

CHAPTER NO. 612

SENATE BILL NO. 221

INTRODUCED BY TURNAGE, S. BROWN

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Fiscal note requested.
January 31, 1979	Fiscal note returned.
February 20, 1979	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent adopted.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed.
	On motion rules suspended. Bill placed on Calendar for third reading this day.
	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 24, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1979	Second reading, pass consideration.

March 27, 1979

Second reading concurred in.

Third reading, concurred in
as amended.

IN THE SENATE

March 28, 1979

Returned from second house.
Concurred in as amended.

March 30, 1979

Second reading, amendments adopted.

March 31, 1979

Third reading, amendments adopted. Sent to enrolling.

April 4, 1979

On motion taken from Committee
on Bills and Journal and
referred to second reading.
Motion adopted.

April 5, 1979

Second reading, amendments rejected.

April 6, 1979

On motion rules be temporarily suspended to reconsider action taken on third reading March 31, 1979. Motion adopted.

On motion Free Joint Conference Committee requested.

April 11, 1979

Free Joint Conference Committee appointed.

April 13, 1979

Free Joint Conference Committee dissolved.

On motion New Free Joint
Conference Committee requested
and appointed.

April 17, 1979

New Free Joint Conference Committee reported.

April 18, 1979

Second reading, adopted.

On motion rules suspended.
Bill placed on Calendar for
third reading this day.

April 18, 1979

Third reading, adopted.

April 19, 1979

Adopted by House.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *201*
2 INTRODUCED BY *Turner & J. Brown*

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH
6 ADMINISTRATIVE PROCEDURES FOR ENFORCING SUPPORT FOR
7 DEPENDENT CHILDREN."

9 WHEREAS, it is the responsibility of the state through
10 the department of revenue to limit the expenditure of public
11 assistance funds, whenever possible, in order that such
12 funds not be spent if there are private funds available, or
13 which can be made available by judicial process or
14 otherwise, to partially or completely meet the financial
15 needs of the children of this state. The failure of parents
16 to provide adequate financial support and care for their
17 children is a major cause of financial dependency and a
18 contributing cause of social delinquency.

19 WHEREAS, the purpose of this act is to provide the
20 state, through the department of revenue, a more effective
21 and efficient way to effect the support of dependent
22 children by the person or persons who, under the law, are
23 primarily responsible for such support and to lighten the
24 heavy burden of the taxpayer, who in many instances is
25 paying toward the support of dependent children while those

1 persons primarily responsible are avoiding their
2 obligations.

3 WHEREAS, common law and statutory procedures governing
4 the remedies for enforcement of support for financially
5 dependent minor children by responsible parents have not
6 proven wholly effective or efficient in coping with the
7 increasing incidence of financial dependency. The increasing
8 workload of courts and prosecuting attorneys has made such
9 remedies uncertain, slow, and inadequate, thereby resulting
10 in a growing burden on the financial resources of the state,
11 which is constrained to provide public assistance grants for
12 basic maintenance requirements when parents fail to meet
13 their primary obligations.

14 THEREFORE, it is the intent of this act that the common
15 law and statutory remedies pertaining to family desertion
16 and nonsupport of minor dependent children be augmented by
17 additional remedies as set forth in sections 14 through 39
18 and directed to the real and personal property resources of
19 the responsible parents. In order to render resources more
20 immediately available to meet the needs of minor children,
21 it is the legislative intent that the remedies herein
22 provided are in addition to and not in lieu of existing law.
23 It is declared to be the public policy of the state that
24 this act be construed and administered to the end that
25 children shall be maintained from the resources of

1 responsible parents, thereby relieving, at least in part,
 2 the burden presently borne by the general citizenry through
 3 public assistance programs.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Definitions. As used in [this act] the
 7 following definitions apply:

8 (1) "Department" means the department of revenue.

9 (2) "Dependent child" means any person under 18 years
 10 of age who is not otherwise emancipated, self-supporting,
 11 married, or a member of the armed forces of the United
 12 States and who is a recipient of public assistance.

13 (3) "Director" means the director of the department of
 14 revenue or his authorized representative.

15 (4) "Disposable earnings" means that part of the
 16 earnings of any individual remaining after the deduction
 17 from those earnings of any amount required by law to be
 18 withheld.

19 (5) "District court order" means any judgment or order
 20 of the district court of the state of Montana or an order of
 21 a court of appropriate jurisdiction of another state
 22 ordering payment of a set or determinable amount of support
 23 money.

24 (6) "Earnings" means compensation paid or payable for
 25 personal services, whether denominated as wages, salary,

1 commission, bonus, or otherwise, and specifically includes
 2 periodic payments under pension or retirement programs or
 3 insurance policies of any type. "Earnings" specifically
 4 includes all gain derived from capital, labor, or both
 5 combined, including profit gained through sale or conversion
 6 of capital assets.

7 (7) "Need" means the necessary costs of food,
 8 clothing, shelter, and medical care for the support of a
 9 dependent child or children.

10 (8) "Public assistance" means any type of monetary or
 11 other assistance, including medical and foster care
 12 benefits, furnished to a person by a state or county agency,
 13 regardless of the original source of the assistance.

14 (9) "Responsible parent" means the natural or adoptive
 15 parent of a dependent child.

16 (10) "Support debt" means the sum created by the
 17 failure to provide support to a dependent child under the
 18 laws of this state or the decree of any court of appropriate
 19 jurisdiction ordering a sum to be paid as child support.

20 Section 2. Department of revenue -- powers and duties
 21 regarding collection of support debt. (1) Whenever the
 22 department of social and rehabilitation services receives an
 23 application for public assistance on behalf of a child and
 24 it appears to the satisfaction of that department that the
 25 child has been abandoned by his parents; the child and one

1 parent have been abandoned by the other parent; or the
 2 parent or other person who has a responsibility for the
 3 care, support, or maintenance of such child has failed or
 4 neglected to give proper care or support to the child, the
 5 department of social and rehabilitation services shall
 6 promptly refer the matter to the department of revenue for
 7 action under the provisions of [this act], the abandonment
 8 or nonsupport statutes, or other appropriate statutes of
 9 this state to insure that the parent or other person
 10 responsible pays for the care, support, or maintenance of
 11 the dependent child.

12 (2) In the event that public assistance is furnished
 13 by a state or county agency or in instances where the
 14 department has contracted to collect support, the department
 15 shall become trustee of any cause of action of the person
 16 obligated for support or any minor child in that person's
 17 custody to recover support due to that obligee from any
 18 person and may bring and maintain the action either in the
 19 department's own name or in the name of the obligee.

20 (3) The department has the power of attorney to act in
 21 the name of any recipient of public assistance in endorsing
 22 and cashing any and all drafts, checks, money orders, or
 23 other negotiable instruments received by the department and
 24 representing support payments for children in whose behalf
 25 public assistance has been previously paid.

1 (4) For purposes of prosecuting any action pursuant to
 2 [this act], the department is a real party in interest upon
 3 the payment of public assistance. No obligee shall act to
 4 prejudice the rights of the department after the receipt of
 5 public assistance.

6 (5) No agreement between any obligee and any obligor
 7 either relieving an obligor of any duty of support or
 8 purporting to settle past, present, or future support
 9 obligations either as settlement or prepayment may act to
 10 reduce or terminate any rights of the department to recover
 11 from that obligor for support provided unless the department
 12 has consented to the agreement in writing.

13 (6) The department may petition a court for
 14 modification of any court order on the same basis as a party
 15 to that action would have been entitled to do.

16 (7) The department shall be subrogated to the right of
 17 the child or children or person having the care, custody,
 18 and control of the child or children to prosecute or
 19 maintain any support action or execute any administrative
 20 remedy existing under the laws of the state to obtain
 21 reimbursement of money thus spent.

22 (8) If a district court enters judgment by order for
 23 an amount of support to be paid by an obligor parent, the
 24 department shall be subrogated to the debt created by the
 25 order and the money judgment shall be determined to be in

1 favor of the department. This subrogation shall apply to
2 temporary spouse support orders, family maintenance orders,
3 and alimony orders up to the amount paid by the department
4 in public assistance money to or for the benefit of a
5 dependent child or children but allocated to the benefit of
6 the children on the basis of providing necessities for the
7 caretaker of the children.

8 (9) The department may adopt and enforce such rules as
9 may be necessary to carry out the provisions of [this act].

10 (10) The department, for the purposes mentioned in
11 [this act], through its director or his authorized
12 representatives, may administer oaths to certify official
13 acts, issue subpoenas, and compel witnesses and the
14 production of books, accounts, documents, and evidence.

15 (11) The department may initiate any civil proceedings
16 necessary to secure reimbursement from the parent or parents
17 of minor dependent children for all money spent by the state
18 in providing public assistance or services to dependent
19 children.

20 Section 3. Support enforcement services. (1) The
21 department may accept applications for support enforcement
22 services on behalf of persons who are not recipients of
23 public assistance and may take appropriate action to
24 establish or enforce support obligations against persons
25 owing a duty to pay support. Actions may be taken under the

1 the provisions of Title 45, chapter 5, the abandonment or
2 nonsupport statutes, or other appropriate statutes of this
3 state, including but not limited to remedies established in
4 Title 45, chapter 5, to establish and enforce the support
5 obligations.

6 (2) The department may establish by rule reasonable
7 standards necessary to limit applications for support
8 enforcement services. These standards shall take into
9 account the earnings, income, and other resources already
10 available to support the person for whom a support
11 obligation exists.

12 (3) The department may charge a fee as compensation
13 for services rendered in establishment of or enforcement of
14 support obligations. This fee shall be agreed on in writing
15 with the custodian or guardian of the person for whom a
16 support obligation is owed or that person if no custodian or
17 guardian exists. An initiation fee as a portion of the
18 collection fee may be charged the applicant by the
19 department. The department shall by rule establish
20 reasonable fees for support enforcement services, and the
21 schedule of fees shall be made available to all applicants
22 for support enforcement services. The department may, upon a
23 showing of necessity, waive or defer any such fee.

24 Section 4. Cooperation by person having custody of
25 child. Any person having the care, custody, or control of

1 any dependent child or children shall cooperate with the
 2 department in establishing the paternity of such child and
 3 obtaining support payments.

4 Section 5. Payment of support money collected to
 5 support enforcement and collections unit -- notice. If
 6 written notice by the department is given to the responsible
 7 person or to the clerk of the court, if appropriate, that
 8 the children for whom a support obligation exists are
 9 receiving public assistance, then any support money paid by
 10 the person or persons responsible for support as a result of
 11 any action shall be paid through the support enforcement and
 12 collections unit of the department of revenue.

13 Section 6. Petition for support order by married
 14 parent with minor children receiving public assistance. (1)
 15 Any married parent with minor children, natural or legally
 16 adopted, who is receiving public assistance may apply to the
 17 district court of the county in which the parent resides or
 18 in which the spouse may be found for an order upon such
 19 spouse, if such spouse is the natural or adoptive mother or
 20 father of such children, to provide for the parent's support
 21 and the support of the parent's minor children by filing in
 22 the county a petition setting forth the facts and
 23 circumstances upon which the parent relies for the order.

24 (2) If it appears to the satisfaction of the court
 25 that the parent is without funds to employ counsel, the

1 department may file a petition on behalf of the parent. If
 2 satisfied that a just cause exists, the court shall direct
 3 that a citation be issued to the spouse requiring that
 4 spouse to appear at a time set by the court to show cause
 5 why an order of support should not be entered in the matter.

6 Section 7. Petition for support order by married
 7 parent with minor children receiving public assistance --
 8 powers of court. (1) After hearing the petition for an order
 9 of support, the court shall make an order granting or
 10 denying it and fixing the terms and amount of the support.

11 (2) The court has the same power to compel the
 12 attendance of witnesses and the production of testimony as
 13 in actions and suits, make such decree or orders as are
 14 equitable in view of the circumstances of both parties, and
 15 punish violations as other contempts are punished.

16 Section 8. Petition for support order by married
 17 parent with minor children receiving public assistance --
 18 waiver of filing fees. The court may upon satisfactory
 19 showing that the petitioner is without funds to pay the
 20 filing fee, order that the petition and other papers be
 21 filed without payment of the fee.

22 Section 9. Financial statements by parent whose
 23 absence is basis of application for public assistance --
 24 penalty. (1) Any parent in the state whose absence is the
 25 basis upon which an application is filed for public

1 assistance on behalf of a child shall complete a statement,
 2 under oath, of his current monthly income, his total income
 3 over the past 36 months, the number of dependents for whom
 4 he is providing support, the amount he is contributing
 5 regularly toward the support of all children for whom
 6 application for such assistance is made, his current monthly
 7 living expenses, and all other information pertinent to
 8 determining his ability to support his children. The
 9 statement shall be provided upon a demand made by the
 10 department. If assistance based upon the application is
 11 granted on behalf of the child, additional statements shall
 12 be filed as required by the department until the child is no
 13 longer receiving public assistance.

14 (2) Failure to comply with this section is a
 15 misdemeanor.

16 Section 10. Scale of suggested minimum contributions.
 17 (1) The department shall establish a scale of suggested
 18 minimum contributions to assist counties and courts in
 19 determining the amount that a parent should be expected to
 20 contribute toward the support of his child under [this act].
 21 The scale shall:

22 (a) include consideration of gross income;
 23 (b) authorize an expense deduction for determining net
 24 income;
 25 (c) designate other available resources to be

1 considered;

2 (d) specify the circumstances which should be
 3 considered in reducing support contributions on the basis of
 4 hardship.

5 (2) The department shall accept and compile pertinent
 6 and reliable information from any available source in order
 7 to establish a minimum scale of suggested contributions.
 8 Copies of the scale shall be made available to courts,
 9 county offices, county attorneys, and upon request, to any
 10 other state or county officer or agency engaged in the
 11 administration or enforcement of [this act]. Attorneys
 12 admitted to practice in Montana may have access to the
 13 minimum scales of suggested contribution.

14 (3) No county, court, officer, or agency may be
 15 required to use this scale.

16 Section 11. Central unit for information and
 17 administration -- cooperation enjoined -- availability of
 18 records. (1) The department shall establish a central unit
 19 to serve as a registry for the receipt of information, for
 20 answering interstate inquiries concerning deserting parents,
 21 to coordinate and supervise departmental activities in
 22 relation to deserting parents, and to assure effective
 23 cooperation with law enforcement agencies.

24 (2) To effectuate the purposes of this section, the
 25 director may request from state, county, and local agencies

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 2 department in establishing the paternity of such child and
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 20 father of such children, to provide for the parent's support
 21 and the support of the parent's minor children by filing in
 22 the county a petition setting forth the facts and
 23 circumstances upon which the parent relies for the order.

24 (2) If it appears to the satisfaction of the court
 25 that the parent is without funds to employ counsel, the

1 department may file a petition on behalf of the parent. If
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 5 why an order of support should not be entered in the matter.

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 9 of support, the court shall make an order granting or
 10 denying it and fixing the terms and amount of the support.
 11 (2) The court has the same power to compel the
 12 attendance of witnesses and the production of testimony as
 13 in actions and suits, make such decree or orders as are
 14 equitable in view of the circumstances of both parties, and
 15 punish violations as other contempts are punished.

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 23 (b) authorize an expense deduction for determining net
 24 income;
 25 (c) designate other available resources to be

1 considered;
 2 (d) specify the circumstances which should be
 3 considered in reducing support contributions on the basis of
 4 hardship.
 5 (2) The department shall accept and compile pertinent
 6 and reliable information from any available source in order
 7 to establish a minimum scale of suggested contributions.
 8 Copies of the scale shall be made available to courts,
 9 county offices, county attorneys, and upon request, to any
 10 other state or county officer or agency engaged in the
 11 administration or enforcement of [this act]. Attorneys
 12 admitted to practice in Montana may have access to the
 13 minimum scales of suggested contribution.

14 (3) No county, court, officer, or agency may be
 15 required to use this scale.

16 Section 11. Central unit for information and
 17 administration -- cooperation enjoined -- availability of
 18 records. (1) The department shall establish a central unit
 19 to serve as a registry for the receipt of information, for
 20 answering interstate inquiries concerning deserting parents,
 21 to coordinate and supervise departmental activities in
 22 relation to deserting parents, and to assure effective
 23 cooperation with law enforcement agencies.

24 (2) To effectuate the purposes of this section, the
 25 director may request from state, county, and local agencies

1 all information and assistance as authorized by [this act].
 2 All state, county, and city agencies, officers, and
 3 employees shall cooperate in the location of parents who
 4 have abandoned or deserted or are failing to support
 5 children receiving public assistance and shall on request
 6 supply the department with all information available
 7 relative to the location, income, and property of the
 8 parents.

9 (3) Any records established pursuant to the provisions
 10 of this section are available only to the department, county
 11 attorneys, and courts having jurisdiction in support and
 12 abandonment proceedings or actions or agencies in other
 13 states engaged in the enforcement of support of minor
 14 children as authorized by the rules of the department and by
 15 the provisions of the federal Social Security Act.

16 Section 12. Department exempt from fees. No filing or
 17 recording fees, court fees, fees for making copies of
 18 documents, or fees for service of process may be required
 19 from the department by any county clerk, county auditor,
 20 sheriff, or other county officer for the filing of any
 21 actions or documents authorized by [this act] or for the
 22 service of any summons or other process in any action or
 23 proceeding authorized by [this act].

24 Section 13. Debt to state by natural or adoptive
 25 parents -- limitations. (1) Except as provided in subsection

1 (2), any payment of public assistance money made to or for
 2 the benefit of any dependent child or children creates a
 3 debt due and owing the state of Montana by the natural or
 4 adoptive parent or parents who are responsible for the
 5 support of such children in an amount equal to the amount of
 6 public assistance money so paid.

7 (2) Where there has been a district court order
 8 established, the debt shall be limited to the amount
 9 provided for by the order.

10 (3) Where a child has been placed in foster care, and
 11 a written agreement for payment of support has been entered
 12 into by the responsible parent or parents and the
 13 department, the debt shall be limited to the amount provided
 14 for in the agreement. However, if a court order for support
 15 is or has been entered, the provisions of the order shall
 16 prevail over the agreement.

17 (4) The department shall adopt rules based on ability
 18 to pay, with respect to the level of support to be provided
 19 for in such agreements or modifications of such agreements
 20 based on changed circumstances.

21 Section 14. Support debt based upon subrogation to or
 22 assignment of judgment -- notice -- contents -- action to
 23 collect. (1) The department may issue a notice of a support
 24 debt accrued or accruing based upon subrogation to or
 25 assignment of the judgment created by a district court

1 order. The notice may be served upon the debtor in the
2 manner prescribed for the service of a summons in a civil
3 action in accordance with the provisions of the Montana
4 Rules of Civil Procedure, demanding payment within 20 days
5 of the date of receipt.

6 (2) The notice of debt shall include:

7 (a) a statement of the support debt accrued or
8 accruing, computable on the amount required to be paid under
9 any district court order to which the department is
10 subrogated or has an assigned interest;

11 (b) a statement that the property of the debtor is
12 subject to collection action;

13 (c) a statement that the property is subject to lien
14 and foreclosure, distress, seizure and sale, or order to
15 withhold and deliver;

16 (d) a statement that the net proceeds will be applied
17 to the satisfaction of the support debt.

18 (3) Action to collect the subrogated or assigned
19 support debt by lien and foreclosure or distress, seizure
20 and sale, or order to withhold and deliver shall be lawful
21 after 20 days from the date of service upon the debtor or 20
22 days from the receipt or refusal by the debtor of the notice
23 of debt.

24 Section 15. Notice of support liability based upon
25 payment of public assistance -- notice -- contents --

1 collection warrant -- fair hearing. (1) In the absence of a
2 district court order the department may issue a notice of a
3 support liability accrued or accruing based upon payment of
4 public assistance to or for the benefit of any dependent
5 child or children. The notice of liability shall be served
6 upon the responsible parent in the manner prescribed for the
7 service of summons in a civil action, in accordance with the
8 provisions of the Montana Rules of Civil Procedure.

9 (2) The notice of liability shall include:

10 (a) a statement of the support debt accrued or
11 accruing, computable on the basis of the amount of public
12 assistance previously paid and to be paid in the future;

13 (b) a statement of the amount of the monthly public
14 assistance payment;

15 (c) a statement of the name of the recipient and the
16 name of the child or children for whom assistance is being
17 paid;

18 (d) a demand for immediate payment of the support debt
19 or, in the alternative, a demand that the responsible parent
20 make answer within 20 days of the date of service to the
21 department stating defenses to liability under [section 13];

22 (e) a statement that if no answer is made on or before
23 20 days from the date of the service the support debt shall
24 be assessed and determined subject to computation and is
25 subject to collection action;

1 (f) a statement that the property of the responsible
 2 parent will be subject to lien and foreclosure, distraint,
 3 seizure and sale, or order to withhold and deliver.

4 (3) If no answer is had by the department to the
 5 notice of liability on or before 20 days of the date of
 6 service, the support debt shall be assessed and determined
 7 subject to the computation and the department shall issue a
 8 collection warrant authorizing a collection action under
 9 [this act].

10 (4) If the responsible parent, within 20 days of the
 11 date of service of notice of liability, makes answer to the
 12 department alleging defenses to liability under [section
 13 13], the responsible parent may receive a fair hearing
 14 pursuant to [sections 20 and 22]. The decision of the
 15 department in the hearing shall establish the obligation of
 16 the responsible parent, if any, for repayment of public
 17 assistance funds spent to date as an assessed and determined
 18 support debt.

19 Section 16. Finding of support liability based upon
 20 payment of public assistance -- filing and serving of liens
 21 -- bond to release liens -- action to collect. (1) If the
 22 department reasonably believes that the parent is not a
 23 resident of this state or is about to move from this state
 24 or has concealed himself, absconded, absented himself or has
 25 removed or is about to remove, secrete, waste, or otherwise

1 dispose of property which could be made subject to
 2 collection action to satisfy the support debt the department
 3 may file and serve liens pursuant to [sections 19 and 20]
 4 during the pendency of the fair hearing or thereafter,
 5 whether or not appealed. No further action under [section
 6 21], [section 26], and [section 27] may be taken on such
 7 liens until final determination after fair hearing and/or
 8 appeal. The department shall in such cases make and file in
 9 the record of the fair hearing an affidavit stating the
 10 reasons upon which the belief is founded. The responsible
 11 parent may furnish a bond satisfactory to the department
 12 during pendency of the hearing or thereafter, and in such
 13 case liens filed shall be released. If the decision
 14 resulting from the hearing is in favor of the responsible
 15 parent, all liens filed shall be released.

16 (2) The department may commence action under the
 17 provisions of [this act] to collect the support debt on the
 18 date of issuance of the decision resulting from the hearing.

19 Section 17. Notice and finding of financial
 20 responsibility of responsible parent -- administrative
 21 procedure. (1) In lieu of the hearing and appeal procedures
 22 provided in [sections 16 and 17], the department may, in the
 23 absence of a district court order, serve on the responsible
 24 parent a notice and finding of financial responsibility
 25 requiring a responsible parent to appear and show cause at a

1 hearing held by the department why the finding of liability
2 and the amount of support liability should not be finally
3 ordered. This notice and finding shall relate to the support
4 debt accrued or accruing under [this act] and/or Title 53,
5 chapter 4, including periodic payments to be made in the
6 future for the period of time any child of the responsible
7 parent is in need. The hearing shall be held pursuant to
8 [this act] and the rules of the department, which shall
9 provide for a fair hearing.

10 (2) The notice and finding of financial liability
11 shall be served in the same manner prescribed for the
12 service of a summons in a civil action, in accordance with
13 the provisions of the Montana Rules of Civil Procedure. Any
14 responsible parent who objects to all or any part of the
15 notice and finding shall have the right for not more than 20
16 days from the date of service to request in writing a
17 hearing, notice of which shall be served upon the department
18 personally or by registered or certified mail. If no request
19 is made, the notice and finding of liability becomes final.
20 If a request is made, the execution of notice and finding of
21 liability shall be stayed pending the decision on such
22 hearing or any direct appeal to the courts from the
23 decision.

24 (3) The notice and finding of financial liability
25 shall include:

1 (a) the amount the department has determined the
2 responsible parent owes, the support debt accrued or
3 accruing, and, as appropriate, the amount to be paid thereon
4 each month, all computable on the basis of the amount of the
5 monthly public assistance payment previously paid or need
6 alleged and the ability of the responsible parent to pay all
7 or any portion of the debt;

8 (b) a statement of the name of the recipient or
9 custodian and the name of any child for whom assistance is
10 being paid or need is alleged; or a statement of the amount
11 of periodic future support payments for which financial
12 liability is found;

13 (c) a statement that the responsible parent may object
14 to all or any part of the notice and finding and request a
15 hearing to show cause why he should not be determined to be
16 liable for any or all of the past and future debt determined
17 and the amount to be paid thereon;

18 (d) a statement that if the responsible parent fails
19 to request a hearing that the support debt and payments
20 stated in the notice and finding, including periodic support
21 payments in the future, shall be assessed, determined, and
22 ordered by the department and that this debt is subject to
23 collection action;

24 (e) a statement that the property of the debtor,
25 without further advance notice or hearing, will be subject

1 to lien and foreclosure, distress, seizure and sale, or
2 order to withhold and deliver to satisfy the debt.

3 Section 18. Administrative hearing -- nature -- place
4 -- time -- determinations -- failure to appear -- entry of
5 findings. (1) The administrative hearing is defined as a
6 "contested case".

7 (2) The administrative hearing may be held in the
8 county of residence or other county convenient to the
9 responsible parent.

10 (3) If a hearing is requested, it shall be scheduled
11 within 30 days.

12 (4) The hearing officer shall determine the liability
13 and responsibility, if any, of the alleged responsible
14 parent under [section 13] and shall also determine the
15 amount of periodic payments to be made to satisfy past,
16 present, or future liability under [section 13]. In making
17 these determinations, the hearing officer shall include in
18 his consideration the scale of suggested minimum
19 contributions adopted under [section 10].

20 (5) If the responsible parent fails to appear at the
21 hearing, upon a showing of valid service, the hearing
22 officer shall enter a decision and order declaring the
23 support debt and payment provisions stated in the notice and
24 finding of financial responsibility to be assessed,
25 determined, and subject to collection action. Within 20 days

1 of entry of the order, the responsible parent may petition
2 the department to vacate the order upon a showing of any of
3 the grounds enumerated in the Montana Rules of Civil
4 Procedure.

5 (6) The hearing officer shall, within 20 days of the
6 hearing, enter findings, conclusions, and a final decision
7 determining liability and responsibility and/or future
8 periodic support payments. The determination of the hearing
9 officer entered pursuant to this section shall be entered as
10 an order unless such findings are set aside pursuant to
11 [section 33] and shall limit the support debt under [section
12 13] to the amounts stated in the decision.

13 (7) The decision establishing liability and future
14 periodic support payments is superseded upon entry of a
15 district court order for support to the extent the district
16 court order is inconsistent with the hearing order or
17 decision. In the absence of a district court order the
18 responsible parent may petition the department for issuance
19 of an order to appear and show cause based on a showing of
20 good cause and material change of circumstances to require
21 the other party to appear and show cause why the decision
22 previously entered should not be prospectively modified. The
23 order to appear and show cause together with a copy of the
24 affidavit upon which the order is based shall be served by
25 the petitioning party on the nonmoving party in the manner

1 of a summons in a civil action. A hearing shall be set not
 2 less than 15 or more than 30 days from the date of service,
 3 unless extended for good cause shown. Prospective
 4 modification may be ordered but only upon a showing of good
 5 cause and material change of circumstances.

6 (8) The department, in its original determinations,
 7 and the hearing officer, in making determinations based on
 8 objections to original determinations or on petitions to
 9 modify, shall consider the standards promulgated for
 10 determination of support payments used by the district court
 11 of the county of residence of the responsible parent.

12 (9) Debts determined pursuant to this section,
 13 accrued and not paid, are subject to collection action under
 14 this chapter without further necessity of action by the
 15 hearing officer.

16 Section 19. Assertion of lien -- effect. (1)
 17 Twenty-one days after receipt or refusal of notice of debt
 18 under provisions of [section 14] or 21 days after service of
 19 notice of debt or as otherwise appropriate under the
 20 provisions of [sections 15 and 16], a lien may be asserted
 21 by the department upon the real or personal property of the
 22 debtor. The claim of the department for a support debt not
 23 paid when due constitutes a lien against all property of the
 24 debtor with priority of a secured creditor. This lien is
 25 separate and apart from and in addition to any other lien

1 provided for in this title. The lien is attached to all real
 2 and personal property of the debtor on the date of filing of
 3 such statement with the county clerk and recorder of the
 4 county in which the property is located. A lien against
 5 earnings is attached and is effective subject to the service
 6 requirements of [section 20] upon filing with the county
 7 clerk and recorder of the county in which the employer is
 8 doing business or maintains an office or agent for the
 9 purpose of doing business.

10 (2) Whenever a support lien has been filed and there
 11 is in the possession of any person, firm, corporation,
 12 association, political subdivision, or department of the
 13 state having notice of the lien any property that may be
 14 subject to the support lien, the property may not be paid,
 15 released, sold, transferred, encumbered, or conveyed, except
 16 as provided for by the exemptions contained in [sections 22
 17 and 26], unless a written release or waiver signed by the
 18 department has been delivered to the person, firm,
 19 corporation, association, political subdivision, or
 20 department of the state or unless a determination has been
 21 made in a fair hearing pursuant to [sections 15 and 16] or
 22 by a district court ordering release of the support lien on
 23 the basis that no debt exists or that the debt has been
 24 satisfied.

25 Section 20. Service of lien. The department may at any

1 time after filing of a support lien serve a copy of the lien
 2 upon any person, firm, corporation, association, political
 3 subdivision, or department of the state in possession of
 4 earnings, deposits, or balances held in any bank account of
 5 any nature that are due, owing, or belonging to the debtor.
 6 The support lien shall be served upon the person, firm,
 7 corporation, association, political subdivision, or
 8 department of the state either in the manner prescribed for
 9 the service of summons in a civil action or by certified
 10 mail return with receipt requested. No lien filed under
 11 [section 19] shall have any effect against earnings or bank
 12 deposits or balances unless it states that amount of the
 13 support debt accrued and unless service upon the person,
 14 firm, corporation, association, political subdivision, or
 15 department of the state in possession of earnings or bank
 16 accounts, deposits, or balances is accomplished pursuant to
 17 this section.

18 Section 21. Order to withhold and deliver -- issue and
 19 service -- contents -- effect -- delivery of property --
 20 bond to release. (1) After service of a notice of debt as
 21 provided for in [section 14] stating a support debt accrued
 22 or accruing based upon subrogation to or assignment of the
 23 amount required to be paid under any district court order or
 24 whenever a support lien has been filed pursuant to [section
 25 19], the department may issue to any person, firm,

1 corporation, association, political subdivision, or
 2 department of the state an order to withhold and deliver
 3 property of any kind including but not limited to earnings
 4 that are due, owing, or belonging to the debtor, when the
 5 department has reason to believe that there is in the
 6 possession of such person, firm, corporation, associations,
 7 political subdivision, or department of the state property
 8 that is due, owing, or belonging to the debtor. The order to
 9 withhold and deliver that shall also be served upon the
 10 debtor shall state the amount of the support debt accrued
 11 and shall state in summary the terms of [sections 22 and
 12 23]. The order to withhold and deliver shall be served in
 13 the manner prescribed for the service of a summons in a
 14 civil action or by certified mail with return receipt
 15 requested.

16 (2) Any person, firm, corporation, association,
 17 political subdivision, or department of the state upon whom
 18 service has been made is required to answer the order to
 19 withhold and deliver within 20 days, exclusive of the day of
 20 service, under oath and in writing, and shall make true
 21 answers to the matters inquired of therein. In the event
 22 there is in the possession of any such person, firm,
 23 corporation, association, political subdivision, or
 24 department of the state any property which may be subject to
 25 the claim of the department, the property shall be withheld

1 immediately upon receipt of the order to withhold and
 2 deliver and shall after the 20-day period, upon demand, be
 3 delivered to the department.

4 (3) The department shall hold the property in trust
 5 for application on the indebtedness involved or for return,
 6 without interest, in accordance with final determination of
 7 liability or nonliability. In the alternative, there may be
 8 furnished to the department a bond satisfactory to the
 9 department, conditioned upon final determination of
 10 liability. If money is due and owing under any contract of
 11 employment, express or implied, or is held by any person,
 12 firm, corporation, or association, political subdivision, or
 13 department of the state subject to withdrawal by the debtor,
 14 the money shall be delivered by remittance payable to the
 15 order of the department.

16 (4) Delivery to the department of the money or other
 17 property held or claimed satisfies the requirement of the
 18 order to withhold and deliver. Delivery to the department
 19 serves as full acquittance, and the state warrants that it
 20 shall defend and hold harmless for such actions persons
 21 delivering money or property to the department pursuant to
 22 [this act]. The state also warrants that it shall defend and
 23 hold harmless for such actions persons withholding money or
 24 property pursuant to [this act], except for the exemptions
 25 contained in [sections 22 and 26].

1 Section 22. Certain amount of earnings exempt from
 2 lien or order. Whenever a support lien or order to withhold
 3 and deliver is served upon any person, firm, corporation,
 4 association, political subdivision, or department of the
 5 state asserting a support debt against earnings and there
 6 are in the possession of that person, firm, corporation,
 7 association, political subdivision, or department of the
 8 state any such earnings, 50% of the disposable earnings is
 9 exempt and may be disbursed to the debtor, whether the
 10 earnings are paid or to be paid weekly, monthly, or at other
 11 regular intervals and whether there be due the debtor
 12 earnings for 1 week or for a longer period. The lien or
 13 order to withhold and deliver shall continue to operate and
 14 require the person, firm, corporation, association,
 15 political subdivision, or department of the state to
 16 withhold the nonexempt portion of earnings at each
 17 succeeding earnings disbursement interval until the entire
 18 amount of the support debt stated in the lien or order to
 19 withhold and deliver has been withheld.

20 Section 23. Civil liability upon failure to comply
 21 with order or lien. Should any person, firm, corporation,
 22 association, political subdivision, or department of the
 23 state fail to answer to an order to withhold and deliver
 24 within the time prescribed in [this act]; or fail or refuse
 25 to deliver property pursuant to the order; or after annull-

1 notice of filing of a support lien, pay over, release, sell,
 2 transfer, or convey real or personal property subject to a
 3 support lien to or for the benefit of the debtor or any
 4 other person; or fail or refuse to surrender upon demand
 5 property distrained under [section 26]; or fail or refuse to
 6 honor an assignment of wages presented by the department,
 7 the person, firm, corporation, association, political
 8 subdivision, or department of the state is liable to the
 9 department in an amount equal to 100% of the value of the
 10 debt which is the basis of the lien, order to withhold and
 11 deliver, distraint, or assignment of wages, together with
 12 costs, interest, and reasonable attorney fees.

13 Section 24. Release of excess to debtor. Whenever any
 14 person, firm, corporation, association, political
 15 subdivision, or department of the state has in its
 16 possession earnings, deposits, accounts, or balances in
 17 excess of the amount of the debt claimed by the department
 18 plus \$100, that person, firm, corporation, association,
 19 political subdivision, or department of the state may,
 20 without liability under [this act], release the excess to
 21 the debtor.

22 Section 25. Banks and savings and loan associations --
 23 service effective only as to branch office served. In the
 24 case of a bank, bank association, mutual savings bank, or
 25 savings and loan association maintaining branch offices,

1 service of a lien or order to withhold and deliver or any
 2 other notice or document authorized by [this act] is only
 3 effective as to the accounts, credits, or other personal
 4 property of the debtor in the particular branch upon which
 5 service is made.

6 Section 26. Distraint, seizure, and sale of property
 7 subject to liens. Whenever a support lien has been filed
 8 pursuant to [section 19], the department may collect the
 9 support debt stated in the lien by the distraint, seizure,
 10 and sale of the property subject to the lien. The department
 11 shall give notice to the debtor and any person known to have
 12 or claim an interest in the property of the general
 13 description of the property to be sold and the time and
 14 place of the sale. The notice shall be given to such persons
 15 by certified mail with return receipt requested or by
 16 service in the manner prescribed for the service of a
 17 summons in a civil action. A notice specifying the property
 18 to be sold shall be posted in at least two public places in
 19 the county in which the distraint has been made. The time of
 20 sale shall be not less than 10 or more than 20 days from the
 21 date of posting of the notices. The sale shall be conducted
 22 by the department, which shall proceed to sell such property
 23 by parcel or by lot at a public auction and which may set a
 24 minimum reasonable price to include the expenses of making a
 25 levy and of advertising the sale. If the amount bid for the

1 property at the sale is not equal to the price so fixed, the
 2 department may declare the property to be purchased by the
 3 department for such price or may conduct another sale of the
 4 property pursuant to the provisions of this section. In the
 5 event of sale, the debtor's account shall be credited with
 6 the amount for which the property has been sold. Property
 7 acquired by the department as prescribed in this section may
 8 be sold by the department at public or private sale, and the
 9 amount realized shall be placed in the state general fund to
 10 the credit of the department of revenue. In all cases of
 11 sale the department shall issue a bill of sale or a deed to
 12 the purchaser. The bill of sale or deed is prima facie
 13 evidence of the right of the department to make the sale and
 14 conclusive evidence of the regularity of the proceeding in
 15 making the sale. The bill of sale or deed transfers to the
 16 purchaser all right, title, and interest of the debtor in
 17 the property. The proceeds of any such sale, except in those
 18 cases in which the property has been acquired by the
 19 department, shall be first applied by the department to
 20 reimbursement of the costs of distress and sale and
 21 thereafter in satisfaction of the delinquent account. Any
 22 excess that remains in the hands of the department shall be
 23 refunded to the debtor. Sums refundable to a debtor may be
 24 subject to seizure or distress by any taxing authority of
 25 the state or its political subdivisions or by the department

1 for new sums due and owing subsequent to the subject
 2 proceeding. Except as specifically provided in [this act],
 3 there shall be exempt from distress, seizure, and sale
 4 under [this act] such property as is exempt therefrom under
 5 the laws of this state.
 6 Section 27. Action for foreclosure of support lien --
 7 satisfaction. Whenever a support lien has been filed, an
 8 action in foreclosure of lien upon real or personal property
 9 may be brought in the district court of the county where the
 10 real or personal property is or was located and the lien was
 11 filed. Judgment may be rendered in favor of the department
 12 for the amount due, plus costs. The court shall allow, as
 13 part of the costs, the money paid for making and filing the
 14 claim of lien and a reasonable attorney's fee. The court
 15 shall order any property upon which any lien provided for by
 16 [this act] is established to be sold by the sheriff of the
 17 proper county to satisfy the lien and costs. The payment of
 18 the lien debt, costs, and reasonable attorney fees, at any
 19 time before sale, satisfies the judgment of foreclosure.
 20 Where the net proceeds of sale upon application to the debt
 21 claimed do not satisfy the debt in full, the department
 22 shall have judgment for any deficiency remaining
 23 unsatisfied. Further levy and sales upon other property
 24 the judgment debtor may be made under the same execution. In
 25 all sales contemplated under this section, advertising of

1 notice is only necessary for 2 weeks in a newspaper
 2 published in the county where the property is located; and
 3 if there is no newspaper in the county, then in the most
 4 convenient newspaper having a circulation in the county.
 5 Remedies provided for in this section are alternatives to
 6 remedies provided for in other sections of [this act].

7 Section 28. Satisfaction of lien after foreclosure
 8 proceedings instituted -- redemption. Any person owning real
 9 property or any interest in real property against which a
 10 support lien has been filed and foreclosure instituted may
 11 pay the amount due, together with expenses of the
 12 proceedings and reasonable attorney fees to the department.
 13 Upon full payment the department shall restore the property
 14 to him, and all further proceedings in the foreclosure
 15 action shall cease. The person shall also have the right
 16 within 240 days after sale of property foreclosed under
 17 [section 27] to redeem the property by making payment to the
 18 purchaser in the amount paid by the purchaser plus interest
 19 at the statutory interest rate payable on judgments
 20 recovered in the courts of this state.

21 Section 29. Debt payment schedule. The department may
 22 at any time set a level and schedule of payments to be paid
 23 upon the debt consistent with the income, earning capacity,
 24 and resources of the debtor.

25 Section 30. Release of lien or order or return of

1 seized property -- effect. The department may at any time
 2 release a support lien or order to withhold and deliver on
 3 all or part of the property of the debtor or return seized
 4 property without liability, if assurance of payment is
 5 determined to be adequate by the department or if the action
 6 will facilitate the collection of the debt. The release or
 7 return does not operate to prevent future action to collect
 8 from the same or other property.

9 Section 31. Emergency filing of liens when payments
 10 appear in jeopardy. If the department finds that the
 11 collection of any support debt based upon subrogation to or
 12 assignment of the amount of support ordered by any district
 13 court order is in jeopardy, it may demand under [section 14]
 14 immediate payment of the support debt. Upon failure or
 15 refusal of the support debtor to immediately pay the support
 16 debt, the department may file and serve liens pursuant to
 17 [sections 19 and 20], without regard to the 20-day period
 18 provided for in [section 15]. No further action under
 19 [sections 21, 26, and 27] may be taken until the notice
 20 requirements of [section 14] are met.

21 Section 32. Interest on debts due -- waiver. Interest
 22 of 6% per year on any support debt due and owing to the
 23 department under [section 13] may be collected by the
 24 department. No provision of [this act] may be construed to
 25 require the department to maintain interest balance due

1 accounts, and interest may be waived by the department, if
 2 waiver would facilitate the collection of the debt.

3 Section 33. Findings and order by department --
 4 judicial review. (1) Upon receipt of the hearing officer's
 5 report of findings on the issues designated for hearing, the
 6 director may accept the report of findings as the basis for
 7 a final order, or upon filing a statement of the legal or
 8 substantial factual basis in the record, the director may:

9 (a) remand all or any portion of the findings for
 10 further hearings and findings on specified issues;

11 (b) disregard that portion of the findings
 12 inconsistent with the evidence presented to the hearing
 13 officer and proceed to enter a final order based upon the
 14 remainder of the findings;

15 (c) substitute alternative or additional findings of
 16 fact on the issues designated for hearing if the substituted
 17 findings are supported by a preponderance of the evidence in
 18 the record. The director shall then cause his findings and
 19 order to be served upon the responsible parent.

20 (2) It is the intent of [this act] that administrative
 21 findings and orders be subject to judicial review but that
 22 administrative remedies be exhausted prior to judicial
 23 review. The administrative procedures described in [this
 24 act] are subject to review in the appropriate district
 25 court. Such review will be based upon the transcript and

1 other pertinent record of the administrative proceedings.
 2 Upon a showing by the department that administrative
 3 remedies have not been exhausted, the district court shall
 4 refuse review until such remedies are exhausted.

5 (3) Nothing in [this act] may be construed to abridge
 6 or in any way affect the defendant's right to counsel during
 7 any and all judicial or administrative proceedings pursuant
 8 to [this act].

9 Section 34. Statutory limitations. Debts ensuing as a
 10 result of determinations made through the administrative
 11 procedures described in [this act] are subject to statutory
 12 limitations as set forth in Title 27, chapter 2.

13 Section 35. Unidentifiable money held in special
 14 account. All money collected in fees, costs, attorney fees,
 15 interest payments, or other funds received by the department
 16 which are unidentifiable as to the support account against
 17 which they should be credited shall be held in a speci:
 18 fund from which the department may make disbursement for any
 19 costs or expenses incurred in the administration or
 20 enforcement of the provisions of [this act].

21 Section 36. Charging off child support debts as
 22 uncollectible. Any support debt due the department from a
 23 responsible parent which the department determines
 24 uncollectible may be transferred from accounts receivable to
 25 a suspense account and cease to be accounted as an asset.

1 any time after 6 years from the date a support debt was
 2 incurred, the department may charge off as uncollectible any
 3 support debt upon which the department finds there is no
 4 available, practical, or lawful means by which the debt may
 5 be collected. No proceedings or action under the provisions
 6 of [this act] may be begun after expiration of the 6-year
 7 period to institute collection of a support debt. Nothing
 8 herein may be construed to render invalid or nonactionable a
 9 support lien filed prior to the expiration of the 6-year
 10 period or an assignment of earnings or order to withhold and
 11 deliver executed prior to the expiration of the 6-year
 12 period.

13 Section 37. Employee debtor rights protected --
 14 limitation. No employer may discharge an employee for reason
 15 that an assignment of earnings has been presented in
 16 settlement of a support debt or that a support lien or order
 17 to withhold and deliver has been served against the
 18 employee's earnings. This provision does not apply if more
 19 than three support liens or orders to withhold and deliver
 20 are served upon the same employer within any period of 12
 21 consecutive months.

22 Section 38. Assignment of earnings to be honored --
 23 effect. Any person, firm, corporation, association,
 24 political subdivision, or department of the state employing
 25 a person owing a support debt or obligation shall honor,

1 according to its terms, a duly executed assignment of
 2 earnings presented by the department as a plan to satisfy or
 3 retire a support debt or obligation. This requirement to
 4 honor the assignment of earnings and the assignment of
 5 earnings itself are applicable whether the earnings are to
 6 be paid presently or in the future and continue in force
 7 until released in writing by the department. Payment of
 8 money pursuant to an assignment of earnings presented by the
 9 department serves as full acquittance under any contract of
 10 employment. The state shall defend and hold harmless any
 11 action taken pursuant to the assignment of earnings. The
 12 department shall be released from liability for improper
 13 receipt of money under an assignment of earnings upon return
 14 of any money so received.

15 Section 39. Severability. If a part of this act is
 16 invalid, all valid parts that are severable from the invalid
 17 part remain in effect. If a part of this act is invalid in
 18 one or more of its applications, the part remains in effect
 19 in all valid applications that are severable from the
 20 invalid applications.

-End-

STATE OF MONTANA

Request No. 135-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 1979, there is hereby submitted a Fiscal Note for Senate Bill 221 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

This proposed bill establishes administrative procedures for enforcing support for dependent children.

ASSUMPTIONS:

- 1) Under current law, \$120,000 would be spent per year in FY 80 and FY 81 for contracted services for lawyers.
- 2) Under the proposed law, \$35,000 would be spent per year in FY 80 and FY 81 for an administrative process to enforce support for dependent children.
- 3) The expenditure of \$35,000 for the administrative process will offset the expenditure of \$120,000 for contracted services for lawyers.
- 4) 75% of these expenditures will be in the form of a grant from the Federal Child Support Enforcement Program, and 25% from General Fund revenues.

FISCAL IMPACT:

The net effect of the passage of this bill will be a reduction in expenditures of \$85,000 each year. The remaining \$35,000 expenditures will be 75 percent federally funded.

FUNDING INFORMATION:

	FY 80	FY 81
General Fund	\$(21,250)	\$(21,250)
Other funds	(63,750)	(63,750)
	<u>\$(85,000)</u>	<u>\$(85,000)</u>

Carolyn Nearing for
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/31/79

1 STATEMENT OF INTENT RE: SB 221

2

3

4 A statement of intent is required for Senate Bill 221

5 inasmuch as rulemaking authority is granted to the

6 Department of Revenue.

7 Senate Bill 221 establishes administrative procedures

8 to facilitate the enforcement of support for dependent

9 children. These procedures provide the Department of Revenue

10 with more effective and efficient procedures to ensure that

11 dependent children are supported by those persons who under

12 the law are primarily responsible for such support.

13 To enable the Department of Revenue to achieve the

14 objectives of SB 221 rulemaking authority is granted as

15 follows:

16 1. In general the Department of Revenue is authorized

17 to "adopt and enforce such rules as may be necessary to

18 carry out the provisions of [this act]" SB 221, section

19 2(9).

20 2. To limit the responsibility of the Department of

21 Revenue to accept applications for support enforcement

22 services on behalf of persons who are not recipients of

23 public assistance. SB 221, sections 1 and 2.

24 3. To establish reasonable fees for support

25 enforcement services provided to persons who are not

1 recipients of public assistance. SB 221, section 3.

2 4. To adopt rules, based on ability to pay, defining

3 the extent of the debt due and owing to the State of Montana

4 by the natural or adoptive parent(s) responsible for the

5 support of children who have received public assistance.

6 Where a district court order establishes the level of

7 support, the debt is limited to the amount provided for by

8 the order. SB 221, section 13(4).

9 First adopted by the SENATE COMMITTEE ON JUDICIARY on

10 February 20, 1979.

SB 221

SENATE BILL NO. 221
INTRODUCED BY TURNAGE, S. BROWN
REQUEST OF THE DEPARTMENT OF REVER

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH
6 ADMINISTRATIVE PROCEDURES FOR ENFORCING SUPPORT FOR
7 DEPENDENT CHILDREN."

9 WHEREAS, it is the responsibility of the state through
10 the department of revenue to limit the expenditure of public
11 assistance funds, whenever possible, in order that such
12 funds not be spent if there are private funds available, or
13 which can be made available by judicial process or
14 otherwise, to partially or completely meet the financial
15 needs of the children of this state. The failure of parents
16 to provide adequate financial support and care for their
17 children is a major cause of financial dependency and a
18 contributing cause of social delinquency.

19 WHEREAS, the purpose of this act is to provide the
20 state, through the department of revenue, a more effective
21 and efficient way to effect the support of dependent
22 children by the person or persons who, under the law, are
23 primarily responsible for such support and to lighten the
24 heavy burden of the taxpayer, who in many instances is
25 paying toward the support of dependent children while those

1 persons primarily responsible are avoiding their
2 obligations.

3 WHEREAS, common law and statutory procedures governing
4 the remedies for enforcement of support for financially
5 dependent minor children by responsible parents have not
6 proven wholly effective or efficient in coping with the
7 increasing incidence of financial dependency. The increasing
8 workload of courts and prosecuting attorneys has made such
9 remedies uncertain, slow, and inadequate, thereby resulting
10 in a growing burden on the financial resources of the state,
11 which is constrained to provide public assistance grants for
12 basic maintenance requirements when parents fail to meet
13 their primary obligations.

14 THEREFORE, It is the intent of this act that the common
15 law and statutory remedies pertaining to family desertion
16 and nonsupport of minor dependent children be augmented by
17 additional remedies as set forth in sections 14 through 39
18 32 and directed to the real and personal property resources
19 of the responsible parents. In order to render resources
20 more immediately available to meet the needs of minor
21 children, it is the legislative intent that the remedies
22 herein provided are in addition to and not in lieu of
23 existing law. It is declared to be the public policy of the
24 state that this act be construed and administered to the end
25 that children shall be maintained from the resources of

1 responsible parents, thereby relieving, at least in part,
 2 the burden presently borne by the general citizenry through
 3 public assistance programs.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Definitions. As used in [this act] the
 7 following definitions apply:

8 (1) "Department" means the department of revenue.

9 (2) "Dependent child" means any person under 18 years
 10 of age who is not otherwise emancipated, self-supporting,
 11 married or a member of the armed forces of the United
 12 States and who is a recipient of public assistance.

13 (3) "Director" means the director of the department of
 14 revenue or his authorized representative.

15 (4) "Disposable earnings" means that part of the
 16 earnings of any individual remaining after the deduction
 17 from those earnings of any amount required by law to be
 18 withheld.

19 (5) "District court order" means any judgment or order
 20 of the district court of the state of Montana or an order of
 21 a court of appropriate jurisdiction of another state
 22 ordering payment of a set or determinable amount of support
 23 money.

24 (6) "Earnings" means compensation paid or payable for
 25 personal services, whether denominated as wages, salary,

1 commission, bonus, or otherwise, and specifically includes
 2 periodic payments under pension or retirement programs or
 3 insurance policies of any type. "Earnings" specifically
 4 includes all gain derived from capital, labor, or both
 5 combined, including profit gained through sale or conversion
 6 of capital assets.

7 (7) "Need" means the necessary costs of food,
 8 clothing, shelter, and medical care for the support of a
 9 dependent child or children.

10 (8) "Public assistance" means any type of monetary or
 11 other assistance, including medical and foster care
 12 benefits, furnished to a person by a state or county agency,
 13 regardless of the original source of the assistance.

14 (9) "Responsible parent" means the natural or adoptive
 15 parent of a dependent child.

16 (10) "Support debt" means the sum created by the
 17 failure to provide support to a dependent child under the
 18 laws of this state or the decree of any court of appropriate
 19 jurisdiction ordering a sum to be paid as child support.

20 Section 2. Department of revenue -- powers and duties
 21 regarding collection of support debt. (1) Whenever the
 22 department of social and rehabilitation services receives an
 23 application for public assistance on behalf of a child and
 24 it appears to the satisfaction of that department that the
 25 child has been abandoned by his parents; the child and one

1 parent have been abandoned by the other parent; or the
 2 parent or other person who has a responsibility for the
 3 care, support, or maintenance of such child has failed or
 4 neglected to give proper care or support to the child, the
 5 department of social and rehabilitation services shall
 6 promptly refer the matter to the department of revenue for
 7 action under the provisions of [this act], the abandonment
 8 or nonsupport statutes, or other appropriate statutes of
 9 this state to insure that the parent or other person
 10 responsible pays for the care, support, or maintenance of
 11 the dependent child.

12 (2) In the event that public assistance is furnished
 13 by a state or county agency or in instances where the
 14 department has contracted to collect support, the department
 15 shall become trustee of any cause of action of the person
 16 obligated for support or any minor child in that person's
 17 custody to recover support due to that obligee from any
 18 person and may bring and maintain the action either in the
 19 department's own name or in the name of the obligee.

20 (3) The department has the power of attorney to act in
 21 the name of any recipient of public assistance in endorsing
 22 and cashing any and all drafts, checks, money orders, or
 23 other negotiable instruments received by the department and
 24 representing support payments for children in whose behalf
 25 public assistance has been previously paid.

1 (4) For purposes of prosecuting any action pursuant to
 2 [this act], the department is a real party in interest upon
 3 the payment of public assistance. No obligee shall act to
 4 prejudice the rights of the department after the receipt of
 5 public assistance.

6 (5) No agreement between any obligee and any obligor
 7 either relieving an obligor of any duty of support or
 8 purporting to settle past, present, or future support
 9 obligations either as settlement or prepayment may act to
 10 reduce or terminate any rights of the department to recover
 11 from that obligor for support provided unless the department
 12 has consented to the agreement in writing.

13 (6) The department may petition a court for
 14 modification of any court order on the same basis as a party
 15 to that action would have been entitled to do.

16 (7) The department shall be subrogated to the right of
 17 the child or children or person having the care, custody,
 18 and control of the child or children to prosecute or
 19 maintain any support action or execute any administrative
 20 remedy existing under the laws of the state to obtain
 21 reimbursement of money thus spent.

22 (8) If a district court enters judgment by order for
 23 an amount of support to be paid by an obligor parent, the
 24 department shall be subrogated to the debt created by the
 25 order and the money judgment shall be determined to be in

1 favor of the department. This subrogation shall apply to
 2 temporary spouse support orders, family maintenance orders,
 3 and alimony orders up to the amount paid by the department
 4 in public assistance money to or for the benefit of a
 5 dependent child or children but allocated to the benefit of
 6 the children on the basis of providing necessities for the
 7 caretaker of the children.

8 (9) The department may adopt and enforce such rules as
 9 may be necessary to carry out the provisions of [this act].

10 (10) The department, for the purposes mentioned in
 11 [this act], through its director or his authorized
 12 representatives, may administer oaths to certify official
 13 acts, issue subpoenas, and compel witnesses and the
 14 production of books, accounts, documents, and evidence.

15 (11) The department may initiate any civil proceedings
 16 necessary to secure reimbursement from the parent or parents
 17 of minor dependent children for all money spent by the state
 18 in providing public assistance or services to dependent
 19 children.

20 Section 3. Support enforcement services. (1) The
 21 department may accept applications for support enforcement
 22 services on behalf of persons who are not recipients of
 23 public assistance and may take appropriate action to
 24 establish or enforce support obligations against persons
 25 owing a duty to pay support. Actions may be taken under the

1 the provisions of Title 45, chapter 5, the abandonment or
 2 nonsupport statutes, or other appropriate statutes of this
 3 state, including but not limited to remedies established in
 4 Title 45, chapter 5, to establish and enforce the support
 5 obligations.

6 (2) The department may establish by rule reasonable
 7 standards necessary to limit applications for support
 8 enforcement services. These standards shall take into
 9 account the earnings, income, and other resources already
 10 available to support the person for whom a support
 11 obligation exists.

12 (3) The department may charge a fee as compensation
 13 for services rendered in establishment of or enforcement of
 14 support obligations. This fee shall be agreed on in writing
 15 with the custodian or guardian of the person for whom a
 16 support obligation is owed or that person if no custodian or
 17 guardian exists. An initiation fee as a portion of the
 18 collection fee may be charged the applicant by the
 19 department. The department shall by rule establish
 20 reasonable fees for support enforcement services, and the
 21 schedule of fees shall be made available to all applicants
 22 for support enforcement services. The department may, upon a
 23 showing of necessity, waive or defer any such fee.

24 Section 4. Cooperation by person having custody of
 25 child. Any person having the care, custody, or control of

1 any dependent child or children shall cooperate with the
 2 department in establishing the paternity of such child and
 3 obtaining support payments.

4 Section 5. Payment of support money collected to
 5 support enforcement and collections unit -- notice. If
 6 written notice by the department is given to the responsible
 7 person or to the clerk of the court, if appropriate, that
 8 the children for whom a support obligation exists are
 9 receiving public assistance, then any support money paid by
 10 the person or persons responsible for support as a result of
 11 any action shall be paid through the support enforcement and
 12 collections unit of the department of revenue.

13 Section 6. Petition for support order by married
 14 parent with minor children receiving public assistance. (1)
 15 Any married parent with minor children, natural or legally
 16 adopted, who is receiving public assistance may apply to the
 17 district court of the county in which the parent resides or
 18 in which the spouse may be found for an order upon such
 19 spouse, if such spouse is the natural or adoptive mother or
 20 father of such children, to provide for the parent's support
 21 and the support of the parent's minor children by filing in
 22 the county a petition setting forth the facts and
 23 circumstances upon which the parent relies for the order.

24 (2) If it appears to the satisfaction of the court
 25 that the parent is without funds to employ counsel, the

1 department may file a petition on behalf of the parent. If
 2 satisfied that a just cause exists, the court shall direct
 3 that a citation be issued to the spouse requiring that
 4 spouse to appear at a time set by the court to show cause
 5 why an order of support should not be entered in the matter.

6 Section 7. Petition for support order by married
 7 parent with minor children receiving public assistance --
 8 powers of court. (1) After hearing the petition for an order
 9 of support, the court shall make an order granting or
 10 denying it and fixing the terms and amount of the support.

11 (2) The court has the same power to compel the
 12 attendance of witnesses and the production of testimony as
 13 in actions and suits, make such decree or orders as are
 14 equitable in view of the circumstances of both parties, and
 15 punish violations as other contempts are punished.

16 Section 8. Petition for support order by married
 17 parent with minor children receiving public assistance --
 18 waiver of filing fees. The court may upon satisfactory
 19 showing that the petitioner is without funds to pay the
 20 filing fee, order that the petition and other papers be
 21 filed without payment of the fee.

22 Section 9. Financial statements by parent whose
 23 absence is basis of application for public assistance --
 24 penalty. (1) Any parent in the state whose absence is the
 25 basis upon which an application is filed for public

1 assistance on behalf of a child shall complete a statement
 2 under oath, of his current monthly income, his total income
 3 over the past 36 months, the number of dependents for whom
 4 he is providing support, the amount he is contributing
 5 regularly toward the support of all children for whom
 6 application for such assistance is made, his current monthly
 7 living expenses, and all other information pertinent to
 8 determining his ability to support his children. The
 9 statement shall be provided upon a demand made by the
 10 department. If assistance based upon the application is
 11 granted on behalf of the child, additional statements shall
 12 be filed as required by the department until the child is no
 13 longer receiving public assistance.

14 (2) Failure to comply with this section is a
 15 misdemeanor.

16 Section 10. Scale of suggested minimum contributions.
 17 (1) The department shall establish a scale of suggested
 18 minimum contributions to assist counties and courts in
 19 determining the amount that a parent should be expected to
 20 contribute toward the support of his child under [this act].
 21 The scale shall:

22 (a) include consideration of gross income;
 23 (b) authorize an expense deduction for determining net
 24 income;
 25 (c) designate other available resources to be

1 considered;
 2 (d) specify the circumstances which should be
 3 considered in reducing support contributions on the basis of
 4 hardship.
 5 (2) The department shall accept and compile pertinent
 6 and reliable information from any available source in order
 7 to establish a minimum scale of suggested contributions.
 8 Copies of the scale shall be made available to courts,
 9 county offices, county attorneys, and upon request, to any
 10 other state or county officer or agency engaged in the
 11 administration or enforcement of [this act]. Attorneys
 12 admitted to practice in Montana may have access to the
 13 minimum scale ~~SCALE~~ of suggested contribution.

14 (3) No county, court, officer, or agency may be
 15 required to use this scale.

16 Section 11. Central unit for information and
 17 administration -- cooperation enjoined -- availability of
 18 records. (1) The department shall establish a central unit
 19 to serve as a registry for the receipt of information, for
 20 answering interstate inquiries concerning deserting parents,
 21 to coordinate and supervise departmental activities in
 22 relation to deserting parents, and to assure effective
 23 cooperation with law enforcement agencies.

24 (2) To effectuate the purposes of this section, the
 25 director may request from state, county, and local agencies

1 all information and assistance as authorized by [this act].
 2 All state, county, and city agencies, officers, and
 3 employees shall cooperate in the location of parents who
 4 have abandoned or deserted or are failing to support
 5 children receiving public assistance and shall on request
 6 supply the department with all information available
 7 relative to the location, income, and property of the
 8 parents.

9 (3) Any records established pursuant to the provisions
 10 of this section are available only to the department, county
 11 attorneys, and courts having jurisdiction in support and
 12 abandonment proceedings or actions or agencies in other
 13 states engaged in the enforcement of support of minor
 14 children as authorized by the rules of the department and by
 15 the provisions of the federal Social Security Act.

16 Section 12. Department exempt from fees. No filing or
 17 recording fees, court fees, fees for making copies of
 18 documents, or fees for service of process may be required
 19 from the department by any county clerk, county auditor,
 20 sheriff, or other county officer for the filing of any
 21 actions or documents authorized by [this act] or for the
 22 service of any summons or other process in any action or
 23 proceeding authorized by [this act].

24 Section 13. Debt to state by natural or adoptive
 25 parents -- limitations. (1) Except as provided in subsection

1 (2), any payment of public assistance money made to or for
 2 the benefit of any dependent child or children creates a
 3 debt due and owing the state of Montana by the natural or
 4 adoptive parent or parents who are responsible for the
 5 support of such children in an amount equal to the amount of
 6 public assistance money so paid.

7 (2) Where there has been a district court order
 8 established, the debt shall be limited to the amount
 9 provided for by the order.

10 (3) Where a child has been placed in foster care, and
 11 a written agreement for payment of support has been entered
 12 into by the responsible parent or parents and the
 13 department, the debt shall be limited to the amount provided
 14 for in the agreement. However, if a court order for support
 15 is or has been entered, the provisions of the order shall
 16 prevail over the agreement.

17 (4) The department shall adopt rules based on ability
 18 to pay, with respect to the level of support to be provided
 19 for in such agreements or modifications of such agreements
 20 based on changed circumstances.

21 Section 14. Support debt based upon subrogation to or
 22 assignment of judgment -- notice -- contents -- action to
 23 collect. (1) The department may issue a notice of a support
 24 debt accrued or accruing based upon subrogation to or
 25 assignment of the judgment created by a district court

1 order. The notice may be served upon the debtor in the
 2 manner prescribed for the service of a summons in a civil
 3 action in accordance with the provisions of the Montana
 4 Rules of Civil Procedure, demanding payment within 20 days
 5 of the date of receipt.

6 (2) The notice of debt shall include:

7 (a) a statement of the support debt accrued or
 8 accruing, computable on the amount required to be paid under
 9 any district court order to which the department is
 10 subrogated or has an assigned interest;

11 (b) a statement that the property of the debtor is
 12 subject to collection action;

13 (c) a statement that the property is subject to lien
 14 and foreclosure, distraint AND seizure and sale--or--order
 15 to-withhold-and-detain;

16 (d) a statement that the net proceeds will be applied
 17 to the satisfaction of the support debt.

18 (3) Action to collect the subrogated or assigned
 19 support debt by lien and foreclosure or distraint AND
 20 seizure and sale--or--order-to-withhold-and-detain shall be
 21 lawful after 20 days from the date of service upon the
 22 debtor or 20 days from the receipt or refusal by the debtor
 23 of the notice of debt.

24 Section 15. Notice of support liability based upon
 25 payment of public assistance -- notice -- contents --

1 collection warrant -- fair hearing. (1) In the absence of a
 2 district court order the department may issue a notice of a
 3 support liability accrued or accruing based upon payment of
 4 public assistance to or for the benefit of any dependent
 5 child or children. The notice of liability shall be served
 6 upon the responsible parent in the manner prescribed for the
 7 service of summons in a civil action, in accordance with the
 8 provisions of the Montana Rules of Civil Procedure.

9 (2) The notice of liability shall include:

10 (a) a statement of the support debt accrued or
 11 accruing, computable on the basis of the amount of public
 12 assistance previously paid and to be paid in the future;

13 (b) a statement of the amount of the monthly public
 14 assistance payment;

15 (c) a statement of the name of the recipient and the
 16 name of the child or children for whom assistance is being
 17 paid;

18 (d) a demand for immediate payment of the support debt
 19 or, in the alternative, a demand that the responsible parent
 20 make answer within 20 days of the date of service to the
 21 department stating defenses to liability under [section 13];

22 (e) a statement that if no answer is made on or before
 23 20 days from the date of the service the support debt shall
 24 be assessed and determined subject to computation and is
 25 subject to collection action;

1 (f) a statement that the property of the responsible
2 parent will be subject to ten-and-foreclosure, distraint,
3 AND seizure and sale,-or-order-to-withhold-and-deliver.

10 (4) If the responsible parent, within 20 days of the
11 date of service of notice of liability, makes answer to the
12 department alleging defenses to liability under [section
13 13], the responsible parent may receive a fair hearing
14 pursuant to [sections-28-and-22SECTION 18]. The decision of
15 the department in the hearing shall establish the obligation
16 of the responsible parent, if any, for repayment of public
17 assistance funds spent to date as an assessed and determined
18 support debt.

19 Section 16. Finding of support liability based upon
20 payment of public assistance -- fitting-and-serving-of--items
21 WARRANT_OF_DISIRABILITY -- bond to release items WARRANT --
22 action to collect. (1) If the department reasonably believes
23 that the parent is not a resident of this state or is about
24 to move from this state or has concealed himself, absconded,
25 absented himself or has removed or is about to remove,

1 secrete, waste, or otherwise dispose of property which could
2 be made subject to collection action to satisfy the support
3 debt, the department may fitte--end--serve--ttens **ISSUE A**
4 **MARRANT OF DISTRAINT** pursuant to [sections 19 and 20] during
5 the pendency of the fair hearing or thereafter, whether or
6 not appealed. No further action under-[section-21]-[section
7 26]-end-[section-27] may be taken on such ttens **THE MARRANT**
8 until final determination after fair hearing and/or appeal.
9 The department shall in such cases make and file in the
10 record of the fair hearing an affidavit stating the reasons
11 upon which the belief is founded. The responsible parent may
12 furnish a bond ~~satisfactory-to-the-department, NOT TO EXCEED~~
13 **THE AMOUNT OF THE SUPPORT DEBT** during pendency of the
14 hearing or thereafter, and in such case ttens-fitted **MARRANTS**
15 **ISSUED** shall be released. If the decision resulting from the
16 hearing is in favor of the responsible parent, all ttens
17 fitted **MARRANTS ISSUED** shall be released.

18 (2) The department may commence action under the
19 provisions of [this act] to collect the support debt on the
20 date of issuance of the decision resulting from the hearing.

21 Section 17. Notice and finding of financial
22 responsibility of responsible parent -- administrative
23 procedure. (1) In lieu of the hearing-and-appeal procedures
24 provided in [sections 16-and-17 15 AND 16], the department
25 may, in the absence of a district court order, serve on the

1 responsible parent a notice and finding of financial
 2 responsibility requiring a responsible parent to appear and
 3 show cause at a hearing held by the department why the
 4 finding of liability and the amount of support liability
 5 should not be finally ordered. This notice and finding shall
 6 relate to the support debt accrued or accruing under [this
 7 act] and/or Title 53, chapter 4, including periodic payments
 8 to be made in the future for the period of time any child of
 9 the responsible parent is in need. The hearing shall be held
 10 pursuant to [this act] and the rules of the department,
 11 which shall provide for a fair hearing.

12 (2) The notice and finding of financial ~~liability~~
 13 **RESPONSIBILITY** shall be served in the same manner prescribed
 14 for the service of a summons in a civil actions in
 15 accordance with the provisions of the Montana Rules of Civil
 16 Procedure. Any responsible parent who objects to all or any
 17 part of the notice and finding shall have the right for not
 18 more than 20 days from the date of service to request in
 19 writing a hearing, notice of which shall be served upon the
 20 department personally or by registered or certified mail. If
 21 no request is made, the notice and finding of ~~liability~~
 22 **FINANCIAL RESPONSIBILITY** becomes final. If a request is
 23 made, the execution of notice and finding of ~~liability~~
 24 **FINANCIAL RESPONSIBILITY** shall be stayed pending the
 25 decision on such hearing or any direct appeal to the courts

1 from the decision.

2 (3) The notice and finding of financial ~~liability~~
 3 **RESPONSIBILITY** shall include:

4 (a) the amount the department has determined the
 5 responsible parent owes, the support debt accrued or
 6 accruing, and, as appropriate, the amount to be paid thereon
 7 each month, all computable on the basis of the amount of the
 8 monthly public assistance payment previously paid or need
 9 alleged and the ability of the responsible parent to pay all
 10 or any portion of the debt;

11 (b) a statement of the name of the recipient or
 12 custodian and the name of any child for whom assistance is
 13 being paid or need is alleged; or a statement of the amount
 14 of periodic future support payments for which financial
 15 ~~liability~~ **RESPONSIBILITY** is found;

16 (c) a statement that the responsible parent may object
 17 to all or any part of the notice and finding and request a
 18 hearing to show cause why he should not be determined to be
 19 liable for any or all of the past and future debt determined
 20 and the amount to be paid thereon;

21 (d) a statement that if the responsible parent fails
 22 to request a hearing, that the support debt and payments
 23 stated in the notice and finding, including periodic support
 24 payments in the future, shall be assessed, determined, and
 25 ordered by the department and that this debt is subject to

1 collection action;

2 (e) a statement that the property of the debtor,
 3 without further advance notice or hearing, will be subject
 4 to ~~lien-and-foreclosure~~ distraint AND seizure and sale-or
 5 order-to-withhold-and-deliver to satisfy the debt.

6 Section 18. Administrative hearing -- nature -- place
 7 -- time -- determinations -- failure to appear -- entry of
 8 findings. (1) The administrative hearing is defined as a
 9 "contested case".

10 (2) The administrative hearing may be held in the
 11 county of residence or other county convenient to the
 12 responsible parent.

13 (3) If a hearing is requested, it shall be scheduled
 14 within 30 days.

15 (4) The hearing officer shall determine the liability
 16 and responsibility, if any, of the alleged responsible
 17 parent under [section 13] and shall also determine the
 18 amount of periodic payments to be made to satisfy past,
 19 present, or future liability under [section 13]. In making
 20 these determinations, the hearing officer shall include in
 21 his consideration the scale of suggested minimum
 22 contributions adopted under [section 10].

23 (5) If the responsible parent fails to appear at the
 24 hearing, upon a showing of valid service, the hearing
 25 officer shall enter a decision and order declaring the

1 support debt and payment provisions stated in the notice and
 2 finding of financial responsibility to be assessed,
 3 determined, and subject to collection action. Within 20 days
 4 of entry of the order, the responsible parent may petition
 5 the department to vacate the order upon a showing of any of
 6 the grounds enumerated in the Montana Rules of Civil
 7 Procedure.

8 (6) The hearing officer shall, within 20 days of the
 9 hearing, enter findings, conclusions, and a final decision
 10 determining liability and responsibility and/or future
 11 periodic support payments. The determination of the hearing
 12 officer entered pursuant to this section shall be entered as
 13 an order unless such findings are set aside pursuant to
 14 [section 33 21] and shall limit the support debt under
 15 [section 13] to the amounts stated in the decision.

16 (7) The decision establishing liability and future
 17 periodic support payments is superseded upon entry of a
 18 district court order for support to the extent the district
 19 court order is inconsistent with the hearing order or
 20 decision. In the absence of a district court order the
 21 responsible parent may petition the department for issuance
 22 of an order to appear and show cause based on a showing of
 23 good cause and material change of circumstances to require
 24 the other party to appear and show cause why the decision
 25 previously entered should not be prospectively modified. The

1 order to appear and show cause together with a copy of the
 2 affidavit upon which the order is based shall be served by
 3 the petitioning party on the nonmoving party in the manner
 4 of a summons in a civil action. A hearing shall be set not
 5 less than 15 or more than 30 days from the date of service,
 6 unless extended for good cause shown. Prospective
 7 modification may be ordered but only upon a showing of good
 8 cause and material change of circumstances.

9 (8) The department, in its original determinations,
 10 and the hearing officer, in making determinations based on
 11 objections to original determinations or on petitions to
 12 modify, shall consider the standards promulgated for
 13 determination of support payments used by the district court
 14 of the county of residence of the responsible parent.

15 (9) Debts determined pursuant to this section,
 16 accrued and not paid, are subject to collection action under
 17 [this chapter A61] without further necessity of action by
 18 the hearing officer.

19 Section 19. Assertion--of--lien-----effect WARRANT OF
 20 DISTRAINT -- EXECUTION. (1) Twenty-one days after receipt or
 21 refusal of notice of debt under provisions of [section 14]
 22 or 21 days after service of notice of debt or as otherwise
 23 appropriate under the provisions of [sections 15 and 16], a
 24 lien--may--be--asserted--by--the--department--upon--the--real--or
 25 personal--property--of--the--debtor--the--state--of--the

1 department--for--a--support--debt--not--paid--when--due--constitutes
 2 a--lien--against--all--property--of--the--debtor--with--priority--of--a
 3 secured--creditor--this--lien--is--separate--and--apart--from--and
 4 in--addition--to--or--other--lien--provided--for--in--this--title--
 5 the--lien--is--attached--to--all--real--and--personal--property--of
 6 the--debtor--on--the--date--of--filing--of--such--statement--with--the
 7 county--clerk--and--recorder--of--the--county--in--which--the
 8 property--is--located--A--lien--against--earnings--is--attached--and
 9 is--effective--subject--to--the--service--requirements--of--[section
 10 20]--upon--filing--with--the--county--clerk--and--recorder--of--the
 11 county--in--which--the--employer--is--doing--business--or--maintains
 12 an--office--or--agent--for--the--purpose--of--doing--business--
 13 f27--Whenever--a--support--lien--has--been--fitted--and--there
 14 is--in--the--possession--of--any--person--firm--corporation--
 15 association--political--subdivision--or--department--of--the
 16 state--having--notice--of--the--lien--any--property--that--may--be
 17 subject--to--the--support--lien--the--property--may--not--be--paid--
 18 released--sold--transferred--encumbered--or--conveyed--except
 19 as--provided--for--by--the--exemptions--contained--in--[sections--22
 20 and--26]--unless--a--written--release--or--waiver--signed--by--the
 21 department--has--been--delivered--to--the--person--firm--
 22 corporation--association--political--subdivision--or
 23 department--of--the--state--or--unless--a--determination--has--been
 24 made--in--a--fair--hearing--pursuant--to--[sections--15--and--16]--or
 25 by--a--district--court--ordering--release--of--the--support--lien--on

1 the--basis--that--no--debt--exists--or--that--the--debt--has--been
 2 satisfied. THE DEPARTMENT MAY ISSUE AN ABSTRACT OF ANY FINAL
 3 ORDER IN THE FORM OF A WARRANT OF DISTRAINT UNDER ITS
 4 OFFICIAL SEAL DIRECTED TO THE SHERIFF OF ANY COUNTY OF THE
 5 STATE COMMANDING HIM TO LEVY UPON AND SELL THE REAL AND
 6 PERSONAL PROPERTY OF THE PERSON OWING THE SUPPORT DEBT
 7 WITHIN HIS COUNTY FOR THE PAYMENT OF THE DEBT, INTEREST, AND
 8 COST OF EXECUTING THE WARRANT AND TO RETURN THE WARRANT TO
 9 THE DEPARTMENT AND PAY TO IT THE MONEY COLLECTED WITHIN 60
 10 DAYS FROM THE DATE OF THE ISSUANCE OF THE WARRANT.

11 (2) THE SHERIFF SHALL, WITHIN 5 DAYS AFTER THE RECEIPT
 12 OF THE WARRANT, FILE A COPY OF THE WARRANT WITH THE CLERK OF
 13 THE DISTRICT COURT OF HIS COUNTY AND THE CLERK SHALL ENTER
 14 IN THE JUDGMENT DOCKET, IN THE COLUMN FOR JUDGMENT DEBTORS,
 15 THE NAME OF THE DEBTOR MENTIONED IN THE WARRANT AND, IN
 16 APPROPRIATE COLUMNS, THE AMOUNT OF THE SUPPORT DEBT AND THE
 17 DATE WHEN SUCH COPY IS FILED. THE AMOUNT OF THE WARRANT SO
 18 DOCKETED IS A LIEN UPON THE TITLE TO AND INTEREST IN REAL
 19 PROPERTY OR CHATTELS REAL OF THE PERSON AGAINST WHOM IT IS
 20 LEVIED IN THE SAME MANNER AS A JUDGMENT DOCKETED IN THE
 21 OFFICE OF SUCH CLERK. THIS LIEN HAS THE SAME PREFERENCE
 22 AGAINST THE ASSETS OF THE DEBTOR AS CLAIMS FOR TAXES.

23 (3) THE SHERIFF SHALL PROCEED TO LEVY UPON AND SELL
 24 THE PROPERTY OF THE DEBTOR IN THE SAME MANNER PRESCRIBED BY
 25 LAW FOR EXECUTIONS ISSUED AGAINST PROPERTY UPON JUDGMENTS OF

1 A COURT OF RECORD AND IS ENTITLED TO THE SAME FEES FOR HIS
 2 SERVICES IN EXECUTING THE WARRANT, TO BE COLLECTED IN THE
 3 SAME MANNER.

4 (4) IF THE NET PROCEEDS OF THE SALE, UPON APPLICATION
 5 TO THE DEBT CLAIMED, DO NOT SATISFY THE DEBT IN FULL, THE
 6 DEPARTMENT SHALL HAVE JUDGMENT FOR ANY DEFICIENCY REMAINING
 7 UNSATISFIED.

8 Section-20--Service-of-lien--The--department--may--at
 9 any--time--after--fitting--of--a--support--lien--serve--a--copy--of--the
 10 lien--upon--any--person--firm--corporation--association--
 11 political--subdivision--or--department--of--the--state--in
 12 possession--of--earnings--deposits--or--balances--held--in--any
 13 bank--account--of--any--nature--that--are--due--owing--or--belonging
 14 to--the--debtor--the--support--lien--shall--be--served--upon--the
 15 person--firm--corporation--association--political
 16 subdivision--or--department--of--the--state--either--in--the--manner
 17 prescribed--for--the--service--of--summons--in--a--civil--action--or
 18 by--certified-mail--return--with--receipt--requested--No--lien
 19 fitted--under--[section--19]--shall--have--any--effect--against
 20 earnings--or--bank--deposits--or--balances--unless--it--states--that
 21 amount--of--the--support--debt--accrued--and--unless--service--upon
 22 the--person--firm--corporation--association--political
 23 subdivision--or--department--of--the--state--in--possession--of
 24 earnings--or--bank--accounts--deposits--or--balances--is
 25 accomplished--pursuant--to--this--section--

1 Section-2b---Order-to-withhold-and-deliver---issue-and
 2 service-----contents-----effect----delivery-of-property---
 3 bond-to-release---f3j---After-service-of-a-notice-of--debt--as
 4 provided--for-in-section-24j--stating-a-support-debt-accrued
 5 or-accruing-based-upon-subrogation-to-or-assignment--of--the
 6 amount-required-to-be-paid-under-any-district-court-order-or
 7 whenever--a-support-item-has-been-fitted-pursuant-to-section
 8 29j;--the--department--may--issue--to--any--person---firm,
 9 corporation---association---political---subdivision---or
 10 department-of-the-state-an-order--to--withhold--and--deliver
 11 property--of--any-kind--including-but-not-limited-to-earnings
 12 that-are-due--owing--or-belonging-to-the--debtor--when--the
 13 department--has--reason--to--believe--that--there--is--in--the
 14 possession--of--such--person--firm--corporation--association
 15 political--subdivision--or--department--of--the--state--property
 16 that-is-due--owing--or-belonging--to--the--debtor--The--order--to
 17 withhold-and-deliver--that--shall--also--be--served--upon--the
 18 debtor--shall--state--the--amount--of--the--support--debt--accrued
 19 and--shall--state--in--summary--the--terms--of--[sections--22--and
 20 23j]--The--order--to--withhold-and-deliver--shall--be--served--in
 21 the--manner--prescribed--for--the--service--of--a--summons--in--a
 22 civil--action--or--by--certified--mail--with--return--receipt
 23 requested.
 24 f2j--Any--person--firm,---corporation---association
 25 political--subdivision--or--department--of--the--state--upon--whom

1 service--has--been--made--is--required--to--answer--the--order--to
 2 withhold-and-deliver--within--20--days,--exclusive--of--the--day--of
 3 service--under--oath--and--in--writing--and--shall--make--true
 4 answers--to--the--matters--inquired--of--therein--in--the--event
 5 there--is--in--the--possession--of--any--such--person--firm,
 6 corporation---association---political---subdivision---or
 7 department--of--the--state--any--property--which--may--be--subject--to
 8 the--claim--of--the--department--the--property--shall--be--withheld
 9 immediately--upon--receipt--of--the--order--to--withhold--and
 10 deliver--and--shall--after--the--20--day--period--upon--demand--be
 11 delivered--to--the--department.
 12 f3j--The--department--shall--hold--the--property--in--trust
 13 for--application--on--the--indebtedness--involved--or--for--return
 14 without--interest--in--accordance--with--final--determination--of
 15 liability--or--nonliability--in--the--alternative--there--may--be
 16 furnished--to--the--department--a--bond--satisfactory--to--the
 17 department--conditioned--upon--final--determination--of
 18 liability--if--money--is--due--and--owing--under--any--contract--of
 19 employment--express--or--implied--or--is--held--by--any--person
 20 firm,--corporation--or--association--political--subdivision--or
 21 department--of--the--state--subject--to--withdrawal--by--the--debtor
 22 the--money--shall--be--delivered--by--remittance--payable--to--the
 23 order--of--the--departments.
 24 f4j--Delivery--to--the--department--of--the--money--or--other
 25 property--held--or--claimed--satisfies--the--requirement--of--the

1 order--to--withhold--and-deliver--Delivery-to-the-department
 2 serves-as-full-acquittances--and-the-state-warrants--that--it
 3 shall--defend--and--hold--harmless--for-such-actions--persons
 4 delivering-money-or-property-to-the-department--pursuant--to
 5 [this-set]--the-state-also-warrants--that-it-shall--defend--and
 6 hold--harmless--for-such-actions--persons--withholding-money-or
 7 property-pursuant-to-[this-set]--except-for--the--exemptions
 8 contained-in-[sections-22-and-26].

9 Section-22--Certain--amount--of--earnings--exempt--from
 10 lien-or-orders--Whenever-a-support-lien-or-order-to-withhold
 11 and-deliver-is-served-upon-any--person--firm--corporation--
 12 association--political--subdivision--or--department--of--the
 13 state--asserting-a-support-debt--against--earnings--and--there
 14 are--in--the--possession--of--that--person--firm--corporation--
 15 association--political--subdivision--or--department--of--the
 16 state--any--such-earnings--50%--of--the-disposable-earnings--is
 17 exempt--and--may--be--disbursed--to--the--debtor--whether--the
 18 earnings--are--paid--or--to--be--paid--weekly--monthly--or--at--other
 19 regular--intervals--and--whether--there--be--due--the--debtor
 20 earnings--for--1--week--or--for--a--longer--period--The--lien--or
 21 order--to--withhold--and-deliver--shall--continue--to--operate--and
 22 require--the--person--firm--corporation--association--
 23 political--subdivision--or--department--of--the--state--to
 24 withhold--the--nonexempt--portion--of--earnings--at--each
 25 succeeding--earnings--disbursement-interval--until--the--entire

1 amount-of-the-support-debt--stated--in--the--lien--or--order--to
 2 withhold--and-deliver--has--been--withheld
 3 Section 20. Civil liability upon failure to comply
 4 with order-or-lien WARRANT OR TO HONOR ASSIGNMENT OF WAGES.
 5 Should any person, firm, corporation, association, political
 6 subdivision, or department of the state fail-to-answer-to-an
 7 order--to--withhold--and-deliver--within--the--time--prescribed--in
 8 [this-set]--or fail or refuse to deliver property pursuant
 9 to the order; or after actual notice of filing of a support
 10 lien, pay over, release, sell, transfer, or convey real or
 11 personal property subject to a support lien to or for the
 12 benefit of the debtor or any other person; or fail or refuse
 13 to surrender upon demand property distrained under [section
 14 26 19]--or fail or refuse to honor an assignment of wages
 15 presented by the department, the person, firm, corporation,
 16 association, political subdivision, or department of the
 17 state is liable to the department in an amount equal to 100%
 18 of the value of the debt which is the basis of the lien
 19 order--to--withhold--and-deliver--distraint or assignment of
 20 wages, together with costs, interest, and reasonable
 21 attorney fees.

22 Section 21. Release of excess to debtor. Whenever any
 23 person, firm, corporation, association, political
 24 subdivision, or department of the state has in its
 25 possession earnings, deposits, accounts, or balances in

1 excess of the amount of the debt claimed by the department
 2 plus \$100, that person, firm, corporation, association,
 3 political subdivision, or department of the state may,
 4 without liability under [this act], release the excess to
 5 the debtor.

6 Section 22. Banks and savings and loan associations --
 7 service effective only as to branch office served. In the
 8 case of a bank, bank association, mutual savings bank, or
 9 savings and loan association maintaining branch offices,
 10 service of a ten or order to withhold and deliver -- or any
 11 other notice or document authorized by [this act] is only
 12 effective as to the accounts, credits, or other personal
 13 property of the debtor in the particular branch upon which
 14 service is made.

15 Section 26r--Distraint--seizure--and--sale--of--property
 16 subject--to--liens-- Whenever a support lien has been filed
 17 pursuant to [section 19], the department--may--collect--the
 18 support--debt--stated--in--the--lien--by--the--distraint--seizure
 19 and--sale--of--the--property--subject--to--the--liens--the--department
 20 shall--give--notice--to--the--debtor--and--any--person--known--to--have
 21 or--claim--an--interest--in--the--property--of--the--general
 22 description--of--the--property--to--be--sold--and--the--time--and
 23 place--of--the--sale--The--notice--shall--be--given--to--such--persons
 24 by--certified--mail--with--return--receipt--requested--or--by
 25 service--in--the--manner--prescribed--for--the--service--of--a

1 summons--in--a--civil--actions--A--notice--specifying--the--property
 2 to--be--sold--shall--be--posted--in--at--least--two--public--places--in
 3 the--county--in--which--the--distraint--has--been--made--the--time--of
 4 sale--shall--be--not--less--than--10--or--more--than--20--days--from--the
 5 date--of--posting--of--the--notice--The--sale--shall--be--conducted
 6 by--the--department--which--shall--proceed--to--sell--such--property
 7 by--parcels--or--by--lot--at--a--public--auction--and--which--may--set--a
 8 minimum--reasonable--price--to--include--the--expenses--of--making--a
 9 levy--and--of--advertising--the--sale--if--the--amount--bid--for--the
 10 property--at--the--sale--is--not--equal--to--the--price--so--fixed--the
 11 department--may--declare--the--property--to--be--purchased--by--the
 12 department--for--such--price--or--may--conduct--another--sale--of--the
 13 property--pursuant--to--the--provisions--of--this--section--in--the
 14 event--of--sale--the--debtor's--account--shall--be--credited--with
 15 the--amount--for--which--the--property--has--been--sold--Property
 16 acquired--by--the--department--as--prescribed--in--this--section--may
 17 be--sold--by--the--department--at--public--or--private--sale--and--the
 18 amount--realized--shall--be--placed--in--the--state--general--fund--to
 19 the--credit--of--the--department--of--revenue--in--all--cases--of
 20 sale--the--department--shall--issue--a--bill--of--sale--or--a--deed--to
 21 the--purchaser--The--bill--of--sale--or--deed--is-- prima facie
 22 evidence--of--the--right--of--the--department--to--make--the--sale--and
 23 conclusive--evidence--of--the--regularity--of--the--proceeding--in
 24 making--the--sale--The--bill--of--sale--or--deed--transfers--to--the
 25 purchaser--all--right--title--and--interest--of--the--debtor--

1 the-property--The-proceeds-of-any-such-gate--except-in-those
 2 cases--in--which--the--property--has--been--acquired--by-the
 3 department--shall--be-first--applied--by--the--department--to
 4 reimbursement--of--the--costs--of--distraint--and--gate--and
 5 thereafter-in-satisfaction-of-the--delinquent--accounts--Any
 6 excess--that--remains--in--the--hands--of--the--department--shall--be
 7 refunded--to--the--debtor--Sums--refundable--to--a--debtor--may--be
 8 subject--to--seizure--or--distraint--by--any--taxing--authority--of
 9 the--state--or--its--political--subdivisions--or--by--the--department
 10 for--new--sums--due--and--owing--subsequent--to--the--subject
 11 proceeding--Except--as--specifically--provided--in--[this--act--]
 12 there--shall--be--exempt--from--distraint--seizure--and--gate
 13 under--[this--act--]--such--property--as--is--exempt--therefrom--under
 14 the--laws--of--this--state.

15 Section 27. Action for foreclosure of support-tien----
 16 satisfaction----Whenever--a--support-tien--has--been--fitted--on
 17 action-in-foreclosure-of-tien-upon-real-or-personal-property
 18 may--be--brought--in--the--district--court--of--the--county--where--the
 19 real--or--personal--property--is--or--was--located--and--the--tien--was
 20 fitted--judgment--may--be--rendered--in--favor--of--the--department
 21 for--the--amount--due--plus--costs--The--court--shall--allow--as
 22 part--of--the--costs--the--money--paid--for--making--and--fitting--the
 23 claim--of--tien--and--a--reasonable--attorney's--fee--The--court
 24 shall--order--any--property--upon--which--any--tien--provided--for--by
 25 [this--act--]--is--established--to--be--sold--by--the--sheriff--of--the

1 proper--county--to--satisfy--the--tien--and--costs--The--payment--of
 2 the--tien--debt--costs--and--reasonable--attorney--fees--at--any
 3 time--before--gate--satisfies--the--judgment--of--foreclosure
 4 where--the--net--proceeds--of--gate--upon--application--to--the--debt
 5 claimed--do--not--satisfy--the--debt--in--full--the--department
 6 shall--have--judgment--for--any--deficiency--remaining
 7 unsatisfied--Further--levy--and--gates--upon--other--property--of
 8 the--judgment--debtor--may--be--made--under--the--same--executions--in
 9 other--gates--contemplated--under--this--section--advertising--of
 10 notice--is--only--necessary--for--2--weeks--in--a--newspaper
 11 published--in--the--county--where--the--property--is--located--and
 12 if--there--is--no--newspaper--in--the--county--then--in--the--most
 13 convenient--newspaper--having--a--circulation--in--the--county--
 14 Remedies--provided--for--in--this--section--are--alternatives--to
 15 remedies--provided--for--in--other--sections--of--[this--act--].

16 Section 28. Satisfaction of tien--after--foreclosure
 17 proceedings--instituted DEBT AFTER LEVY ON PROPERTY--
 18 redemption. Any person owning real property or any interest
 19 in real property against which a support-tien WARRANT OF
 20 DISCHARGE has been fitted-and-foreclosure--instituted ISSUED
 21 AND LEVIED UPON may pay the amount due, together with
 22 expenses of the proceedings and reasonable attorney fees to
 23 the department. Upon full payment the department SHERIFF
 24 shall restore the property to him, and all further
 25 proceedings in--the--foreclosure--action ON THE WARRANT shall

1 cease. The person shall also have the right within 240 days
 2 after sale of property foreclosed-under-[section-27] ~~LEVIED~~
 3 UPON to redeem the property by making payment to the
 4 purchaser in the amount paid by the purchaser plus interest
 5 at the statutory interest rate payable on judgments
 6 recovered in the courts of this state.

7 Section 24. Debt payment schedule. The department may
 8 at any time ~~AIER NOTICE TO THE DEBTOR~~ set ~~OR RESET~~ a level
 9 and schedule of payments to be paid upon the debt consistent
 10 with the income, earning capacity, and resources of the
 11 debtor.

12 Section 25. Release of ~~lien--or--order--or DISTRAINT~~
 13 return of seized property -- effect. The department may at
 14 any time release a ~~support-lien-or-order--to--withhold--and~~
 15 deliver ~~DISTRAINT~~ on all or part of the property of the
 16 debtor or ~~ORDER THE SHERIFF TO~~ return seized property
 17 without liability, if assurance of payment is determined to
 18 be adequate by the department or if the action will
 19 facilitate the collection of the debt. The release or return
 20 does not operate to prevent future action to collect from
 21 the the same or other property.

22 ~~Section-31--Emergency-fitting-of--liens--when--payments~~
 23 ~~appear--in--jeopardy--if--the--department--finds--that-the~~
 24 ~~collection-of-any-support-debt-based-upon-subrogation-to--or~~
 25 ~~assignment--of-the-amount-of-support-ordered-by-any-district~~

1 court-order-is-in-jeopardy--it-may-demand-under-[section-14]
 2 immediate-payment-of--the--support-debt--Upon--failure--or
 3 refusal-of-the-support-debtor-to-immediately-pay-the-support
 4 debt--the--department--may-fitte-and-serve-tiens-pursuant-to
 5 [sections-19-and-20], without regard to the 20-day-period
 6 provided--for--in--[section--15]--No--further--action-under
 7 [sections-21-26-and-27] may--be--taken--until--the--notice
 8 requirements-of-[section-14] are met.

9 Section 26. Interest on debts due -- waiver. Interest
 10 of-6% per-year on any support debt due and owing to the
 11 department ~~AT THE STATUTORY INTEREST RATE PAYABLE ON~~
 12 ~~JUDGMENTS RECOVERED IN THE COURTS OF THIS STATE~~ under
 13 [section 13] may be collected by the department. No
 14 provision of [this act] may be construed to require the
 15 department to maintain interest balance due accounts, and
 16 interest may be waived by the department, if waiver would
 17 facilitate the collection of the debt.

18 Section 27. Findings and order by department --
 19 judicial review. (1) Upon receipt of the hearing officer's
 20 report of findings on the issues designated for hearing, the
 21 director may accept the report of findings as the basis for
 22 a final order, or upon filing a statement of the legal or
 23 substantial factual basis in the record, the director may:
 24 (a) remand all or any portion of the findings for
 25 further hearings and findings on specified issues;

1 (b) disregard that portion of the findings
 2 inconsistent with the evidence presented to the hearing
 3 officer and proceed to enter a final order based upon the
 4 remainder of the findings;

5 (c) substitute alternative or additional findings of
 6 fact on the issues designated for hearing if the substituted
 7 findings are supported by a preponderance of the evidence in
 8 the record. The director shall then cause his findings and
 9 order to be served upon the responsible parent.

10 (2) It is the intent of [this act] that administrative
 11 findings and orders be subject to judicial review but that
 12 administrative remedies be exhausted prior to judicial
 13 review. The administrative procedures described in [this
 14 act] are subject to review in the appropriate district
 15 court. Such review ~~will be based upon the transcript and~~
 16 other--pertinent--record--of--the--administrative--proceedings
 17 SHALL BE CONDUCTED PURSUANT TO THE MONTANA ADMINISTRATIVE
PROCEDURE ACT. Upon a showing by the department that
 19 administrative remedies have not been exhausted, the
 20 district court shall refuse review until such remedies are
 21 exhausted.

22 (3) Nothing in [this act] may be construed to abridge
 23 or in any way affect the defendant's right to counsel during
 24 any and all judicial or administrative proceedings pursuant
 25 to [this act].

1 Section 28. Statutory limitations. Debts ensuing as a
 2 result of determinations made through the administrative
 3 procedures described in [this act] are subject to statutory
 4 limitations as set forth in Title 27, chapter

5 ~~Section 35e--Unidentifiable--money--held--in--special~~
 6 ~~account--All--money--collected--in--fees--costs--attorney--fees--~~
 7 ~~interest--payments--or--other--funds--received--by--the--department~~
 8 ~~which--are--unidentifiable--as--to--the--support--account--against~~
 9 ~~which--they--should--be--credited--shall--be--held--in--a--special~~
 10 ~~fund--from--which--the--department--may--make--disbursement--for--any~~
 11 ~~costs--or--expenses--incurred--in--the--administration--or~~
 12 ~~enforcement--of--the--provisions--of--[this--act].~~

13 Section 29. Charging off child support debts as
 14 uncollectible. Any support debt due the department from a
 15 responsible parent which the department determines
 16 uncollectible may be transferred from accounts receivable to
 17 a suspense account and cease to be accounted as an asset. At
 18 any time after 6 years from the date a support debt was
 19 incurred, the department may charge off as uncollectible any
 20 support debt upon which the department finds there is no
 21 available, practical, or lawful means by which the debt may
 22 be collected. No proceedings or action under the provisions
 23 of [this act] may be begun after expiration of the 6-year
 24 period to institute collection of a support debt. Nothing
 25 herein may be construed to render invalid or nonactionable a

1 support-~~then~~ WARRANT OF DISTRAIN filed ~~WITH THE CLERK OF~~
 2 COURT prior to the expiration of the 6-year period or an
 3 assignment of earnings or--order--to--withhold--and--detain
 4 executed prior to the expiration of the 6-year period.

5 Section 30. Employee debtor rights protected --
 6 limitation. No employer may discharge ~~OR PREJUDICE~~ an
 7 employee for reason that an assignment of earnings has been
 8 presented in settlement of a support debt or that a support
 9 ~~then--or--order-to-withhold-and-detain~~ WARRANT OF DISTRAIN
 10 has been served against the employee's earnings. This
 11 provision does not apply if more than three support-~~then~~-or
 12 orders--to--withhold-and-detain WARRANTS are served upon the
 13 same employer within any period of 12 consecutive months.

14 Section 31. Assignment of earnings to be honored --
 15 effect. Any person, firm, corporation, association,
 16 political subdivision, or department of the state employing
 17 a person owing a support debt or obligation shall honor,
 18 according to its terms, a duly executed assignment of
 19 earnings ~~WHETHER EXECUTED VOLUNTARILY OR PURSUANT TO COURT~~
 20 ~~ORDERS~~ presented by the department as a plan to satisfy or
 21 retire a support debt or obligation. This requirement to
 22 honor the assignment of earnings and the assignment of
 23 earnings itself are applicable whether the earnings are to
 24 be paid presently or in the future and continue in force
 25 until released in writing by the department. Payment of

1 money pursuant to an assignment of earnings presented by the
 2 department serves as full acquittance under any contract of
 3 employment. The state shall defend and hold harmless any
 4 action taken pursuant to the assignment of earnings. The
 5 department shall be released from liability for improper
 6 receipt of money under an assignment of earnings upon return
 7 of any money so received.

8 Section 32. Severability. If a part of this act is
 9 invalid, all valid parts that are severable from the invalid
 10 part remain in effect. If a part of this act is invalid in
 11 one or more of its applications, the part remains in effect
 12 in all valid applications that are severable from the
 13 invalid applications.

-End-

STATEMENT OF INTENT RE: SB 221

4 A statement of intent is required for Senate Bill 221
5 inasmuch as rulemaking authority is granted to the
6 Department of Revenue.

7 Senate Bill 221 establishes administrative procedures
8 to facilitate the enforcement of support for dependent
9 children. These procedures provide the Department of Revenue
10 with more effective and efficient procedures to ensure that
11 dependent children are supported by those persons who under
12 the law are primarily responsible for such support.

13 To enable the Department of Revenue to achieve the
14 objectives of SB 221 rulemaking authority is granted as
15 follows:

16 1. In general the Department of Revenue is authorized
17 to "adopt and enforce such rules as may be necessary to
18 carry out the provisions of [this act]" SB 221, section
19 2(9).

20 2. To limit the responsibility of the Department of
21 Revenue to accept applications for support enforcement
22 services on behalf of persons who are not recipients of
23 public assistance. SB 221, sections 1 and 2.

24 3. To establish reasonable fees for support
25 enforcement services provided to persons who are not

1 recipients of public assistance. SB 221, section 3.
2 4. To adopt rules, based on ability to pay, defining
3 the extent of the debt due and owing to the State of Montana
4 by the natural or adoptive parent(s) responsible for the
5 support of children who have received public assistance.
6 Where a district court order establishes the level of
7 support, the debt is limited to the amount provided for by
8 the order. SB 221, section 12141.
9 First adopted by the SENATE COMMITTEE ON JUDICIARY on
10 February 20, 1979.

9 WHEREAS, it is the responsibility of the state through
10 the department of revenue to limit the expenditure of public
11 assistance funds, whenever possible, in order that such
12 funds not be spent if there are private funds available, or
13 which can be made available by judicial process or
14 otherwise, to partially or completely meet the financial
15 needs of the children of this state. The failure of parents
16 to provide adequate financial support and care for their
17 children is a major cause of financial dependency and a
18 contributing cause of social delinquency.

19 WHEREAS, the purpose of this act is to provide the
20 state, through the department of revenue, a more effective
21 and efficient way to effect the support of dependent
22 children by the person or persons who, under the law, are
23 primarily responsible for such support and to lighten the
24 heavy burden of the taxpayer, who in many instances is
25 paying toward the support of dependent children while those

1 persons primarily responsible are avoiding their
2 obligations.

3 WHEREAS, common law and statutory procedures governing
4 the remedies for enforcement of support for financially
5 dependent minor children by responsible parents have not
6 proven wholly effective or efficient in coping with the
7 increasing incidence of financial dependency. The increasing
8 workload of courts and prosecuting attorneys has made such
9 remedies uncertain, slow, and inadequate, thereby resulting
10 in a growing burden on the financial resources of the state,
11 which is constrained to provide public assistance grants for
12 basic maintenance requirements when parents fail to meet
13 their primary obligations.

14 THEREFORE, it is the intent of this act that the common
15 law and statutory remedies pertaining to family desertion
16 and nonsupport of minor dependent children be augmented by
17 additional remedies as set forth in sections 412 through
18 39 32 30 and directed to the real and personal property
19 resources of the responsible parents. In order to render
20 resources more immediately available to meet the needs of
21 minor children, it is the legislative intent that the
22 remedies herein provided are in addition to and not in lieu
23 of existing law. It is declared to be the public policy of
24 the state that this act be construed and administered to the
25 end that children shall be maintained from the resources of

1 responsible parents, thereby relieving, at least in part,
 2 the burden presently borne by the general citizenry through
 3 public assistance programs.

4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Definitions. As used in [this act] the
 7 following definitions apply:

8 (1) "Child" or "Dependent child" means any person
 9 under 18 years of age who is not otherwise emancipated;
 10 self-supporting; married; or a member of the armed forces of
 11 the United States.

12 (2) "Department" means the department of revenue.
 13 (2) "Dependent child" means any person under 18 years
 14 of age who is not otherwise emancipated; self-supporting;
 15 married; or a member of the armed forces of the United
 16 States and who is a recipient of public assistance.

17 (3) "Director" means the director of the department of
 18 revenue or his authorized representative.

19 (4) "Disposable earnings" means that part of the
 20 earnings of any individual remaining after the deduction
 21 from those earnings of any amount required by law to be
 22 withheld.

23 (5) "District court order" means any judgment or order
 24 of the district court of the state of Montana or an order of
 25 a court of appropriate jurisdiction of another state

1 ordering payment of a set or determinable amount of support
 2 money.

3 (6) "Earnings" means compensation paid or payable for
 4 personal services, whether denominated as wages, salary,
 5 commission, bonus, or otherwise, and specifically includes
 6 periodic payments under pension or retirement programs or
 7 insurance policies of any type. "Earnings" specifically
 8 includes all gain derived from capital, labor, or both
 9 combined, including profit gained through sale or conversion
 10 of capital assets.

11 (7) "Need" means the necessary costs of food,
 12 clothing, shelter, and medical care for the support of a
 13 dependent child or children.

14 (8) "Public assistance" means any type of monetary or
 15 other assistance, including medical and foster care
 16 benefits, furnished to a person by a state or county agency,
 17 regardless of the original source of the assistance.

18 (9) "Responsible parent" means the natural or adoptive
 19 parent of a dependent child.

20 (10) "Support debt" means the sum created by the
 21 failure to provide support to a dependent child under the
 22 laws of this state or the decree of any court of appropriate
 23 jurisdiction ordering a sum to be paid as child support.

24 Section 2. Department of revenue -- powers and duties
 25 regarding collection of support debt. (1) Whenever the

1 department of social and rehabilitation services receives an
 2 application for public assistance on behalf of a child and
 3 it appears to the satisfaction of that department that the
 4 child has been abandoned by his parents; the child and one
 5 parent have been abandoned by the other parent; or the
 6 parent or other person who has a responsibility for the
 7 care, support, or maintenance of such child has failed or
 8 neglected to give proper care or support to the child, the
 9 department of social and rehabilitation services shall
 10 promptly refer the matter to the department of revenue for
 11 action under the provisions of [this act], the abandonment
 12 or nonsupport statutes, or other appropriate statutes of
 13 this state to insure that the parent or other person
 14 responsible pays for the care, support, or maintenance of
 15 the dependent child.

16 (2) In the event that public assistance is furnished
 17 by a state or county agency or in instances where the
 18 department has contracted to collect support, the department
 19 shall become trustee of any cause of action of the--person
 20 obligated--for--support--or--any--minor--child--in--that--person's
 21 custody THE DEPENDENT CHILD OR THE PERSON HAVING LEGAL
 22 CUSTODY OF THE DEPENDENT CHILD to recover support due to
 23 that obligee from any person and may bring and maintain the
 24 action either in the department's own name or in the name of
 25 the obligee.

1 (3) The department has the power of attorney to act in
 2 the name of any recipient of public assistance in endorsing
 3 and cashing any and all drafts, checks, money orders, or
 4 other negotiable instruments received by the department and
 5 representing support payments for children in whose behalf
 6 public assistance has been previously paid.

7 (4) For purposes of prosecuting any CIVIL action
 8 pursuant to [this act], the department is a real party in
 9 interest upon the payment of public assistance. No obligee
 10 shall act to prejudice the rights of the department after
 11 the receipt of public assistance.

12 (5) No agreement between any obligee and any obligor
 13 either relieving an obligor of any duty of support or
 14 purporting to settle past, present, or future support
 15 obligations either as settlement or prepayment may act to
 16 reduce or terminate any rights of the department to recover
 17 from that obligor for support DEBT provided unless the
 18 department has consented to the agreement in writing.

19 (6) The department may petition a court for
 20 modification of any court order on the same basis as a party
 21 to that action would have been entitled to do.

22 (7) The department shall be subrogated to the right of
 23 the child or children or person having the care, custody,
 24 and control of the child or children to prosecute or
 25 maintain any support CIVIL action or execute any

1 administrative remedy existing under the laws of the state
 2 to obtain reimbursement of money thus spent.

3 (8) If a district court enters-judgment-by--order--for
 4 an amount of support to be paid by an obligor ~~A RESPONSIBLE~~
 5 parent, the department shall be subrogated to the debt
 6 created by the order and the money judgment shall be
 7 determined to be in favor of the department. This
 8 subrogation shall apply to temporary spouse support orders,
 9 AND family maintenance orders--and--alimony-orders up to the
 10 amount paid by the department in public assistance money to
 11 or for the benefit of a dependent child or children but
 12 allocated to the benefit of the children on the basis of
 13 providing necessities for the caretaker of the children.

14 (9) The department may adopt and enforce such rules as
 15 may be necessary to carry out the provisions of [this act].

16 (10) The department, for the purposes mentioned in
 17 [this act], through its director or his authorized
 18 representatives, may administer oaths to certify official
 19 acts, issue subpoenas, and compel witnesses and the
 20 production of books, accounts, documents, and evidence.

21 ~~titl--the--department--may--initiate--any--civit--proceedings~~
 22 ~~necessary--to--secure--reimbursement--from--the--parent--or--parents~~
 23 ~~of--minor--dependent--chitdren--for--all--money--spent--by--the--state~~
 24 ~~in--providing--public--assistance--or--services--to--dependent~~
 25 ~~chitdren~~

1 Section 3. Support enforcement services. (1) The
 2 department may accept applications for support enforcement
 3 services on behalf of persons who are not recipients of
 4 public assistance and may take appropriate action to
 5 establish or enforce support obligations against persons
 6 owing a duty to pay support. ~~Actions--may--be--taken--under--the~~
 7 ~~the--provisions--of--title--45--chapter--5--the--abandonment--or~~
 8 ~~nonsupport--statutes--or--other--appropriate--statutes--of--this~~
 9 ~~state--including--but--not--limited--to--remedies--established--in~~
 10 ~~title--45--chapter--5--to--establish--and--enforce--the--support~~
 11 ~~obligations--~~

12 (2) The department may establish by rule reasonable
 13 standards necessary to limit applications for support
 14 enforcement services. These standards shall take into
 15 account the earnings, income, and other resources already
 16 available to support the person for whom a support
 17 obligation exists.

18 (3) The department may charge a fee as compensation
 19 for services rendered in establishment of or enforcement of
 20 support obligations. This fee shall be agreed on in writing
 21 with the ~~PARENT~~ custodian or guardian of the person for
 22 whom a support obligation is owed or that person if no
 23 ~~PARENT~~ custodian or guardian exists. An initiation fee as
 24 a portion of the collection fee may be charged the applicant
 25 by the department. The department shall by rule establish

1 reasonable fees for support enforcement services, and the
 2 schedule of fees shall be made available to all applicants
 3 for support enforcement services. The department may, upon a
 4 showing of necessity, waive or defer any such fee.

5 Section 4. Cooperation by person having custody of
 6 child. Any person having the care, custody, or control of
 7 any dependent child or children shall cooperate with the
 8 department in establishing the paternity of such child and
 9 obtaining support payments.

10 Section 5. Payment of support money collected to
 11 support enforcement and collections unit -- notice. If
 12 written notice by the department is given to the responsible
 13 person or to the clerk of the court, if appropriate, that
 14 the children for whom a support obligation exists are
 15 receiving public assistance, then any support money paid by
 16 the person or persons responsible for support as a result of
 17 any action shall be paid through the support enforcement and
 18 collections unit of the department of revenue.

19 Section 6. Petition for support order by married
 20 parent with minor children receiving public assistance. (1)
 21 Any married parent with minor children, natural or legally
 22 adopted, who is receiving public assistance IN THE ABSENCE
OF A SUPPORT ORDER may apply to the district court of the
 23 county in which the parent resides or in which the spouse
 24 may be found for an order upon such spouse, if such spouse

1 is the natural or adoptive mother or father of such
 2 children, to provide for the parent's support and the
 3 support of the parent's minor children by filing in the
 4 county a petition setting forth the facts and circumstances
 5 upon which the parent relies for the order.

6 (2) If it appears to the satisfaction of the court
 7 that the parent is without funds to employ counsel, the
 8 department may file a petition on behalf of the parent. If
 9 satisfied that a just cause exists, the court shall direct
 10 that a citation be issued to the spouse requiring that
 11 spouse to appear at a time set by the court to show cause
 12 why an order of support should not be entered in the matter.

13 Section 7. Petition for support order by married
 14 parent with minor children receiving public assistance --
 15 powers of court. (1) After hearing the petition for an order
 16 of support, the court shall make an order granting or
 17 denying it and fixing the terms and amount of the support.

18 (2) The court has the same power to compel the
 19 attendance of witnesses and the production of testimony as
 20 in actions and suits, make such decree or orders as are
 21 equitable in view of the circumstances of both parties, and
 22 punish violations as other contempts are punished.

23 ~~Section 8. Petition for support order by married
 24 parent with minor children receiving public assistance --
 25 waiver of filing fees -- the court may upon satisfactory~~

1 showing--that--the--petitioner--is--without-funds-to-pay-the
 2 fitting-fee-order-that-the--petition--and--other--papers--be
 3 fitted-without-payment-of-the-fee

4 Section 8. Financial statements by parent whose
 5 absence is basis of application for public assistance --
 6 penalty. (1) Any parent in the state whose absence is the
 7 basis upon which an application is filed for public
 8 assistance on behalf of a child shall complete a statement
 9 under oath, of his current monthly income, his total income
 10 over the past 36 months, the number of dependents for whom
 11 he is providing support, the amount he is contributing
 12 regularly toward the support of all children for whom
 13 application for such assistance is made, his current monthly
 14 living expenses, and all other information pertinent to
 15 determining his ability to support his children. The
 16 statement shall be provided upon a demand made by the
 17 department. If assistance based upon the application is
 18 granted on behalf of the child, additional statements shall
 19 be filed as required by the department until the child is no
 20 longer receiving public assistance.

21 (2) Failure to comply with this section is a
 22 misdemeanor.

23 Section 9. Scale of suggested minimum contributions.
 24 (1) The department shall establish a scale of suggested
 25 minimum contributions to assist counties and courts in

1 determining the amount that a parent should be expected to
 2 contribute toward the support of his child under [this act].
 3 The scale shall:
 4 (a) include consideration of gross income;
 5 (b) authorize an expense deduction for determining net
 6 income;
 7 (c) designate other available resources to be
 8 considered;
 9 (d) specify the circumstances which should be
 10 considered in reducing support contributions on the basis of
 11 hardship.

12 (2) The department shall accept and compile pertinent
 13 and reliable information from any available source in order
 14 to establish a minimum scale of suggested contributions.
 15 Copies of the scale shall be made available to courts,
 16 county offices, county attorneys, and upon request, to any
 17 other state or county officer or agency engaged in the
 18 administration or enforcement of [this act]. Attorneys
 19 admitted to practice in Montana may have access to the
 20 minimum scales SCALE of suggested contribution.

21 (3) No county, court, officer, or agency may be
 22 required to use this scale.

23 Section 10. Central unit for information and
 24 administration -- cooperation enjoined -- availability of
 25 records. (1) The department shall establish a central unit

1 to serve as a registry for the receipt of information, for
 2 answering interstate inquiries concerning deserting parents;
 3 to coordinate and supervise departmental activities in
 4 relation to deserting parents; and to assure effective
 5 cooperation with law enforcement agencies.

6 (2) To effectuate the purposes of this section, the
 7 director may request from state, county, and local agencies
 8 all information and assistance as authorized by [this act].
 9 All state, county, and city agencies, officers, and
 10 employees shall cooperate in the location of parents who
 11 have abandoned or deserted or are failing to support
 12 children receiving public assistance and shall on request
 13 supply the department with all information available
 14 relative to the location, income, and property of the
 15 parents.

16 (3) Any records established pursuant to the provisions
 17 of this section are available only to the department, county
 18 attorneys, and courts having jurisdiction in support and
 19 abandonment proceedings or actions or agencies in other
 20 states engaged in the enforcement of support of minor
 21 children as authorized by the rules of the department and by
 22 the provisions of the federal Social Security Act.

23 Section-12--Department-exempt-from-fees--No-filing-or
 24 recording--fees--court--fees--fees--for--making--copies--of
 25 documents--or--fees--for--service--of--process--may--be--required

1 from--the--department--by--any-county-clerk, county-auditor,
 2 sheriff, or other county--officer--for--the--filing--of--any
 3 actions--or--documents--authorized--by-[this act]; or for the
 4 service--of--any--summons--or--other--process--in--any--action--or
 5 proceeding--authorized--by-[this act].

6 Section 11. Debt to state by natural or adoptive
 7 parents -- limitations. (1) Except as provided in subsection
 8 (2), any payment of public assistance money made to or for
 9 the benefit of any dependent child or children creates a
 10 debt due and owing the state of Montana by the natural--or
 11 adoptive RESPONSIBLE parent or parents who-are-responsible
 12 for-the-support-of-such-children in an amount equal to the
 13 amount of public assistance money so paid. IN THE CASE OF AN
ADOPTIVE PARENT OR PARENTS, NO DEBT FOR PUBLIC ASSISTANCE
PAID MAY ACCRUE PRIOR TO THE DATE OF ADOPTION.

16 (2) Where there has been a district court order
 17 established, the debt shall be limited to the amount
 18 provided for by the order.

19 (3) Where a child has been placed in foster care, and
 20 a written agreement for payment of support has been entered
 21 into by the responsible parent or parents and the-department
 22 ANY STATE AGENCY, the debt shall be limited to the amount
 23 provided for in the agreement. However, if a court order for
 24 support is or has been entered, the provisions of the order
 25 shall prevail over the agreement.

1 (4) The department shall adopt rules based on ability
 2 to pay with respect to the level of support to be provided
 3 for in such agreements or modifications of such agreements
 4 based on changed circumstances.

5 Section 12. Support debt based upon subrogation to or
 6 assignment of judgment -- notice -- contents -- action to
 7 collect. (1) The department may issue a notice of a support
 8 debt accrued or accruing based upon subrogation to or
 9 assignment of the judgment created by a district court
 10 order. The notice may be served upon the debtor in the
 11 manner prescribed for the service of a summons in a civil
 12 action in accordance with the provisions of the Montana
 13 Rules of Civil Procedure, demanding payment within 20 days
 14 of the date of receipt.

15 (2) The notice of debt shall include:

16 (a) a statement of the support debt accrued or
 17 accruing, computable on the amount required to be paid under
 18 any district court order to which the department is
 19 subrogated or has an assigned interest;

20 (b) a statement that the property of the debtor is
 21 subject to collection action;

22 (c) a statement that the property is subject to ~~lien~~
 23 ~~end-foreclosure~~ distraint~~y~~ AND seizure and sale~~v~~--or--order
 24 to-withhold-and-deliver;

25 (d) a statement that the net proceeds will be applied

1 to the satisfaction of the support debt.

2 (3) Action to collect the subrogated or assigned
 3 support debt by ~~lien--end--foreclosure--or~~ distraint~~y~~ AND
 4 seizure and sale~~v~~--or--order--to--withhold--and--deliver shall be
 5 lawful after 20 days from the date of service upon the
 6 debtor or 20 days from the receipt or refusal by the debtor
 7 of the notice of debt.

8 Section 13. Notice of support liability based upon
 9 payment of public assistance -- notice -- contents --
 10 collection warrant -- fair hearing. (1) In the absence of a
 11 district court order the department may issue a notice of a
 12 support liability accrued or accruing based upon payment of
 13 public assistance to or for the benefit of any dependent
 14 child or children. The notice of liability shall be served
 15 upon the responsible parent in the manner prescribed for the
 16 service of summons in a civil action, in accordance with the
 17 provisions of the Montana Rules of Civil Procedure.

18 (2) The notice of liability shall include:

19 (a) a statement of the support debt accrued or
 20 accruing, computable on the basis of the amount of public
 21 assistance previously paid and to be paid in the future;

22 (b) a statement of the amount of the monthly public
 23 assistance payment;

24 (c) a statement of the name of the recipient and the
 25 name of the child or children for whom assistance is being

1 paid;

2 (d) a demand for immediate payment of the support debt
 3 or, in the alternative, a demand that the responsible parent
 4 make answer within 20 days of the date of service to the
 5 department stating defenses to liability under [section 43
 6 11];

7 (e) a statement that if no answer is made on or before
 8 20 days from the date of the service the support debt shall
 9 be assessed and determined subject to computation and is
 10 subject to collection action;

11 (f) a statement that the property of the responsible
 12 parent will be subject to ~~lien-and-foreclosure~~ distraint
 13 ~~AND~~ seizure and sale~~r~~-or-order-to-withhold-and-deliver.

14 (3) If no answer is had by the department to the
 15 notice of liability on or before 20 days of the date of
 16 service, the support debt shall be assessed and determined
 17 subject to the computation and the department shall issue a
 18 collection warrant ~~QE~~ DISIRAINI authorizing a collection
 19 action under [this act].

20 (4) If the responsible parent, within 20 days of the
 21 date of service of notice of liability, makes answer to the
 22 department alleging defenses to liability under [section 43
 23 11], the responsible parent may receive a fair hearing
 24 pursuant to [sections--20--and--22 SECTION 18 16]. The
 25 decision of the department in the hearing shall establish

1 the obligation of the responsible parent, if any, for
 2 repayment of public assistance funds spent to date as an
 3 assessed and determined support debt.

4 Section 14. Finding of support liability based upon
 5 payment of public assistance -- fitting-and-serving-of-tiens
 6 WARRANT QE DISIRAINI -- bond to release ~~tiens~~ WARRANT --
 7 action to collect. (1) If the department reasonably believes
 8 that the parent is not a resident of this state or is about
 9 to move from this state or has concealed himself, absconded,
 10 absented himself or has removed or is about to remove,
 11 secreted, waste, or otherwise dispose of property which could
 12 be made subject to collection action to satisfy the support
 13 debt, the department may file--and--serve--~~tiens~~ ISSUE A
 14 WARRANT QE DISIRAINI pursuant to [sections-19 SECTION 17 and
 15 20] during the pendency of the fair hearing or thereafter,
 16 whether or not appealed. No further action under--[section
 17 21]--[section--26]--and--[section-27] may be taken on such
 18 ~~tiens~~ THE WARRANT until final determination after fair
 19 hearing and/or appeal. The department shall in such cases
 20 make and file in the record of the fair hearing an affidavit
 21 stating the reasons upon which the belief is founded. The
 22 responsible parent may furnish a bond satisfactory-to-the
 23 department~~NOT TO EXCEED THE AMOUNT OF THE SUPPORT DEBT~~
 24 during pendency of the hearing or thereafter, and in such
 25 case ~~tiens~~-fitted WARRANTS ISSUED shall be released. If the

1 decision resulting from the hearing is in favor of the
 2 responsible parent, all tiens-fitted ~~WARRANTS ISSUED~~ shall be
 3 released.

4 (2) The department may commence action under the
 5 provisions of [this act] to collect the support debt on the
 6 date of issuance of the decision resulting from the hearing.

7 Section 15. Notice and finding of financial
 8 responsibility of responsible parent -- administrative
 9 procedure. (1) In lieu of the hearing-and-appeal procedures
 10 provided in [sections 16-and-17 ~~15-ANB-16 13 AND 14~~], the
 11 department may, in the absence of a district court order,
 12 serve on the responsible parent a notice and finding of
 13 financial responsibility requiring a responsible parent to
 14 appear and show cause at a hearing held by the department
 15 why the finding of liability and the amount of support
 16 liability should not be finally ordered. This notice and
 17 finding shall relate to the support debt accrued or accruing
 18 under [this act] and/or Title 53, chapter 4, including
 19 periodic payments to be made in the future for the period of
 20 time any child of the responsible parent is in need. The
 21 hearing shall be held pursuant to [this act] and the rules
 22 of the department, which shall provide for a fair hearing.

23 (2) The notice and finding of financial ~~liability~~
 24 ~~RESPONSIBILITY~~ shall be served in the same manner prescribed
 25 for the service of a summons in a civil action, in

1 accordance with the provisions of the Montana Rules of Civil
 2 Procedure. Any responsible parent who objects to all or any
 3 part of the notice and finding shall have the right for not
 4 more than 20 days from the date of service to request in
 5 writing a hearing, notice of which shall be served upon the
 6 department personally or by registered or certified mail. If
 7 no request is made, the notice and finding of ~~liability~~
 8 ~~FINANCIAL RESPONSIBILITY~~ becomes final. If a request is
 9 made, the execution of notice and finding of ~~liability~~
 10 ~~FINANCIAL RESPONSIBILITY~~ shall be stayed pending the
 11 decision on such hearing or any direct appeal to the courts
 12 from the decision.

13 (3) The notice and finding of financial ~~liability~~
 14 ~~RESPONSIBILITY~~ shall include:

15 (a) the amount the department has determined the
 16 responsible parent owes, the support debt accrued or
 17 accruing, and, as appropriate, the amount to be paid thereon
 18 each month, all computable on the basis of the amount of the
 19 monthly public assistance payment previously paid or need
 20 alleged and the ability of the responsible parent to pay all
 21 or any portion of the debt;

22 (b) a statement of the name of the recipient or
 23 custodian and the name of any child for whom assistance is
 24 being paid or need is alleged; or a statement of the amount
 25 of periodic future support payments for which financial

1 ~~financial responsibility~~ is found;

2 (c) a statement that the responsible parent may object
 3 to all or any part of the notice and finding and request a
 4 hearing to show cause why he should not be determined to be
 5 liable for any or all of the past and future debt determined
 6 and the amount to be paid thereon;

7 (d) a statement that if the responsible parent fails
 8 to request a hearing, that the support debt and payments
 9 stated in the notice and finding, including periodic support
 10 payments in the future, shall be assessed, determined, and
 11 ordered by the department and that this debt is subject to
 12 collection action;

13 (e) a statement that the property of the debtor,
 14 without further advance notice or hearing, will be subject
 15 to ~~lien-and-foreclosure~~ distraint~~s~~ AND seizure and sale~~r~~ or
 16 order-to-withhold-and-deliver to satisfy the debt.

17 Section 16. Administrative hearing -- nature -- place
 18 -- time -- determinations -- failure to appear -- entry of
 19 findings. (1) The administrative hearing is defined as a
 20 "contested case".

21 (2) The administrative hearing may be held in the
 22 county of residence or other county convenient to the
 23 responsible parent.

24 (3) If a hearing is requested, it shall be scheduled
 25 within 30 days.

1 (4) The hearing officer shall determine the liability
 2 and responsibility, if any, of the alleged responsible
 3 parent under [section 33 11] and shall also determine the
 4 amount of periodic payments to be made to satisfy past,
 5 present, or future liability under [section 33 11]. In
 6 making these determinations, the hearing officer shall
 7 include in his consideration the scale of suggested minimum
 8 contributions adopted under [section 30 2].

9 (5) If the responsible parent fails to appear at the
 10 hearing, upon a showing of valid service, the hearing
 11 officer shall enter a decision and order declaring the
 12 support debt and payment provisions stated in the notice and
 13 finding of financial responsibility to be assessed,
 14 determined, and subject to collection action. Within 20 days
 15 of entry of the order, the responsible parent may petition
 16 the department to vacate the order upon a showing of any of
 17 the grounds enumerated in the Montana Rules of Civil
 18 Procedure.

19 (6) The hearing officer shall, within 20 days of the
 20 hearing, enter findings, conclusions, and a final decision
 21 determining liability and responsibility and/or future
 22 periodic support payments. The determination of the hearing
 23 officer entered pursuant to this section shall be entered as
 24 an order unless such findings are set aside pursuant to
 25 [section 33 23 25] and shall limit the support debt under

1 [section 13 11] to the amounts stated in the decision.

2 (7) The decision establishing liability and future
 3 periodic support payments is superseded upon entry of a
 4 district court order for support to the extent the district
 5 court order is inconsistent with the hearing order or
 6 decision. In the absence of a district court order the
 7 responsible parent may petition the department for issuance
 8 of an order to appear and show cause based on a showing of
 9 good cause and material change of circumstances to require
 10 the other party to appear and show cause why the decision
 11 previously entered should not be prospectively modified. The
 12 order to appear and show cause together with a copy of the
 13 affidavit upon which the order is based shall be served by
 14 the petitioning party on the nonmoving party in the manner
 15 of a summons in a civil action. A hearing shall be set not
 16 less than 15 or more than 30 days from the date of service,
 17 unless extended for good cause shown. Prospective
 18 modification may be ordered but only upon a showing of good
 19 cause and material change of circumstances.

20 (8) The department, in its original determinations,
 21 and the hearing officers, in making determinations based on
 22 objections to original determinations or on petitions to
 23 modify, shall consider the standards promulgated for
 24 determination of support payments used by the district court
 25 of the county of residence of the responsible parent.

1 (9) Debts determined pursuant to this section,
 2 accrued and not paid, are subject to collection action under
 3 [this chapter ACII] without further necessity of action by
 4 the hearing officers.

5 Section 17. Assertion--of--lien-----effect WARRANT OF
 6 DISTRAINT-- EXECUTION. (1) Twenty-one days after receipt or
 7 refusal of notice of debt under provisions of [section 14
 8 12] or 21 days after service of notice of debt or as
 9 otherwise appropriate under the provisions of [sections 15
 10 and--to 13 AND 14]: a--lien--may--be--asserted--by--the--department
 11 upon--the--real--or--personal--property--of--the--debtor--the--claim
 12 of--the--department--for--a--support--debt--not--paid--when--due
 13 constitutes--a--lien--against--all--property--of--the--debtor--with
 14 priority--of--a--secured--creditor--this--lien--is--separate--and
 15 apart--from--and--in--addition--to--any--other--lien--provided--for--in
 16 this--title--the--lien--is--attached--to--all--real--and--personal
 17 property--of--the--debtor--on--the--date--of--filing--of--such
 18 statement--with--the--county--clerk--and--recorder--of--the--county
 19 in--which--the--property--is--located--A--lien--against--earnings--is
 20 attached--and--is--effective--subject--to--the--service
 21 requirements--of--[section--20]--upon--filing--with--the--county
 22 clerk--and--recorder--of--the--county--in--which--the--employer--is
 23 doing--business--or--maintains--an--office--or--agent--for--the
 24 purpose--of--doing--business--

25 t29--Whenever--a--support--lien--has--been--fitted--and--there

1 is--in--the--possession--of--any--persons--firm--corporations
 2 associations--political--subdivisions--or--departments--of--the
 3 state--having--notice--of--the--lien--any--property--that--may--be
 4 subject--to--the--support--lien--the--property--may--not--be--paid--
 5 released--sold--transferred--encumbered--or--conveyed--except
 6 as--provided--for--by--the--exemptions--contained--in--sections--22
 7 and--26--unless--a--written--release--or--waiver--is--signed--by--the
 8 department--has--been--delivered--to--the--person--firm--
 9 corporation--association--political--subdivision--or
 10 department--of--the--state--or--unless--a--determination--has--been
 11 made--in--a--fair--hearing--pursuant--to--sections--15--and--16--or
 12 by--a--district--court--ordering--release--of--the--support--lien--on
 13 the--basis--that--no--debt--exists--or--that--the--debt--has--been
 14 satisfied. THE DEPARTMENT MAY ISSUE AN ABSTRACT OF ANY FINAL
 15 ORDER IN THE FORM OF A WARRANT OF DISBAINI UNDERS ITS
 16 OFFICIAL SEAL DIRECTED TO THE SHERIFF OF ANY COUNTY OF THE
 17 STATE COMMANDING HIM TO LEVY UPON AND SELL THE REAL AND
 18 PERSONAL PROPERTY OF THE PERSON OWING THE SUPPORT DEBT
 19 WITHIN HIS COUNTY FOR THE PAYMENT OF THE DEBT, INTEREST, AND
 20 COST OF EXECUTING THE WARRANT AND TO RETURN THE WARRANT TO
 21 THE DEPARTMENT AND PAY TO IT THE MONEY COLLECTED WITHIN 60
 22 DAYS FROM THE DATE OF THE ISSUANCE OF THE WARRANT.

22 THE SHERIFF SHALL, WITHIN 5 DAYS AFTER THE RECEIPI
 23 OF THE WARRANT, FILE A COPY OF THE WARRANT WITH THE CLERK OF
 24 THE DISTRICT COURT OF HIS COUNTY AND THE CLERK SHALL ENTER

1 IN THE JUDGMENT DOCKET, IN THE COLUMN FOR JUDGMENT DEBTORS,
 2 THE NAME OF THE DEBTOR MENTIONED IN THE WARRANT AND, IN
 3 APPROPRIATE COLUMNS, THE AMOUNT OF THE SUPPORT DEBT AND THE
 4 DATE WHEN SUCH COPY IS FILED, THE AMOUNT OF THE WARRANT SO
 5 DOCKETED IS A LIEN UPON THE TITLE TO AND INTEREST IN REAL
 6 PROPERTY OR CHATIELS REAL OF THE PERSON AGAINST WHOM IT IS
 7 LEVIED IN THE SAME MANNER AS A JUDGMENT DOCKETED IN THE
 8 OFFICE OF SUCH CLERK. THIS LIEN HAS THE SAME PREFERENCE
 9 AGAINST THE ASSETS OF THE DEBTOR AS CLAIMS FOR TAXES.

10 131 THE SHERIFF SHALL PROCEED TO LEVY UPON AND SELL
 11 THE PROPERTY OF THE DEBTOR IN THE SAME MANNER PRESCRIBED BY
 12 LAW FOR EXECUTIONS ISSUED AGAINST PROPERTY UPON JUDGMENTS OF
 13 A COURT OF RECORD AND IS ENTITLED TO THE SAME FEES FOR HIS
 14 SERVICES IN EXECUTING THE WARRANT, TO BE COLLECTED IN THE
 15 SAME MANNER.

16 141 IF THE NET PROCEEDS OF THE SALE, UPON APPLICATION
 17 TO THE DEBTOR CLAIMED, DO NOT SATISFY THE DEBT IN FULL, THE
 18 DEPARTMENT SHALL HAVE JUDGMENT FOR ANY DEFICIENCY REMAINING
 19 UNSATISFIED.

20 Section 28--Service--of--lien--the--department--may--at
 21 any--time--after--filing--of--a--support--lien--serve--a--copy--of--the
 22 lien--upon--any--persons--firm--corporations--associations--
 23 political--subdivisions--or--departments--of--the--state--in
 24 possession--of--earnings--deposits--or--balances--held--in--any
 25 bank--account--of--any--nature--that--are--due--owing--or--belonging

1 to-the-debtors-The-support-tien-shall--be--served--upon--the
 2 person,----firm,----corporation,----association,---political
 3 subdivision,---or-department-of-the-state-either-in-the-manner
 4 prescribed-for-the-service-of-summons-in-a-civit--action--or
 5 by--certified--mail--return--with-receipt-requested. No-tien
 6 fitted-under-[section--19]--shall--have--any--effect--against
 7 earnings--or--bank--deposits--or--balances-unless-it-states-that
 8 amount-of-the-support-debt--accrued--and--unless--service--upon
 9 the--person,---firm,---corporation,---association,---political
 10 subdivision,---or-department-of-the--state--in--possession--of
 11 earnings--of--bank--accounts,--deposits,--or--balances--is
 12 accomplished-pursuant-to-thi-sections

13 Section-21--Order-to-withhold-and-deliver---issue-and
 14 service---contents---effect----delivery--of--property----
 15 bond--to--recesses--[t]--After-service-of-a-notice-of-debt-as
 16 provided-for-in-[section-14]-stating-a-support-debt--accrued
 17 or--accruing--based-upon-subrogation-to-or-assignment-of-the
 18 amount-required-to-be-paid-under-any-district-court-order-or
 19 whenever-a-support-tien-has-been-fitted-pursuant-to-[section
 20 19],---the---department---may--issue--to--any--person,---firm
 21 corporation,---association,---political---subdivision,---or
 22 department--of--the--state--an--order-to-withhold-and-deliver
 23 property-of-any-kind-including-but-not-limited--to--earnings
 24 that--are--due--owing--or--belonging--to--the--debtors--when--the
 25 department-has-reason--to--believe--that--there--is--in--the

1 possession--of--such--person,---firm,---corporation,---association,
 2 political-subdivision,---or-department-of-the--state--property
 3 that-is--due--owing--or--belonging--to--the--debtors--the--order-to
 4 withhold--and--deliver--that--shall--also--be--served--upon--the
 5 debtor--shall--state--the--amount--of--the--support--debt--accrued
 6 and--shall--state--in--summary--the--terms--of-[sections-22-and
 7 23]--the--order-to-withhold-and-deliver--shall--be--served--in
 8 the--manner--prescribed--for--the--service-of-a-summons-in-a
 9 civit-action--or--by--certified--mail--with--return--receipt
 10 requested.
 11 [t]--Any--person,---firm,---corporation,---association,
 12 political-subdivision,---or-department-of-the-state-upon--whom
 13 service--has--been--made--is--required--to--answer--the--order--to
 14 withhold-and-deliver--within--20--days--exclusive--of--the--day--of
 15 service--under-oath--and--in--writing--and--shall--make--true
 16 answers--to--the--matters--inquired--of--therein--in--the--event
 17 there--is--in--the--possession--of--any--such--person,---firm,
 18 corporation,---association,---political---subdivision,---or
 19 department--of--the--state--any--property--which--may--be--subject--to
 20 the--claim--of--the--department--the--property--shall--be--withheld
 21 immediately--upon--receipt--of--the--order--to--withhold-and
 22 deliver--and--shall--after--the--20--day--period--upon--demand--be
 23 delivered--to--the--department.
 24 [t]--The--department--shall--hold--the--property--in--trust
 25 for--application--on--the--indebtedness--involved--or--for--return-

1 without--interest--in-accordance-with-final-determination-of
 2 liability-or-nontiability--in-the-alternative--there-may-be
 3 furnished--to--the--department--a--bond--satisfactory-to-the
 4 department--conditioned---upon---final---determination---of
 5 liability---if--money-is-due-and-owing-under-any-contract-of
 6 employment--express-or-implicitly-or-is-held--by--any--person--
 7 firm--corporation--or-association--political-subdivision--or
 8 department-of-the-state--subject-to-withdrawal-by-the-debtor--
 9 the--money--shall--be-delivered-by--remittance-payable-to-the
 10 order-of-the-department--
 11 [4]--Delivery-to-the-department-of-the-money--or--other
 12 property--held--or--claimed-satisfies-the--requirement-of-the
 13 order-to-withhold-and-deliver-Delivery--to--the--department
 14 serves--as--full-acquittance--and-the-state-warrants--that-it
 15 shall-defend-and-hold--harmless--for--such--actions--persons
 16 delivering--money--or--property--to--the--department--pursuant-to
 17 [this--act]--the-state--also-warrants--that-it--shall-defend-and
 18 hold-harmless--for--such--actions--persons--withholding-money--or
 19 property--pursuant--to-[this--act]--except-for-the-exemptions
 20 contained-in-[sections-22-and-26]--
 21 Section-22--Certain-amount--of--earnings--exempt--from
 22 lien--or--order--Whenever-a-support-lien--or--order-to-withhold
 23 and--deliver--is--served-upon-any-person--firm--corporation--
 24 association--political-subdivision--or--department--of--the
 25 state--asserting--a--support-debt--against-earnings--and--there

1 are-in-the-possession-of--that--person--firm--corporation--
 2 association--political--subdivision--or--department--of--the
 3 state--any--such--earnings--50%--of--the--disposable--earnings--is
 4 exempt--and--may--be--disbursed--to--the--debtor--whether--the
 5 earnings--are--paid--or--to--be--paid--weekly--monthly--or--at--other
 6 regular--intervals--and--whether--there--be--due--the--debtor
 7 earnings--for--a--week--or--for--a--longer--period--The-ten--or
 8 order-to-withhold-and-deliver-shall-continue-to-operate--and
 9 require--the--person--firm--corporation--association--
 10 political--subdivision--or--department--of--the--state--to
 11 withhold--the--nonexempt--portion--of--earnings--at--each
 12 succeeding-earnings-disbursement-interval--until--the--entire
 13 amount--of--the--support-debt--stated--in--the--ten--or--order-to
 14 withhold-and-deliver-has-been-withheld--
 15 Section 18. Civil liability upon failure to comply
 16 with order-or-ten WARRANT OR TO HONOR ASSIGNMENT OF WAGES.
 17 Should any person, firm, corporation, association, political
 18 subdivision, or department of the state fail-to-answer-to-an
 19 order-to-withhold-and-deliver-within-the-time-prescribed--in
 20 [this--act]--or fail or refuse to deliver property pursuant
 21 to the order; or after actual notice of filing of a support
 22 lien, pay over, release, sell, transfer, or convey real or
 23 personal property subject to a support lien to or for the
 24 benefit of the debtor or any other person; or fail or refuse
 25 to surrender upon demand property distrained under [section

1 26 ~~19~~ 17]t or fail or refuse to honor an assignment of wages
 2 presented by the department, the person, firm, corporation,
 3 association, political subdivision, or department of the
 4 state is liable to the department in an amount equal to 100%
 5 of the value of the debt which is the basis of the ~~lien~~
 6 order--to--withhold-and-deliver distaintry or assignment of
 7 wages ~~OR THE VALUE OF THE DISBRAINED PROPERTY WHICHEVER IS~~
 8 ~~LESS~~ together with costs, interest, and reasonable attorney
 9 fees.

10 Section 19. Release of excess to debtor. Whenever any
 11 person, firm, corporation, association, political
 12 subdivision, or department of the state has in its
 13 possession earnings, deposits, accounts, or balances in
 14 excess of the amount of the debt claimed by the department
 15 plus \$100, that person, firm, corporation, association,
 16 political subdivision, or department of the state may,
 17 without liability under [this act], release the excess to
 18 the debtor.

19 Section 20. Banks and savings and loan associations --
 20 service effective only as to branch office served. In the
 21 case of a bank, bank association, mutual savings bank, or
 22 savings and loan association maintaining branch offices,
 23 service of a ~~lien~~ or order-to-withhold-and-deliver--or any
 24 other notice or document authorized by [this act] is only
 25 effective as to the accounts, credits, or other personal

1 property of the debtor in the particular branch upon which
 2 service is made.

3 Section 26--Distaintry-seizure-and-sale--of--property
 4 subject--to--lien--Whenever-a-support-lien-has-been-filed
 5 pursuant-to-[section-19j]-the--department--may--collect--the
 6 support--debt--stated-in-the-lien-by-the-distaintry-seizure
 7 and-sale-of-the-property-subject-to-the-lien--The-department
 8 shall-give-notice-to-the-debtor-and-any-person-known-to-have
 9 or--claim--an--interest--in--the--property--of--the--general
 10 description--of--the--property--to--be--sold--and--the--time--and
 11 place--of--the--sale--The--notice--shall--be--given--to--such--persons
 12 by--certified--mail--with--return--receipt--requested--or--by
 13 service--in--the--manner--prescribed--for--the--service--of--a
 14 summons--in--a--civil--action--A--notice--specifying--the--property
 15 to--be--sold--shall--be--posted--in--at--least--two--public--places--in
 16 the--county--in--which--the--distaintry--has--been--made--The--time--of
 17 sale--shall--be--not--less--than--10--or--more--than--20--days--from--the
 18 date--of--posting--of--the--notice--The--sale--shall--be--conducted
 19 by--the--department--which--shall--proceed--to--sell--such--property
 20 by--parcel--or--by--lot--at--a--public--auction--and--which--may--set--a
 21 minimum--reasonable--price--to--include--the--expenses--of--making--a
 22 levy--and--of--advertising--the--sale--If--the--amount--bid--for--the
 23 property--at--the--sale--is--not--equal--to--the--price--so--fixed--the
 24 department--may--decrease--the--property--to--be--purchased--by--the
 25 department--for--such--price--or--may--conduct--another--sale--of--the

1 property-pursuant-to-the-provisions-of-this-section--in--the
 2 event--of--sales--the-debtor's--account--shall--be--credited--with
 3 the--amount--for--which--the--property--has--been--sold--Property
 4 acquired--by--the--department--as--prescribed--in--this--section--may
 5 be--sold--by--the--department--at--public--or--private--sales--and--the
 6 amount--realized--shall--be--placed--in--the--state--general--fund--to
 7 the--credit--of--the--department--of--revenue--in--all--cases--of
 8 sale--the--department--shall--issue--a--bill--of--sale--or--a--deed--to
 9 the--purchaser--The--bill--of--sale--or--deed--is-- prima--facte
 10 evidence--of--the--right--of--the--department--to--make--the--sale--and
 11 conclusive--evidence--of--the--regularity--of--the--proceeding--in
 12 making--the--sales--The--bill--of--sale--or--deed--transfers--to--the
 13 purchaser--all--right--title--and--interest--of--the--debtor--in
 14 the--property--The--proceeds--of--any--such--sales--except--in--those
 15 cases--in--which--the--property--has--been--acquired--by--the
 16 department--shall--be--first--applied--by--the--department--to
 17 reimbursement--of--the--costs--of--distraint--and--sale--and
 18 thereafter--in--satisfaction--of--the--delinquent--account--Any
 19 excess--that--remains--in--the--hands--of--the--department--shall--be
 20 refunded--to--the--debtor--Sums--refundable--to--a--debtor--may--be
 21 subject--to--seizure--or--distraint--by--any--taxing--authority--of
 22 the--state--or--its--political--subdivisions--or--by--the--department
 23 for--new--sums--due--and--owing--subsequent--to--the--subject
 24 proceeding--Except--as--specifically--provided--in--[this--act]--
 25 there--shall--be--exempt--from--distraint--seizure--and--sale

1 under--[this--act]--such--property--as--is--exempt--therefrom--under
 2 the--laws--of--this--state--
 3 Section--27--Action--for--foreclosure--of--support--tien--
 4 satisfaction--Whenever--a--support--tien--has--been--fitted--on
 5 action--in--foreclosure--of--tien--upon--real--or--personal--property
 6 may--be--brought--in--the--district--court--of--the--county--where--the
 7 real--or--personal--property--is--or--was--located--and--the--tien--was
 8 fitted--judgment--may--be--rendered--in--favor--of--the--department
 9 for--the--amount--due--plus--costs--The--court--shall--allow--as
 10 part--of--the--costs--the--money--paid--for--making--and--fitting--the
 11 claim--of--tien--and--a--reasonable--attorney's--fees--The--court
 12 shall--order--any--property--upon--which--any--tien--provided--for--by
 13 [this--act]--is--established--to--be--sold--by--the--sheriff--of--the
 14 proper--county--to--satisfy--the--tien--and--costs--The--payment--of
 15 the--tien--debt--costs--and--reasonable--attorney--fees--at--any
 16 time--before--sales--satisfies--the--judgment--of--foreclosure--
 17 Where--the--net--proceeds--of--sale--upon--application--to--the--debt
 18 claimed--do--not--satisfy--the--debt--in--full--the--department
 19 shall--have--judgment--for--any--deficiency--remaining
 20 unsatisfied--Further--levy--and--sales--upon--other--property--of
 21 the--judgment--debtor--may--be--made--under--the--same--execution--in
 22 all--sales--contemplated--under--this--section--advertising--of
 23 notice--is--only--necessary--for--2--weeks--in--a--newspaper
 24 published--in--the--county--where--the--property--is--located--and
 25 if--there--is--no--newspaper--in--the--county--then--in--the--most

1 convenient-newspaper-having-a-circulation--in--the--county--
 2 Remedies--provided--for--in--this--section--are--alternatives--to
 3 remedies--provided--for--in--other--sections--of--[this--act]--
 4 Section 21. Satisfaction of ~~lien~~--after--foreclosure
 5 proceedings--instituted DEBT AFTER LEVY ON PROPERTY--
 6 redemption. Any person owning real property or any interest
 7 in real property against which a support-~~lien~~ MARRANI DE
DISIBAINI has been filed--and--foreclosure--instituted ISSUED
AND LEVIED UPON may pay the amount due, together with
 10 expenses of the proceedings and reasonable attorney fees to
 11 the department. Upon full payment the department SHERIFF
 12 shall restore the property to him, and all further
 13 proceedings in--the--foreclosure-action ON THE MARRANI shall
 14 cease. The person shall also have the right within 240 days
 15 after sale of property foreclosed--under--[section-27] LEVIED
UPON to redeem the property by making payment to the
 17 purchaser in the amount paid by the purchaser plus interest
 18 at the statutory interest rate payable on judgments
 19 recovered in the courts of this state.

20 Section 22. Debt payment schedule. The department may
 21 at any time AFTER NOTICE TO THE DEBTOR set OR RESEEI a level
 22 and schedule of payments to be paid upon the debt consistent
 23 with the income, earning capacity, and resources of the
 24 debtor.

25 Section 23. Release of ~~lien~~--or--order--or DISIBAINI.

1 return of seized property -- effect. The department may at
 2 any time release a support-~~lien~~--or--order--to--withhold--and
 3 deliver DISIBAINI on all or part of the property of the
 4 debtor or ORDER THE SHERIFF TO return seized property
 5 without liability, if assurance of payment is determined to
 6 be adequate by the department or if the action will
 7 facilitate the collection of the debt. The release or return
 8 does not operate to prevent future action to collect from
 9 the the same or other property.

10 Section 3--Emergency-filing-of--liens--when--payments
 11 appear--in--jeopardy--if--the--department--finds--that--the
 12 collection--of--any--support--debt--based--upon--subrogation--to--or
 13 assignment--of--the--amount--of--support--ordered--by--any--district
 14 court--order--is--in--jeopardy--it--may--demand--under--[section-14]
 15 immediate--payment--of--the--support--debt--Upon--failure--or
 16 refusal--of--the--support--debtor--to--immediately--pay--the--support
 17 debt--the--department--may--file--and--serve--liens--pursuant--to
 18 [sections-19-and-20]--without--regard--to--the--20--day--period
 19 provided--for--in--[section-15]--No--further--action--under
 20 [sections-21-and-26]--may--be--taken--until--the--notice
 21 requirements--of--[section-14]--are--met.

22 Section 24. Interest on debts due -- waiver. Interest
 23 of 6% per year on any support debt due and owing to the
 24 department AT THE STATUTORY INTEREST RATE PAYABLE ON
JUDGMENTS RECOVERED IN THE COURTS OF THIS STATE under

1 [section 13 11] may be collected by the department. No
 2 provision of [this act] may be construed to require the
 3 department to maintain interest balance due accounts, and
 4 interest may be waived by the department, if waiver would
 5 facilitate the collection of the debt.

6 Section 25. ~~Findings----and----order---by---department~~
 7 ~~ADMINISTRATIVE FINDINGS AND ORDER~~ -- judicial review. ~~if~~
 8 Upon--receipt-of-the-hearing-officer's-report-of-findings-on
 9 the-issues-designated-for-hearing, the-director--may--accept
 10 the--report--of--findings-as-the-basis-for-a-final-order--or
 11 upon-fitting-a-statement-of-the-legat-or-substantial--factual
 12 basis-in-the-record, the-director-may--

13 ~~fit--remand--at--or--any--portion--of--the--findings--for~~
 14 ~~further--hearings--and--findings--on--specified--issues~~
 15 ~~fit--disregard--that--portion--of--the--findings~~
 16 ~~inconsistent--with--the--evidence--presented--to--the--hearing~~
 17 ~~officer--and--proceed--to--enter--a--final--order--based--upon--the~~
 18 ~~remainder--of--the--findings~~

19 ~~(c)--substitute--alternative--or--additionat--findings--of~~
 20 ~~fact--on--the--issues--designated--for--hearing--if--the--substituted~~
 21 ~~findings--are--supported--by--a--preponderance--of--the--evidence--in~~
 22 ~~the--records--The--director--shall--then--cause--his--findings--and~~
 23 ~~order--to--be--served--upon--the--responsible--parent~~

24 ~~It is the intent of [this act] that~~
 25 ~~administrative findings and orders be subject to judicial~~

1 review but that administrative remedies be exhausted prior
 2 to judicial review. The administrative procedures described
 3 in [this act] are subject to review in the appropriate
 4 district court. Such review ~~will--be--based--upon--the~~
~~transcript--and--other--pertinent--record--of--the--administrative~~
~~proceedings~~ ~~SHALL BE CONDUCTED PURSUANT TO THE MONTANA~~
~~ADMINISIRAIIVE PROCEDURE ACI.~~ Upon a showing by the
 8 department that administrative remedies have not been
 9 exhausted, the district court shall refuse review until such
 10 remedies are exhausted.

11 ~~Nothing in [this act] may be construed to~~
 12 ~~abridge or in any way affect the defendant's right to~~
 13 ~~counsel during any and all judicial or administrative~~
 14 ~~proceedings pursuant to [this act].~~

15 Section 26. Statutory limitations. Debts ensuing as a
 16 result of determinations made through the administrative
 17 procedures described in [this act] are subject to statutory
 18 limitations as set forth in Title 27, chapter 2.

19 ~~Section 35--Unidentifiable--money--held--in--special~~
 20 ~~accounts--All--money--collected--in--fees--costs--attorney--fees--~~
 21 ~~interest--payments--or--other--funds--received--by--the--department~~
 22 ~~which--are--unidentifiable--as--to--the--support--account--against~~
 23 ~~which--they--should--be--credited--shall--be--held--in--a--special~~
 24 ~~fund--from--which--the--department--may--make--disbursement--for--any~~
 25 ~~costs--or--expenses--incurred--in--the--administration--or~~

1 enforcement-of-the-provisions-of-[this-act]»

2 Section 27. Charging off child support debts as
 3 uncollectible. Any support debt due the department from a
 4 responsible parent which the department determines
 5 uncollectible may be transferred from accounts receivable to
 6 a suspense account and cease to be accounted as an asset. IN
 7 THE EVENT A WARRANT OF DISRAINI HAS BEEN FILED AND THE
 8 SUPPORT DEBT HAS SUBSEQUENTLY BEEN CHARGED OFF AS
 9 UNCOLLECTIBLE, THE DEPARTMENT SHALL ISSUE A RELEASE OF LIEN.
 10 At any time after 6 years from the date a support debt was
 11 incurred, the department may charge off as uncollectible any
 12 support debt upon which the department finds there is no
 13 available, practical, or lawful means by which the debt may
 14 be collected. No proceedings or action under the provisions
 15 of [this act] may be begun after expiration of the 6-year
 16 period to institute collection of a support debt. Nothing
 17 herein may be construed to render invalid or nonactionable a
 18 support-lien WARRANT OF DISRAINI filed WITH THE CLERK OF
 19 COURT prior to the expiration of the 6-year period or an
 20 assignment of earnings or--order--to--withhold--and--deliver
 21 executed prior to the expiration of the 6-year period.

22 Section 28. Employee debtor rights protected --
 23 limitation. No employer may discharge OR PREJUDICE an
 24 employee for reason that an assignment of earnings has been
 25 presented in settlement of a support debt or that a support

1 lien--or--order-to-withhold-and-deliver WARRANT OF DISRAINI
 2 has been served against the employee's earnings. This
 3 provision does not apply if more than three support-lien--or
 4 orders--to--withhold--and--deliver WARRANTS are served upon the
 5 same employer within any period of 12 consecutive months.

6 Section 29. Assignment of earnings to be honored --
 7 effect. Any person, firm, corporation, association,
 8 political subdivision, or department of the state employing
 9 a person owing a support debt or obligation shall honor,
 10 according to its terms, a duly executed assignment of
 11 earnings, WHETHER EXECUTED VOLUNTARILY OR PURSUANT TO COURT
 12 ORDER, presented by the department as a plan to satisfy or
 13 retire a support debt or obligation. This requirement to
 14 honor the assignment of earnings and the assignment of
 15 earnings itself are applicable whether the earnings are to
 16 be paid presently or in the future and continue in force
 17 until released in writing by the department. Payment of
 18 money pursuant to an assignment of earnings presented by the
 19 department serves as full acquittance under any contract of
 20 employment. The state shall defend and hold harmless any
 21 action taken pursuant to the assignment of earnings. The
 22 department shall be released from liability for improper
 23 receipt of money under an assignment of earnings upon return
 24 of any money so received.

25 Section 30. Severability. If a part of this act is

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

-End-

1 department of social and rehabilitation services receives an
 2 application for public assistance on behalf of a child and
 3 it appears to the satisfaction of that department that the
 4 child has been abandoned by his parents; the child and one
 5 parent have been abandoned by the other parent; or the
 6 parent or other person who has a responsibility for the
 7 care, support, or maintenance of such child has failed or
 8 neglected to give proper care or support to the child, the
 9 department of social and rehabilitation services shall
 10 promptly refer the matter to the department of revenue for
 11 action under the provisions of [this act], the abandonment
 12 or nonsupport statutes, or other appropriate statutes of
 13 this state to insure that the parent or other person
 14 responsible pays for the care, support, or maintenance of
 15 the dependent child.

16 (2) In the event that public assistance is furnished
 17 by a state or county agency or in instances where the
 18 department has contracted to collect support, the department
 19 shall become trustee of any cause of action of the--person
 20 obligated--for--support--or--any--minor--child--in--that--person's
 21 custody THE DEPENDENT CHILD OR THE PERSON HAVING LEGAL
 22 CUSTODY OF THE DEPENDENT CHILD to recover support due to
 23 that obligee from any person and may bring and maintain the
 24 action either in the department's own name or in the name of
 25 the obligee.

1 (3) The department has the power of attorney to act in
 2 the name of any recipient of public assistance in endorsing
 3 and cashing any and all drafts, checks, money orders, or
 4 other negotiable instruments received by the department and
 5 representing support payments for children in whose behalf
 6 public assistance has been previously paid.

7 (4) For purposes of prosecuting any CIVIL action
 8 pursuant to [this act], the department is a real party in
 9 interest upon the payment of public assistance. No obligee
 10 shall act to prejudice the rights of the department after
 11 the receipt of public assistance.

12 (5) No agreement between any obligee and any obligor
 13 either relieving an obligor of any duty of support or
 14 purporting to settle past, present, or future support
 15 obligations either as settlement or prepayment may act to
 16 reduce or terminate any rights of the department to recover
 17 from that obligor for support DEBT provided unless the
 18 department has consented to the agreement in writing.

19 (6) The department may petition a court for
 20 modification of any court order on the same basis as a party
 21 to that action would have been entitled to do.

22 (7) The department shall be subrogated to the right of
 23 the child or children or person having the care, custody,
 24 and control of the child or children to prosecute or
 25 maintain any support CIVIL action or execute any

1 administrative remedy existing under the laws of the state
 2 to obtain reimbursement of money thus spent.

3 (8) If a district court enters-judgment-by-order--for
 4 ORDERS an amount of support to be paid by an-obtgor &
 5 RESPONSIBLE parent, the department shall be subrogated to
 6 the debt created by the order and the money judgment shall
 7 be determined to be in favor of the department. This
 8 subrogation shall apply to temporary spouse support orders
 9 AND family maintenance orders--and--etimony-orders up to the
 10 amount paid by the department in public assistance money to
 11 or for the benefit of a dependent child or children but
 12 allocated to the benefit of the children on the basis of
 13 providing necessities for the caretaker of the children.

14 (9) The department may adopt and enforce such rules as
 15 may be necessary to carry out the provisions of [this act].

16 (10) The department, for the purposes mentioned in
 17 [this act], through its director or his authorized
 18 representatives, may administer oaths to certify official
 19 acts, issue subpoenas, and compel witnesses and the
 20 production of books, accounts, documents, and evidence.

21 ~~the--department--may--initiate--any--civit--proceedings~~
 22 ~~necessary--to--secure--reimbursement--from--the--parent--or--parents~~
 23 ~~of--minor--dependent--chitdren--for--all--money--spent--by--the--state~~
 24 ~~in--providing--public--assistance--or--services--to--dependent~~
 25 ~~chitdren~~

1 Section 3. Support enforcement services. (1) The
 2 department may accept applications for support enforcement
 3 services on behalf of persons who are not recipients of
 4 public assistance and may take appropriate action to
 5 establish or enforce support obligations against persons
 6 owing a duty to pay support. Actions--may--be--taken--under--the
 7 the--provisions--of--Title-45v--chapter-5v--the--abandonment--or
 8 nonsupport--statutes--or--other--appropriate--statutes--of--this
 9 state--including--but--not--limited--to--remedies--established--in
 10 Title-45v--chapter-5v--to--establish--and--enforce--the--support
 11 obligations.

12 (2) The department may establish by rule reasonable
 13 standards necessary to limit applications for support
 14 enforcement services. These standards shall take into
 15 account the earnings, income, and other resources already
 16 available to support the person for whom a support
 17 obligation exists.

18 (3) The department may charge a fee as compensation
 19 for services rendered in establishment of or enforcement of
 20 support obligations. This fee shall be agreed on in writing
 21 with the PARENT~~s~~ custodian~~s~~ or guardian of the person for
 22 whom a support obligation is owed or that person if no
 23 PARENT~~s~~ custodian~~s~~ or guardian exists. An initiation fee as
 24 a portion of the collection fee may be charged the applicant
 25 by the department. The department shall by rule establish

March 23, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 221,
third reading copy, as follows:

1. Page 2.

Following: line 4

Insert: "SECTION 3. THERE IS A NEW MCA SECTION THAT READS:
Location of principal office. The principal office of the
judgeship created by [this act] shall be in Lake County.

AND AS AMENDED
BE CONCURRED IN

March 23, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 221,
third reading copy, as follows:

1. Page 2, line 17.

Following: "sections"

Strike: "14"

Insert: "12"

2. Page 2, line 18.

Following: line 17

Strike: "32"

Insert: "30"

3. Page 3.

Following: line 7

Insert: "(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States."

Renumber: subsequent subsections

4. Page 3, lines 9 through 12.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

5. Page 5, lines 15 through 17.

Following: "action of"

Strike: "the person obligated for support of any minor child in that person's custody"

Insert: "the dependent child or the person having legal custody of the dependent child"

6. Page 6, line 1.

Following: "any"

Insert: "civil"

7. Page 6, line 11.

Following: "support"

Insert: "debt"

8. Page 6, line 18.

Strike: "prosecute or"

9. Page 6, line 19.

Following: "maintain any"

Strike: "support"

Insert: "civil"

10. Page 6, line 22.

Following: "court"

Strike: "enters judgment by order for"

(continued)

11. Page 6, line 23.

Following: "by"

Strike: "an obligor"

Insert: "a responsible"

12. Page 7, line 2.

Following: "support orders"

Strike: ","

Insert: "and"

Following: "maintenance orders"

Strike: ","

13. Page 7, line 3.

Strike: "and alimony orders"

14. Page 7, lines 15 through 19.

Strike: subsection (11) in its entirety

15. Page 7, line 25 through line 5, page 8.

Following: "support."

Strike: remainder of line 25 through line 5, page 8, in their entirety

16. Page 8, line 15.

Following: "with the"

Insert: "parent,"

Following: "custodian"

Insert: ","

17. Page 8, line 16.

Following: "no"

Insert: "parent,"

Following: "custodian"

Insert: ","

18. Page 9, line 16.

Following: "assistance"

Insert: "in the absence of a support order"

19. Page 10, lines 16 through 21.

Strike: section 8 in its entirety

Renumber: subsequent sections

20. Page 13, lines 16 through 23.

Strike: section 12 in its entirety

Renumber: subsequent sections

21. Page 14, lines 3 and 4.

Following: "by the"

Strike: "natural or adoptive"

Insert: "responsible"

22. Page 14, lines 4 and 5.

Strike: "who are responsible for the support of such children"

23. Page 14, line 6.

Following: "paid."

Insert: "In the case of an adoptive parent or parents, no debt for public assistance paid may accrue prior to the date of adoption."

24. Page 14, lines 12 and 13.

Following: "and"

Strike: "the department"

Insert: "any state agency"

25. Page 15, line 19.

Strike: "lien and foreclosure or"

26. Page 16, line 21.

Following: "section"

Strike: "13"

Insert: "11"

27. Page 17, line 13.

Following: line 12

Strike: "13"

Insert: "11"

28. Page 17, line 14.

Following: "SECTION"

Strike: "18"

Insert: "16"

29. Page 18, line 4.

Following: "["

Strike: "sections 19"

Insert: "section 17"

30. Page 18, line 24.

Following: "~~16-and-17~~"

Strike: "15 AND 16"

Insert: "13 and 14"

31. Page 21, line 17.

Following: "section"

Strike: "13"

Insert: "11"

32. Page 21, line 19.

Following: "section"

Strike: "13"

Insert: "11"

(continued)

33. Page 21, line 22.

Following: "section"

Strike: "10"

Insert: "9"

34. Page 22, line 14.

Following: "33"

Strike: "27"

Insert: "25"

35. Page 22, line 15.

Following: "section"

Strike: "13"

Insert: "11"

36. Page 23, line 21.

Following: "section"

Strike: "14"

Insert: "12"

37. Page 23, line 23.

Following: "sections"

Strike: "15 and 16"

Insert: "13 and 14"

38. Page 30, line 14.

Following: "26"

Strike: "19"

Insert: "17"

39. Page 30, line 20.

Following: "wages"

Insert: "or the value of the distrained property, whichever is less"

40. Page 36, line 13.

Following: "section"

Strike: "13"

Insert: "11"

41. Page 36, line 18.

Following: "Section 27."

Strike: "Findings and order by department"

Insert: "Administrative findings and order"

42. Page 36, line 19 through line 9, page 37.

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

(continued)

SENATE BILL NO. 221

Page 5

43. Page 38, line 4.
Following: "chapter"
Insert: "2."

44. Page 38, line 17.
Following: "asset."
Insert: "In the event a warrant of distress has been filed and
the support debt has subsequently been charged off as uncollectible,
the department shall issue a release of lien."

Further Respectfully report that Senate Bill No. 221,
Statement of Intent, be amended as follows:

1. Page 2, line 8.
Following: "section"
Strike: "13(4)"
Insert: "12(4)"