. By law, agency provides all pertinent information to court. **Stay is indeterminate.** Agency recommends, but parole board makes release decision. (Classification 2B)

NEW YORK - Judge has no authority to order treatments or placements in specific agency facilities, but often makes recommendations, which agency tries to follow if resources are available. Judge has authority to order initial periods of placement, but agency can request extensions. **Length of stay is indefinite, but program completion criteria add measure of determinacy.** (Classification 2B)

OKLAHOMA - Judge has little authority in placement, treatment, or release decisions after commitment to agency. **Length of stay is indeterminate.** Agency determines release date. (Classification 1A)

OREGON - Judge cannot commit to a particular residential facility, but can specify type of care. It's responsibility of corrections agency to find appropriate resource. Judge does have considerable oversight authority. Court retains wardship regardless of placement of child. **Indefinite stay up to maximum allowed for adult.** Agency makes release decision based upon treatment completion criteria and a parole plan. Decision is made by a committee at the institution level. (Classification - 2A)

PENNSYLVANIA - Judge orders specific placements and commitments. Probation develops referral package with options for judge to choose. **Judge can stipulate a specific length of stay, but most terms are indefinite.** Judge releases and court provides aftercare. (Classification 3B)

RHODE ISLAND - Judge has broad authority. Court can place a child in the custody of the agencies or institutions under the control of or approved by the department upon such terms as the court shall determine. **Determinate length of stay.** Judge makes release decision. (Classification 3C)

SOUTH CAROLINA - Judge can order to an institution, but anything else is beyond court's authority. Agency tries to follow recommendations. **Length of stay is indeterminate.** Correctional agency recommends release, but decision is made by separate juvenile parole board. (Classification 1A)

SOUTH DAKOTA - Judge can order juvenile to an adolescent facility of department of corrections. After commitment, facility staff determine services. **Indeterminate stay.** Release made by agency

within 30 days prepares treatment plan containing anticipated length of stay and post-commitment needs and submits to court. **Indeterminate stays.** Agency has discretion in release decisions. (Classification 1A)

CALIFORNIA - Judge has no authority to determine facility, program, or release, except order can be vacated under certain conditions. Agency encourages input from judges, but viewed as recommendations. **Indeterminate stay.** Parole board sets parole consideration date, which may be changed, and makes final release decision.

COLORADO - Judge has no authority in treatment decisions, but can recommend, which agency finds helpful. Prosecution decides whether to seek mandatory or non-mandatory sentence. Non-mandatory serves 4-12 months. Aggravated provision requires 30 - 60 months. **Guidelines add some determinacy to process.** Community placements are screened by local board. Parole board releases. (Classification 1B)

CONNECTICUT - Judge can order specific treatment and make direct placements. Court personnel work width Department to develop treatment plan to present to judge. **Indeterminate stays, with maximums.** Agency has authority to parole or discharge, but some juveniles are eligible to return to their communities only after 6 months. (Classification - 2B)

DELAWARE - Agency has discretion in placement and treatment decisions. Judges recommend and agency attempts to accommodate. **Indeterminate length of stay.** Second felony in a year allows judge to set six month minimum. Agency classification team decides to release to aftercare. (Classification 1A)

KENTUCKY - Judge has little authority. Agency has jurisdiction in placement care, and treatment issues. **Terms are indeterminate.** Agency has release authority. (Classification 1A)

LOUISIANA - Once judge commits juvenile, agency determines level of care and custody. **The commitment order establishes the maximum length of stay.** Agency may reassign to progressively more or less restrictive setting based upon offender progress. (Classification - 2B)

MAINE - No separate juvenile system. Judge has no authority to order treatment, but can place in juvenile facility if conditions in law are met. Judge has persuasive power in treatment decisions. **Indeterminate terms.** Cases are reviewed at least once per year until discharge. Review must describe services provided, certify that services recommended are available, and that plan is least restrictive alternative. (Classification - 2A)

MARYLAND - Judge has broad discretion in determining

based on recommendation of institution administrator. Courts administer aftercare supervision. (Classification 2A)

TENNESSEE - Judge has no authority in treatment and placement decisions, but can make recommendations. Agency has discretionary decision-making authority. **Two types of commitments: Indeterminate, in which agency recommends release, and if judge disagrees, goes to 3-judge panel; and determinate, (under specific conditions) where sentence is fixed, but offender can earn time off for good behavior.** Agency can recommend early release. (Classification 1B)

TEXAS - No authority to specify facility, program, or treatment when committing to agency. Can make recommendations, which agency considers. **Indeterminate length of stay.** Agency has discretion, but release criteria add determinacy to process. Determinate sentences for a class of violent offenders. (Classification 1B)

UTAH - Judge has no authority beyond commitment, but can commit for 90 days for observation and evaluation. Judge has discretionary authority short of commitment decision. Commitment is viewed as a last resort. Correctional agency reviews history compiled by court and considers recommendations. **Indeterminate stay.** Youth parole board makes release decision. Probation administered by courts. Aftercare and institutions (which can contract facilities) administered by agency. (Classification 1A)

VERMONT - Judge has little authority to make placement and treatment decisions. **Length of stay is indeterminate.** Agency is the release decision maker. (Classification 1A)

VIRGINIA - Judge has little authority in placement, treatment, and release decisions after commitment. Commitment is seen as last resort, and can be reviewed and revised within 60 days. **Indeterminate terms.** Department makes release decision. If a juvenile is sixteen, a prior offender, and commits a felony, court can set time at 6 - 12 months. (Classification 1A)

WASHINGTON - No authority to specify facilities, programs, but some authority to set length of stay and add community supervision. Recommendations are part of sentencing packet considered by agency. Community supervision as part of sentence. Sentencing standards add considerable determinacy to term. Eligible for release at service of minimum, which is 80 percent of maximum. **Release decision made by institution review board,** with target release date established by 60 percent of minimum. (Classification 1B)

WEST VIRGINIA - Judge commits to a facility, but choices are limited, and can commit for 30 days for diagnosis and evaluation. Also, can specify certain types of treatment or education. **Indeterminate stay, with maximum determined by adult penalty.** Director of institutions makes release decision, but returned to

court for further disposition. Parole abolished. Aftercare provided by probation officers. (Classification 2A)

WISCONSIN - Judge has range of local options before commitment to Division, but has no authority to mandate plan of treatment when youth are committed to the state for placement in a secured correctional institution. Judge often makes recommendations, which agency tries to accommodate. Court determines maximum stay in dispositional order, as allowed by code. **Agency makes release decisions, except for youth convicted of certain serious crimes, which only the court can release early.** (Classification 1B)

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 3-18-93
BILL NO. HB 638

Proposed Amendment to HB 638

Prepared by Ann Gilkey
Department of Family Services

1. Page 4, line 10.
Strike: lines 10 - 12 in their entirety
Insert: "TO A MORE APPROPRIATE PLACEMENT IN RESPONSE TO THE YOUTH'S MENTAL HEALTH NEEDS AND CONSISTENT WITH THE DISPOSITION ALTERNATIVES AVAILABLE IN 53-21-127."

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March 18, 1993

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 3-18-93
BILL NO. HB 638

Chairman Bill Yellowtail
Senate Judiciary Committee
State Capitol
Helena, Montana 59620

Dear Chairman Yellowtail and members of the committee. My name is John McCrea. I am with the Montana Advocacy Program. I have been involved in an investigation for the past three years addressing how adolescents have been and are currently treated in the system and more specifically in the correction system.

This bill is a cooperative effort to avoid potential litigation from a coalition representing Legal Services, Youth Law Center and the Montana Advocacy Program.

This law would prohibit the initial commitment or prolonged confinement of a mentally ill youth in a state correctional facility. When the Protection and Advocacy program first visited Pine Hills School, we saw some examples of this horrendous practice. I visited with a mentally ill youth who was confined to a room that only had a mattress on the floor. The room served to isolate the youth from the other youth because he had been cutting on himself. He had traded cigarettes for a piece of glass to use to cut on himself. There was blood on the floor. He was seriously mentally ill and the staff felt they were doing everything they could to protect this youth. This was an inappropriate placement. Schools and Agencies were fighting other agencies over who would pay for the care and treatment of a mentally ill youth. When no one could agree, the youth went to Pine Hills School or Mt. View School to be warehoused. Staff would openly confess that they were not trained or equipped to deal with the kind of problems and behaviors these youth manifested. Still they would stay for weeks or months on end, not receiving the treatment they needed. This bill would require a decision to evaluate the youth and do a commitment through the mental health codes or some diversionary process so that needed hospitalization or treatment could be provided, preventing placement to a correctional facility that is neither equipped or staffed to treat severe psychiatric problems. I urge you to pass this bill. Thank you.

Sincerely,

John McCrea

John McCrea

DATE 3/18/83

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 638 HB 335 HB 228

HJR 22

Name	Representing	Bill No.	Check One: Support	Oppose
Ann Hayes	DRS	HB 638	X	
Rosemary Hertel	SELF	335	X	
Lynda Spaulding	MT. LAND TITLE ASSN.	335		X
Bill Gowan	" "	"		"
Bob Pyfer	MT Credit Unions League	335	X amend	
GEORGE BENNETT	MONT. BANKERS ASS'N	335	X AMEND	
Jack Anderson	MT League of Sav. Inst.	335	Amend	
Roger Tippy	MT Independent Bankers	335	Amd	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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