

CHAPTER TEN ENFORCEMENT OF SUPPORT OBLIGATIONS

INTRODUCTION

Enforcement actions are the steps necessary to compel a noncustodial parent to pay support that has been ordered by a court or administrative agency. To ensure that payments are made as ordered, it is critical to monitor payments and to initiate the appropriate enforcement remedy.

Certain enforcement remedies are available exclusively to State Child Support Enforcement (CSE) agencies. Other remedies are available to any child support tribunal,¹ as well as to private attorneys and collection agencies. Some always involve court action; others are administrative in nature, requiring little or no court action.

Determining correct remedies is case-specific. Thus, the facts, coupled with Federal and State mandates, dictate how a IV-D caseworker, private attorney, or custodial parent should proceed to enforce the particular support order.

MONITORING PAYMENTS

Many State CSE programs have had recordkeeping responsibility for a long time, while others have only recently taken over these functions as a result of new mandates contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).² Awareness of the payment status of a case is vital to the timely initiation of enforcement actions.

Calculating Payments

Child support arrears occur when the party ordered to pay periodic support, usually the noncustodial parent, either fails to make any payment or does not pay the entire amount for a designated period. Arrears also can arise when a custodial parent and child receive public assistance; the initial support order may contain “support for a prior period,” based on the obligor’s past income, that represents recoupment of payments the State made for the care of the child before the order’s entry.

Typically, the party seeking to collect the arrears amount is the custodial parent. Arrears due the custodial parent accrue when the family received no public assistance and the noncustodial party has failed to pay the full amount ordered by the tribunal. In addition, a tribunal can order payment to the custodial

¹ The term “tribunal” refers to a court and/or administrative agency.

² P.L. No. 104-193 (1996).

parent of retroactive support for a period prior to the entry of the order or reimbursement for common law “necessities” that the custodial parent paid before entry of the order. On the other hand, the State IV-D agency may be entitled to pursue arrears if the family receives, or has received, public assistance and the noncustodial party has failed to pay the full amount ordered by the tribunal. Additionally, a tribunal may order payment to the agency of retroactive support or support for a prior period. Some courts have recognized that special circumstances can arise that give the child standing to enforce the support order.³ The Nevada Supreme Court in *Morelli v. Morelli*⁴ reasoned that the child is an intended third party beneficiary of an agreement for support between the parents. The New Jersey Supreme Court has reiterated this as recently as 1997, when the court held that support belongs to the child and not the parent.⁵

Federal regulations require that State IV-D agencies have an effective system for monitoring compliance with a support obligation and identifying the date that a noncustodial parent fails to make payments in an amount equal to the support payable for 1 month.⁶ This includes responsibility for keeping accurate records to monitor the payment history of the noncustodial parent. Accurate payment records help ensure that appropriate enforcement remedies are initiated.

Sometimes when the tribunal is attempting to determine arrears, a noncustodial parent will claim that payment has been made in a manner other than the ordered payment method(s). Generally, a noncustodial parent is not allowed credit for expenditures made for the child while the child is in his or her custody. State child support guidelines usually address how visitation arrangements impact on the support amount. Nor are obligors usually given credit for payments made outside of the order’s terms. Many States consider in-kind payments or cash paid directly to the child as gifts and, therefore, do not credit these payments against the child support obligation. Courts in a number of States have found that giving credit for voluntary payments permits the noncustodial parent to vary the terms of the order, and usurps the custodial party’s right to determine the manner in which support money will be spent. The Supreme Court of Alaska affirmed a long-standing Alaskan principle and held that “payments voluntarily made to the children are not to be credited against child support obligations. The rationale is that such voluntary payments to the children quite often are intended for particular purposes whereas the manner in which child support payments are used to meet the children’s basic needs is left to the discretion of the custodial parent or guardian.”⁷

³ See, e.g., *Drake v. Drake*, 89 A.D.2d 207, 455 N.Y.S.2d 420 (N.Y. App. Div. 1982).

⁴ 102 Nev. 326, 720 P.2d 704 (1986).

⁵ *Monmouth County Div. of Social Servs. for F.M. n/k/a D.W. v. G.D.M.*, 308 N.J. Super. 83, 705 A.2d 408 (1997).

⁶ 45 C.F.R. §§ 303.6(a), (b) (2000).

⁷ *Alaska Child Support Enforcement Div. v. Campbell*, 931 P.2d 416 (Alaska 1997), citing *Young v. Williams*, 583 P.2d 201 (Alaska 1978).

It is important to note that some courts have been willing to use equitable principles to determine the propriety of a substituted form of payment. For example, when the custodial party expressly or implicitly consents to the alternate payment as partial or complete satisfaction of the support obligation, some courts will give a credit to the noncustodial parent. For a credit to be awarded, however, it appears that the payment must substantially comply with the “spirit and intent” of the original order.⁸

Interest

A companion issue to arrears monitoring is interest. Some States charge interest on past-due child support obligations. Interest can be applied to unpaid support at the rate set by State statute. In the relevant States, judgment interest generally is determined in child support matters in the same way it is set in other civil judgments. States that charge interest typically begin its accrual on the day the relevant child support payment becomes due and unpaid.⁹

A State’s decision to award interest rests on important public policy considerations. Many States believe that the award of interest encourages obligors to make their child support payments on time. Interest also provides the child a measure of compensation for his or her loss caused by the tardiness of the child support payments. For instance, in *Adams v. Adams*¹⁰, the court reasoned that:

The use of one’s money by another has value in economic theory and in fact. In our society, this use is frequently compensated by the charging of interest, such charges being imposed variously under the authority of public and privately made law. Charges made on the use of one’s money or forbearance to collect a debt are called interest. The economic value of a supporting spouse’s use of a child’s money, or forbearance to pay for whatever reason, is real and should be compensated via interest. When a supporting spouse fails to timely make child support payments, he or she uses the child’s money.¹¹

Numerous courts have upheld the concept of interest being due for unpaid child support.¹² In *Lauderback v. Wadsworth*, for example, the court clearly

⁸ See, e.g., *Whitman v. Whitman*, 405 N.E.2d 608 (Ind. Ct. App. 1980); *Williams v. Williams*, 405 So. 2d 1277 (La. Ct. App. 1981).

⁹ *Darling v. Gosselin*, 589 N.W.2d 192 (N.D. 1999).

¹⁰ 591 So. 2d 430 (Miss. 1992).

¹¹ *Id.*, quoting *Brand v. Brand*, 482 So.2d 236 (Miss. 1986).

¹² See, e.g., *Brown v. Brown*, 983 P.2d 1264 (Alaska 1999); *Michigan v. Law*, 459 Mich. 419, 591 N.W.2d 20 (1999); *Baranyk v. McDowell*, 589 N.W.2d 192 (N.D. 1989); *Johnson v. Johnson*, 965 S.W.2d. 943 (Mo. Ct. App 1998); *Baird v. Lanning*, 843 S.W.2d. 388 (Mo. Ct. App. 1992); *Darling v. Gosselin*, 589 N.W.2d 192 (N.D. 1999); *Carter v. Carter*, 479 S.E.2d 681 (W. Va. 1996).

stated that matured alimony and child support installments are judgments for money, which accrue, along with interest imposed by statute, from the date the payments are due.¹³

Spousal Support

When Title IV-D of the Social Security Act was originally passed, it only had provisions pertaining to the enforcement of child support obligations. State CSE agencies could not attempt any collection of spousal support obligations. When there was a single order that contained both child and spousal support, the State CSE agency could only take steps to collect the child support portion of the order, even though spousal support was required to be assigned to the State as a condition of receiving public assistance.

With passage of the Omnibus Budget Reconciliation Act of 1981¹⁴, it became permissible in certain circumstances for the State CSE agency to collect spousal support obligations. In a public assistance case, if the spouse or former spouse was residing in the same household as the child for whom support was being collected and the child support obligation and the spousal support obligation were included in the same order, State CSE agencies were permitted to collect and enforce spousal support or alimony. Under no circumstances were CSE agencies allowed to receive Federal funds for the establishment of a spousal support obligation. Subject to the same restrictions that the spouse, or former spouse, reside in the same house as the child receiving support and that the obligations be included in the same order, spousal support collection was extended to nonpublic assistance cases by enactment of the Tax Equity and Fiscal Responsibility Act of 1982.¹⁵

Current law provides that a State CSE agency will enforce any support obligation established with respect to the custodial parent of such a child for whom support is being collected. The agency cannot, however, receive Federal funds for the establishment of spousal support obligations. There remains a requirement that the spouse or former spouse and the child reside in the same home.¹⁶ Additionally, at State option, the State can enforce a spousal support obligation for an individual who is not a party to a child support case at the request of a foreign country.¹⁷

Today, State CSE agencies collect spousal support using many of the same collection techniques used for child support. As with child support, income withholding is the most effective and efficient manner to secure spousal support. The requirements and restrictions contained in 45 C.F.R. § 303.100 apply to both

¹³ *Lauderback v. Wadsworth*, 416 S.E.2d 62 (W. Va. 1992).

¹⁴ P.L. No. 97-35 (1981).

¹⁵ P.L. No. 97-248 (1982).

¹⁶ See 42 U.S.C. § 654(4)(B)(ii) (Supp. V 1999); 45 C.F.R. § 302.31 (2000).

¹⁷ 42 U.S.C. § 654(32) (Supp. V 1999).

child and spousal support obligations. Federal and State tax refund offset can also be used as a tool to collect spousal support.¹⁸ Liens, bonds, IRS Full Collection, and reporting to credit bureaus are all enforcement remedies available for the collection of spousal support. Although traditionally reserved for child support purposes only, some States, such as California, provide that license suspension and revocation are available for nonpayment of spousal support so long as it is being enforced in conjunction with a child support obligation.¹⁹

SPECIFIC ENFORCEMENT REMEDIES

There are many different ways to enforce child support orders. State IV-D agencies have some special remedies available to them that are not available to private parties. The applicability of any enforcement method to a particular case will depend on the facts of the case.

Income Withholding

Perhaps the most effective child support enforcement tool is income withholding, a procedure by which automatic deductions are made from wages or other income. Once initiated, income withholding can keep support flowing to the family on a regular basis.

Income withholding grew out of wage garnishments. Over the years, many States have used wage garnishments effectively. However, even where garnishment procedures are summary and wage exemptions are limited, the temporary nature of the garnishment remedy proved to be unsatisfactory.

Eventually, Congress enacted laws designed to enhance the effectiveness of income withholding on the State level. In the Family Support Act of 1988²⁰, for example, Congress made immediate income withholding mandatory effective November 1, 1990, for child support orders issued or modified through State IV-D agencies. With limited exceptions, that law also mandated immediate wage withholding for all orders entered or modified on or after January 1, 1994.²¹

Today, any child support order issued or modified in a State, regardless of whether the case is a IV-D case, must contain a provision for income withholding.²² Additionally, immediate withholding is required in all IV-D cases that have an order issued or modified on or after November 1, 1990²³, as a continued effort to “see that innocent children receive the care they need and deserve and that both parents acknowledge and accept their responsibilities.”²⁴

¹⁸ 42 U.S.C. § 664 (1994, Supp. IV 1998, & Supp. V 1999); 45 C.F.R. § 303.102 (2000).

¹⁹ Cal. Fam. Code § 17520(4).

²⁰ P.L. No. 100-485 (1988), codified at 42 U.S.C. § 666(a)(8) (Supp. V 1999).

²¹ 42 U.S.C. § 666(a)(8)(B)(i) (Supp. V 1999).

²² 42 U.S.C. § 666(a)(8)(B)(ii) (Supp. V 1999); 45 C.F.R. § 303.100(g) (2000).

²³ 45 C.F.R. § 303.100(b) (2000).

²⁴ 134 Cong. Rec. 14895 (June 16, 1988) (testimony of Sen. W. Bradley).

There are exceptions to immediate withholding, but they are very limited. The Family Support Act of 1988²⁵ carved out a “good cause” exception to immediate income withholding. That exception requires the tribunal to approve a written agreement executed between the custodial parent and the noncustodial parent for an alternative payment arrangement. The tribunal must make a finding that implementing immediate income withholding would not be in the best interest of the child and require some proof, if the order is being modified, that previously ordered support was paid in a timely manner.²⁶

PRWORA brought about several additional changes to income withholding. For instance, different types of income, not just wages, are now subject to withholding.²⁷ Additionally, State agencies must have administrative authority to initiate income withholding. PRWORA also required the States to adopt the Uniform Interstate Family Support Act (UIFSA)²⁸ and its direct income withholding provision. Under UIFSA, income withholding can be initiated in one State, and sent directly to an employer in another State, without involving a tribunal or the IV-D agency in either State.²⁹ Direct income withholding is available in all interstate cases, including those handled by private attorneys.³⁰

Courts have upheld the mandatory nature of income withholding, recognizing the high priority of child support enforcement.³¹ Additionally, they have routinely held that the exceptions to immediate income withholding do not include the absence of an arrearage, but rather hinge on the issue of whether the court finds good cause to exempt the parties from income withholding and to ratify an alternative payment arrangement agreed to by the parties.³² Courts have further held that “good cause” should be narrowly defined. For example, one appellate court concluded that the trial court must “make a written determination explaining why immediate income withholding is not in the best interests of the child, [the parties must offer] proof of timely payment of previously ordered support, and the noncustodial parent [has a] continuous duty to inform the clerk of court of current and future income payers and the availability of employment-related health insurance.”³³

²⁵ P.L. No. 100-485 (1988).

²⁶ 42 U.S.C. § 666(b)(3)(A) (1994, Supp. IV 1998, & Supp. V 1999); 45 C.F.R. § 303.100(b)(2) (2000).

²⁷ 42 U.S.C. § 666(b)(8) (1994, Supp. IV 1998, & Supp. V 1999).

²⁸ Unif. Interstate Family Support Act (1996)[hereinafter UIFSA], 9 Pt. 1B U.L.A. 235 (1999).

²⁹ UIFSA §§ 501 – 506 (amended 2001), 9 Pt. 1A U.L.A. 336 – 346 (1999).

³⁰ For more detail refer to Chapter Twelve: Interstate Child Support Remedies.

³¹ See, e.g., *State ex re. Henson v. Richardson*, 621 So.2d 991 (Ala. 1993); *Rockland County Dept. of Social Services v. Alexander*, 151 Misc.2d 447, 581 N.Y.S.2d 571 (N.Y. Fam. Ct. 1992); *State ex rel. Stutler v. Watt*, 188 W. Va. 426, 424 S.E.2d 771 (1992).

³² *State ex rel. Stutler v. Watt*, 188 W. Va. 426, 424 S.E.2d 771 (1992).

³³ *Shipley v. Shipley*, 509 N.W.2d 49 (N.D. 1993).

In IV-D cases where income withholding is not immediate, including those cases where the order predates the statutory date of November 1, 1990, and cases where the court has found good cause, an income withholding must be initiated when the support owed is at least equal to one month's support amount.³⁴ Additionally, the noncustodial parent can request that income withholding be initiated or the State IV-D agency can determine, after request by the custodial parent, that income withholding would be appropriate.³⁵

In cases where income withholding is initiated rather than immediate, the noncustodial parent is entitled to notice regarding the commencement of the withholding, the amount of overdue support (if any), the amount of income to be withheld, that the withholding is binding not only on the current employer but on all subsequent employers, the right to contest the withholding, and information necessary for the employer to begin withholding.³⁶ Should the noncustodial parent wish to contest the withholding, the only issue that the tribunal should consider is a mistake of fact (i.e., an incorrect amount or the incorrect individual).³⁷

National Directory of New Hires. The National Directory of New Hires (NDNH) interacts with the Federal Case Registry (FCR), which contains information about persons in all child support cases being handled by State CSE agencies. These two databases compare their data and, when a match occurs, the NDNH provides the appropriate State information concerning the noncustodial parent. That information can be used by the State to initiate an income withholding notice to the noncustodial parent's employer.

In many instances, the State will learn that a noncustodial parent is living or working in another State. With this information, a State can take appropriate action regarding direct or interstate income withholding.

Standard income withholding form. When it came to income withholding, variety often equaled confusion, especially in the interstate enforcement context. To eliminate the confusion to employers, child support workers, service recipients, and domestic relations practitioners, the Federal Office of Child Support Enforcement (OCSE) issued a revised standardized form in 2001—the *Order/Notice to Withhold Income for Child Support*.³⁸ Its use is mandated for "all child support orders which are initially issued in the State on or after January 1, 1994."³⁹ The form relays certain basic information, such as:

- the names of the parties and the child;

³⁴ 45 C.F.R. § 303.100(c)(1) (2000).

³⁵ 45 C.F.R. § 303.100(c) (2000).

³⁶ 45 C.F.R. § 303.100(d) (2000).

³⁷ *Id.*

³⁸ This form was distributed to child support agencies via an OCSE-AT-01-07 (2001), and may be obtained from the OCSE web site (www.acf.dhhs.gov/programs/cse).

³⁹ 42 U.S.C. §§ 666(a)(8)(B) and 666(b)(6)(A)(ii) (Supp. V 1999).

- the withholding order or notice information;
- an indication whether this notice is announcing the beginning of withholding, a change of the amount being withheld, or the end of withholding;
- notice to enroll the child in an available health insurance plan;
- the amount to withhold for current support, past due support, medical support, and/or other specified amounts;
- the amount to prorate withholding for different pay frequencies;
- remittance information; and
- additional information about withholding priorities, combining payments, reporting the withholding date, withholding for an employee with multiple orders, procedures in the event of employee termination, lump sum payments, liability, anti-discrimination, and withholding limits.

Use of the standard form will help ensure that employers receive key information to begin the income withholding, and eliminate the need for them to decipher unfamiliar orders or notices from different States, agencies, or entities.

Interstate income withholding. Income withholding is also an effective enforcement tool for interstate child support cases. There are two income withholding options for the interstate context—direct income withholding and traditional interstate income withholding.

The Child Support Enforcement Amendments of 1984⁴⁰ required the use of interstate income withholding. However, with the advent of direct income withholding and other interstate enforcement remedies such as UIFSA's registration for enforcement, it is rare that traditional interstate income withholding will be the primary enforcement tool used in an interstate case.

As of January 1, 1998, all States were required to adopt the UIFSA.⁴¹ One of UIFSA's cornerstones is the concept of direct income withholding.⁴² Under this remedy, an income withholding order is sent directly from one State to an obligor's employer, or other income source, in another State.

Today, State law must direct employers to comply with an income withholding order issued by any State and to treat that order as if it were issued

⁴⁰ P.L. No. 98-378 (1984).

⁴¹ 42 U.S.C. § 666(f) (Supp. V 1999). For a list of State UIFSA citations, see *infra* Exhibit 12-1

⁴² UIFSA §§ 501-506 (amended 2001), 9 Pt.1B U.L.A. 336-346 (1999).

by a tribunal in the employer's State.⁴³ The employer or source of income must comply with any order that is regular on its face.⁴⁴ Enforcement must continue as specified in the order, until the employer or source of income receives notice from the initiating CSE agency or individual to modify or stop the withholding.⁴⁵

Although UIFSA permits direct income withholding, there are times when that remedy is not appropriate. One example is when the initiating CSE agency has asked a responding State to enforce the order and an income withholding is already in place.⁴⁶

Withholding from Government benefits. Income withholding is one of the most effective means of securing payment. As long as the noncustodial parent receives periodic income from the identified income source, it is possible to collect on the child support obligation without having to rely on the noncustodial parent to make the payment.

Benefits that are characterized as remuneration for employment are traditionally subject to withholding for child support purposes. These would include Social Security Disability payments, but not Supplemental Security Income, which is a need-based benefit.

Unemployment Compensation

Federal regulations provide that each IV-D agency must enter into a written agreement with the State Employment Security Agency (SESA) in its State regarding the withholding of unemployment compensation due individuals with unmet child support obligations being enforced by the IV-D agency.⁴⁷ Thus, unemployment compensation is subject to withholding in IV-D cases.

Because of the state-specific agreements between IV-D agencies and SESAs, it might be necessary for State IV-D agencies to seek enforcement against unemployment benefits in interstate cases through a two-state income withholding procedure rather than by direct income withholding.⁴⁸ Federal regulations require each IV-D agency to take actions, in conjunction with its SESA, which both support and facilitate the two-state enforcement approach.⁴⁹

⁴³ 45 C.F.R. § 303.100(f)(1) (2000).

⁴⁴ UIFSA § 502(b), 9 Pt. 1B U.L.A. 339 (1999).

⁴⁵ 45 C.F.R. § 303.100(e)(1)(iv) (2000).

⁴⁶ Refer to OCSE AT 98-30 (1998) for additional information on interstate child support enforcement. See also Chapter Twelve: Interstate Child Support Remedies.

⁴⁷ 45 C.F.R. § 302.65(b) (2000).

⁴⁸ Many States have begun to accept direct income withholding against unemployment benefits. As of March, 2001, the following 11 States allowed it: Louisiana, Massachusetts, Michigan, Minnesota, New York, North Dakota, Ohio, Pennsylvania, Tennessee, Wisconsin, and Wyoming.

⁴⁹ 45 C.F.R. § 302.65(c)(5) (2000).

Social Security Benefits

Generally, Social Security Disability (SSD) payments are not subject to attachment or other legal process.⁵⁰ SSD benefits are, however, attachable for child support purposes.

The law provides that payments from the Federal Government are subject to income withholding or other legal process for child support purposes if based on remuneration for employment. Because SSD payments are considered to be based on remuneration for employment, they are subject to withholding.⁵¹

In contrast, Supplemental Security Income (SSI) benefits are not attachable for child support purposes. Both Federal law and regulations specifically prohibit withholding of this income.⁵² This prohibition continues even after the benefits are deposited into the recipient's bank account.⁵³ The basis for this conclusion is that SSI benefits are not based on remuneration for employment; rather, they are based on need. Some courts have held that SSI is a form of public assistance, intended to protect the recipient from poverty.⁵⁴

Note that while SSI payments cannot be attached for child support enforcement purposes, some courts have considered them as income for the purposes of calculating the underlying child support obligation.⁵⁵

Judgments

Unlike income withholding, some remedies for collection of child support require that the noncustodial parent be in arrears prior to their use. Therefore, it is essential that a judgment for the arrearage be obtained as the first step in securing payment on the arrears. Judgments can occur either by order of the tribunal or by operation of law.

In addition to judicially imposed judgments are those that arise by operation of law. The Omnibus Budget Reconciliation Act of 1986⁵⁶ provided that all support orders must be entitled to judgment status. Further amendments to

⁵⁰ 42 U.S.C. § 407(a) (Supp. V 1999).

⁵¹ 42 U.S.C. §§ 659(a) and (h)(1)(A)(ii)(1) (Supp. V 1999); 5 C.F.R. § 581.103(c)(1) (2001).

⁵² 42 U.S.C. § 407(a) (Supp. V 1999); 42 U.S.C. § 659(h) (Supp. V 1999); 5 C.F.R. § 581.104(j) (2001).

⁵³ *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413 (1973). See also *NCNB Fin. Servs. v. Shumate*, 829 F.Supp.178 (W.D. Va. 1993), *affd*, 45 F.3d 427, *cert. denied* 95 U.S. 1161 (1995).

⁵⁴ See, e.g., *Becker County Human Servs. re Becker County Foster Care v. Peppel*, 493 N.W.2d 573 (Minn. Ct. App. 1992); *Tennessee Dep't of Human Servs. ex rel. Young v. Young*, 802 S.W.2d 594 (Tenn. 1990).

⁵⁵ See *Davis v. Office of Child Support Enforcement*, 5 S.W.3d 58 (Ark. App. 1999); *Commonwealth ex rel. Morris v. Morris*, 984 S.W.2d 840 (Ky. 1998); *Whitmore v. Kenney*, 626 A.2d 1190 (Pa. Super. 1993).

⁵⁶ P. L. No. 99-509 (1986).

the Social Security Act have made it a State requirement that unpaid support become a judgment by operation of law. States are required to have:

[p]rocedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes ... , is (on and after the date it is due)—

- (A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,
- (B) entitled as a judgment to full faith and credit in such State and in any other State, and
- (C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.⁵⁷

State courts have ruled in a consistent manner, holding that child support becomes a judgment as the obligation becomes due.⁵⁸ In the case of *Carter v. Carter*,⁵⁹ the Maine Court of Appeals held that “[t]he right to the payment of support becomes vested as it becomes due. Thus [,] an order of child support is essentially a judgment in installments.” Consequently, the judgment automatically increases as subsequent payments are missed. Additionally, courts have upheld the proposition that a judgment rendered in one State is entitled to full faith and credit in a sister State.⁶⁰

Some States have a preclusion against retroactive modification in their court rules. For instance, Alaska rules provide that “[e]ach monthly child support installment mandated in the final decree was a final judgment, not subject to retroactive modification.”⁶¹ Most States, however, have taken a statutory approach and included a bar to retroactive modification of child support arrears in their State code. North Dakota, for example, provides that “[a]ny order directing any payment or installment of money for the support of a child is, on and after the

⁵⁷ 42 U.S.C. § 666(a)(9)(C) (Supp. V 1999); 45 C.F.R. § 303.106 (2000).

⁵⁸ See, e.g., *Young v. Williams*, 583 P.2d 201 (Alaska 1978); *Newman v. Newman*, 451 N.W.2d 843 (Iowa 1990); *In re: Marriage of Malquist*, 880 P.2d 1357 (Mont. 1994); *Britton v. Britton*, 671 P.2d 1135 (N.M. 1983).

⁵⁹ 611 A.2d 86 (Me. 1992).

⁶⁰ *McCubbin v. Seay*, 749 So.2d 1127 (Miss. 1999).

⁶¹ Alaska R. Civ. Proc. 90.3(h)(2) (2001-2002).

date it is due, an unpaid judgment and not subject to retroactive modification.”⁶² Statutes, like North Dakota’s, almost uniformly provide for modification of the support amount from the date of filing of the petition for modification.

Contempt

A contempt action—sometimes called a violation order—typically is not the first method of enforcement. In most instances, it is used only when other enforcement tools have been ineffective or are unavailable. For example, contempt may be appropriate for the delinquent, self-employed noncustodial parent for whom income withholding is not a possibility. Also, unlike other enforcement actions, contempt is always a judicial remedy.

There are two types of contempt: “civil” and “criminal.” Civil contempt differs from criminal contempt in both purpose and procedure. If the purpose and character of the penalty imposed by the court is remedial and for the benefit of a private party to the action, the contempt is classified as civil. If the purpose of the penalty, however, is to vindicate the authority of the court, the contempt is classified as criminal. For example, a sentence of imprisonment is remedial if the contemnor remains imprisoned unless and until he or she performs the act required by the court; but if the sentence is imprisonment for a definite period without a purge clause, it is punitive. Furthermore, as a general rule, a fine is remedial if paid to the complainant, but punitive if paid to the court. Finally, if contempt is classified as criminal, then the U.S. Constitution affords greater safeguards in the contempt proceeding including the requirement that the offense be proved beyond a reasonable doubt.⁶³ Furthermore, “if both civil and criminal relief are imposed in the same proceeding, then the criminal feature of the order is dominant and fixes its character for purposes of review.”⁶⁴

Civil contempt. Generally, civil contempt actions are brought against noncustodial parents who have particularly poor payment histories, are unemployed or self-employed, or have no regular income that can be withheld through income withholding. As stated above, the primary purpose of civil contempt is to encourage compliance with the child support order. In fact, in many States, a finding of present ability to pay is a prerequisite to a civil contempt ruling.

There are two approaches to the concept of ability to pay. The Supreme Court of Mississippi has held that, once the custodial party makes a prima facie

⁶² N.D. Cent. Code § 14-08.1-05(1)(c) (2001).

⁶³ *Hicks v. Feiock*, 485 U.S. 624 (1988), applied in *U.S. Dep’t of Energy v. Ohio*, 503 U.S. 607 (1992).

⁶⁴ *Hicks*, 485 U.S. 624, n.10 (1988), citing to *Nye v. United States*, 313 U.S. 33, 42-43 (1941), quoting *Union Tool Co. v. Wilson*, 259 U.S. 107, 110 (1922). See *Gompers v. Buck Stove Co.*, 211 U.S. 324 (1911); *United States v. North*, 621 F.2d 1255 (3d Cir. 1980); *In re Grand Jury Investigation*, 600 F.2d 420 (3d Cir. 1979); *In re Timmons*, 607 F.2d 120 (5th Cir. 1979); *Commonwealth v. Fieck*, 439 A.2d 774 (Pa. Super. 1982).

case of contempt due to nonpayment, the burden of proof shifts to the noncustodial parent. That noncustodial parent must show an inability to pay or present some other defense; this proof must be clear and convincing, and it must rise above a state of doubtfulness.⁶⁵

In some States, a person can be held in contempt if he or she refuses to comply with a court order. Failure to pay, however, must be willful and contemptuous; contempt cannot be ordered as a result of an inability to pay.⁶⁶

Noncustodial parents have made challenges, on constitutional grounds, to the use of contempt in the child support context. Opponents assert that the imposition of the contempt sanction violates the constitutional prohibitions against slavery, involuntary servitude, and imprisonment for a debt. The courts, however, have struck down such challenges.

The California Supreme Court's opinion in *Moss v. Superior Court*⁶⁷ provides an example of the rationale for rejecting the constitutional argument: "[T]here is no constitutional impediment to the use of the contempt power to punish a parent who otherwise lacking monetary ability to pay child support, willfully fails and refuses to seek and accept available employment commensurate with the parent's skills and abilities."⁶⁸

A parent's obligation to support a minor child is a social obligation that is no less important than compulsory military service, road building, jury service, or other constitutionally permissible enforced labor.

Procedure. In most jurisdictions, the contempt process is initiated by filing a motion for order to show cause as a supplementary proceeding in the cause of action that produced the underlying support order. The motion is "heard" and ruled on by the tribunal *ex parte*. In virtually all jurisdictions, the judge or administrative hearing officer can grant the motion and issue an order to show cause without even an informal hearing. Most tribunals require the motion to be supported by an affidavit from the payee or a certified copy of the clerk's payment record.

After the judge reviews and signs the order to show cause, it is usually processed by the court clerk's office. The clerk will check the court calendar for an available date, prepare an appropriate summons to accompany the order, and forward the two documents to the appropriate sheriff's (or other process server's) office for service on the obligor.

⁶⁵ *Kennedy v. Kennedy*, 650 So.2d 1362 (Miss. 1995).

⁶⁶ *Burger v. Burger*, 424 N.W.2d 691 (Wis. 1988); *Krieman v. Goldberg*, 571 N.W.2d 425 (Wis. Ct. App. 1997); *Haeuser v. Haeuser*, 548 N.W.2d 535 (Wis. Ct. App. 1996).

⁶⁷ *Moss v. Superior Court*, 17 Cal. 4th 396, 950 P.2d 59 (1997).

⁶⁸ *Id.*, 17 Cal. 4th 396, 405, 950 P.2d 59, 64 (1997).

Notice requirements. In the case of *In re Oliver*,⁶⁹ the U.S. Supreme Court discussed in detail a variety of due process requirements regarding an individual charged with contempt of court. Specifically, the Court found that a contemnor must “be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf.” The U.S. Supreme Court has continued to uphold this proposition.⁷⁰

The noncustodial parent generally must have actual notice of the date and time of the hearing on the order to show cause. “[D]ue process requires that the alleged contemnor receive full and unambiguous notification of the accusation of contempt.”⁷¹ If it can be established that the noncustodial parent is avoiding service of process, it is sometimes possible to serve the noncustodial parent’s attorney of record (assuming the attorney-client relationship is intact) or to serve an adult at the noncustodial parent’s residence.⁷² To direct such service, it might be necessary to file an accompanying motion asking the tribunal for permission prior to issuance of the summons. It also might be possible to direct the sheriff to attempt substituted service on a routine basis if personal service proves difficult.

State rules and procedures may provide that certified mail, return receipt requested, is an option for service. Using “restricted delivery” so that the addressee must personally sign for the mail might be preferable. If the noncustodial parent fails to appear, the tribunal might not entertain a motion for or issue a bench warrant or *capias* unless proof of actual notice is shown. If the noncustodial parent appears at the hearing in response to the summons, actual notice is deemed to have been given and the issue will not have to be addressed. If the noncustodial parent does not appear, it may be possible to justify the substituted service to the tribunal as a step in obtaining a bench warrant.⁷³

In addition to the issue of serving the summons and order on the noncustodial parent, there is an important issue surrounding the quality of the notice. The allegation contained in the motion for order to show cause and the language transferred to the order itself must be specific enough to allow the noncustodial parent to prepare a defense at the show cause hearing. The specificity that is required varies from State to State, and even from case to case. Generally, it is prudent to allege the specific provisions of the support order that have been violated, and to set forth the noncustodial parent’s payment record during the applicable period. Serving a copy of the motion for order to show

⁶⁹ 333 U.S. 257 (1948).

⁷⁰ See, e.g., *Pounder v. Watson*, 521 U.S. 982 (1997); *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994); *Morgan v. Illinois*, 504 U.S. 719 (1992).

⁷¹ *In re Reed*, 901 S.W.2d 604 (Tex. 1995).

⁷² See *In re Morelli*, 11 Cal. App. 3d 819, 839, 91 Cal. Rptr. 72 (1970).

⁷³ See *Stich v. California Superior Ct.*, 13 Fam. L. Rep. (BNA) 1236 (Cal. Ct. App. 1986), *cert. denied*, 481 U.S. 1025 (1987).

cause with the supporting affidavit or court record is one possible way to demonstrate service.

Bench warrants. In most States, a bench warrant can be issued directing the sheriff to arrest a noncustodial parent who is served with an order to show cause but fails to appear at the hearing.⁷⁴ The procedure after the noncustodial parent is apprehended varies. If the judge or hearing officer is available, many tribunals will notify the attorneys that the noncustodial parent has been brought in on the bench warrant, and a hearing on the order to show cause will commence as soon as counsel can convene. When the judge who will hear the show cause hearing is not available, another judge will hold a preliminary hearing for the purpose of setting bail to secure the noncustodial parent's appearance at the show cause hearing. Some tribunals routinely follow the latter procedure, even when the appropriate judge or hearing officer is available.

Right to counsel. Due process requires that the noncustodial parent be given the opportunity to be represented by counsel at the show cause hearing. A significant amount of case law has developed with respect to indigent noncustodial parents who ask for, and are denied, counsel at State or county expense. The decisions are split on whether there is a right to appointed counsel in a child support contempt proceeding.

Because imprisonment is a frequent outcome of the show cause hearing, some courts have held that counsel must always be provided to indigent contemnors.⁷⁵ Other courts take a middle position, holding that the right to counsel does not accrue until the court determines that imprisonment is a possible outcome.⁷⁶ Finally, the third position is that in civil contempt cases, by definition, the noncustodial parent will be imprisoned only if he or she has the present ability to purge himself or herself of the contempt. If the noncustodial parent has that present ability, he or she is not indigent and does not need court-appointed counsel.⁷⁷

Elements of contempt. Generally, there are five elements required for a finding of civil contempt:

- continuing personal and subject matter jurisdiction in the tribunal that is holding the show cause hearing;
- the existence of a valid support order;
- knowledge of the order by the noncustodial parent;

⁷⁴ See, e.g., Cal. Civ. Proc. Code § 1212.

⁷⁵ See *Redmond v. Redmond*, 123 Md. App. 485, 718 A.2d 668 (1997).

⁷⁶ *In re Castro*, 998 S.W.2d 935 (Tex. 1999).

⁷⁷ See, e.g., *Pompey v. Broward Co.*, 95 F.3d 1543 (11th Cir. 1996).

- ability of the noncustodial parent to comply; and
- willful noncompliance by the noncustodial parent.⁷⁸

Jurisdiction will usually be established in the pleadings filed with the court. Traditionally, citing the original order underlying the contempt action, the residence of the parties, and the court's authority to hear the matter as established by State code will meet jurisdictional requirements. Personal jurisdiction, which requires minimum contacts with the forum, can be clearly established if the obligor is served within State.⁷⁹ Subject matter jurisdiction, which is the authority of the tribunal to hear the contempt action, should be provided for in the State code.

The existence of a valid support order can be established by asking the court to take judicial notice of the support order contained in the file.⁸⁰ The noncustodial parent's knowledge of the order usually can be established by reference to the support order itself, which often will note the presence of the noncustodial parent or his or her attorney at the hearing that produced the order. If the order does not contain such a reference, the court file should contain the court clerk's certificate of mailing, which creates a rebuttable presumption of service.⁸¹ In States where personal service is required, this too may act as a presumption. Nonpayment can be established by entering the records maintained by the IV-D agency. To verify these, it may be necessary to take testimony from the custodial parent or a representative of the IV-D agency. It may be possible to substitute an affidavit in lieu of live testimony.⁸²

Punishment. In a civil contempt action, the punishment must be remedial and coercive, forcing compliance by the noncustodial parent. The purpose of the sanctions is not punishment *per se* and tends to fall into three categories: (1) incarceration, (2) coercive fines, and (3) compensatory fines.⁸³ Any fine or imprisonment is improper, however, unless it benefits the custodial parent and the children and allows the noncustodial parent to purge him or herself by complying with clearly stated and attainable requirements.

Purgation requirements and commitment. Tribunals have the authority to set conditions that allow contemnors to purge themselves of contempt. The

⁷⁸ See *Roe v. Operation Rescue*, 54 F.3d 133 (3d Cir. 1995); *In re Marriage of Swan*, 526 N.W.2d 320 (Iowa 1995); *McCain v. Dinkens*, 639 N.E.2d 1132 (N.Y. 1994).

⁷⁹ See *Burnham v. Superior Court*, 495 U.S. 604 (1990).

⁸⁰ See generally Annotation, *Pleading and Burden of Proof in Contempt Proceedings as to Ability to Comply with Orders of Payment of Alimony or Child Support*, 53 A.L.R.2d 591 (1957). See also *Ex Parte Ah Men*, 19 P. 380 (Cal. 1888); *State ex rel. Cook v. Cook*, 66 Ohio St. 566, 64 N.E. 567 (1902).

⁸¹ *Jones v. Jones*, 428 P.2d 497 (Idaho 1967).

⁸² *Catron v. Catron*, 577 P.2d 322 (Colo. Ct. App. 1978); *Bowden v. Bowden*, 278 S.W.2d 670 (Tenn. 1955).

⁸³ *Doyle v. London Guarantee & Accident Co.*, 204 U.S. 599 (1907).

purge requirements, however, must serve a remedial aim, must be clearly specified, and should be reasonably related to the cause or nature of the contempt. In addition, the contemnor should be able to fulfill the conditions.⁸⁴ Within these limits, the court's discretion in setting the purgation requirements is very broad.⁸⁵ Contempt might be an appropriate remedy when a noncustodial parent's income source or assets cannot be ascertained. It might also be useful when dealing with self-employed noncustodial parents or noncustodial parents who are unemployed. The tribunal may go so far as to make the noncustodial parent borrow from friends and relatives, sell or mortgage property, or seek out work as a condition of purge.

Generally, the fine or imprisonment continues until the noncustodial parent complies with the purgation requirements. In a civil contempt proceeding, a fixed term without possibility of purgation is clearly not proper.⁸⁶ Additionally, some courts have found that if the children have attained the age of majority, incarceration is not an option.⁸⁷ Furthermore, due process may require that a civil contemnor be released when confinement has lost its coercive force, but the contemnor has the burden of proving that there is not a substantial likelihood that continued confinement would accomplish its coercive purpose.⁸⁸

Criminal contempt. While the same act may give rise to both civil and criminal contempt charges, each confers distinct procedural rights. The distinction between civil and criminal contempt is crucial. A strictly penal sanction can be imposed only where the defendant is provided essential due process protections.⁸⁹ These due process concerns include the right to notice of the offense, the right to present a defense, the right to call witnesses, an impartial judge, and, in some jurisdictions, the right to counsel and a trial by jury.

A criminal contempt proceeding is considerably more complicated than a civil contempt proceeding. Initiation of the proceeding may require a more formal notice than is provided the civil contemnor in the motion and order to show cause, although a formal indictment is not necessary. The possibility of an indigency hearing, a jury trial, and a change of judge makes the process potentially a very long one. The evidentiary hurdles are difficult to overcome without knowledgeable witnesses.

Despite these drawbacks, there are occasions when criminal contempt is useful. Where a noncustodial parent has been charged with civil contempt on numerous occasions, but regularly frustrates the action by paying the arrearage on the day of the show cause hearing and never making payment voluntarily, a

⁸⁴ *Larsen v. Larsen*, 478 N.W.2d 18 (Wis. 1992).

⁸⁵ *Rose v. Rose*, 481 U.S. 619 (1987).

⁸⁶ *Hess v. Hess*, 409 N.E.2d 497 (Ill. Ct. App. 1980).

⁸⁷ *Grady v. Hunt*, 12 Fam. L. Rep. (BNA) 1312 (1986).

⁸⁸ *Alexander v. Alexander*, 742 S.W.2d 115 (Ark. Ct. App. 1987); *Sanders v. Shephard*, 541 N.E.2d 1150 (Ill. App. Ct. 1989).

⁸⁹ *Commonwealth of Pennsylvania v. Edwards*, 703 A.2d 1058 (Pa. 1996).

criminal contempt action may change his or her attitude about compliance.⁹⁰ A court may set consecutive jail terms for multiple contempts.⁹¹ Furthermore, criminal contempt might be the only available remedy to punish a noncustodial parent who has made himself or herself unable to pay by quitting a job or taking one at a much lower salary.⁹²

Liens and Levy

In the child support enforcement context, a lien is a nonpossessory interest that a custodial parent or the State, if there is an assignment of rights, obtains in the real or personal property of the noncustodial parent. The interest arises as a result of the entry of a support order, noncompliance by the noncustodial parent, and compliance with all the procedural requirements to “perfect” the lien by the custodial parent, his or her representative, or the State IV-D agency.⁹³

Federal law requires States, as a condition of receiving Federal funds, to provide that a lien, in the amount of overdue support, arises by operation of law against a noncustodial parent’s real and personal property.⁹⁴ Methods for creating, and executing on, the liens are subject to State law. It also is important to note that Federal law requires States to give full faith and credit to the lien of another State, as long as “the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State[.]”⁹⁵ Note, however, that State “rules may not require judicial notice or hearing prior to the enforcement of such a lien.”

Liens are also an appropriate remedy in interstate child support cases. There are two provisions in Federal law that relate to the use of liens in the context of an interstate support matter. The first provision requires each State to accord full faith and credit to a child support lien that arises in another State, as long as it complies with State procedural rules.⁹⁶ To increase recognition of sister State liens, Congress required States to impose liens using standardized forms beginning March 1, 1997.⁹⁷

⁹⁰ *International Union, United Auto Workers v. Bagwell*, 512 U.S. 821 (1994), citing *United States v. United Mine Workers of America*, 330 U.S. 258, 299 (1946).

⁹¹ *Johnson v. Iowa District Court*, 385 N.W.2d 562 (Iowa 1986).

⁹² *Ghidotti v. Barber*, 364 N.W.2d 141 (Mich. 1997).

⁹³ See *Freis v. Harvey, Nebraska Dep’t of Social Servs.*, 563 N.W.2d 363 (Neb. 1997).

⁹⁴ 42 U.S.C. § 666(a)(4)(A) (Supp. 1999).

⁹⁵ 42 U.S.C. § 666(a)(4)(B) (Supp. V 1999).

⁹⁶ *Id.*

⁹⁷ 42 U.S.C. § 652(a)(11)(B) (Supp. V 1999) and 42 U.S.C. § 654(9)(E) (Supp. V 1999). The Notice of Lien form and accompanying instructions are available on the OCSE web site at www.acf.dhhs.gov/programs/cse. For additional information on interstate child support enforcement, refer to Chapter Twelve: Interstate Child Support Remedies.

A lien is often referred to as a “slumbering” interest that allows the noncustodial parent to retain possession of the property, but which prevents transfer of clear title of affected property either directly (by prohibiting the recording agency from issuing a new title or deed) or indirectly (by providing that all subsequent interests in the property will be subject to the lien). The latter method is the most common. It works because subsequent potential purchasers and lenders receive notice of the existence of the lien during the process of transferring the title or deed. The potential purchaser or lender reacts to this “cloud on the title” by requiring the noncustodial parent to satisfy the lien, or to obtain a release from the custodial parent, before proceeding with the transfer or loan. In real property transfers, the potential purchaser or lender discovers the lien through a title search conducted by the title insurance company. Personal property liens require notice to subsequent purchasers and lenders as well, but the notice usually is provided by way of a notation on the title of the property, or by serving notice on a third party possessor.

The lien will last for a number of years, depending on the statute, and generally can be revived for an indefinite number of additional periods, as long as the underlying judgment survives. The lien may grow automatically, as the arrearage increases, and may even take priority over subsequent liens created by other creditors if the statute so provides. Some States have given priority to child support liens over most other liens.⁹⁸

Procedure to create liens. Although child support liens arise by operation of law, there are procedures for perfecting liens. These vary among the States. Most States require the custodial parent to take some affirmative act to perfect the lien. This act might be as simple as recording a transcript of the support order or judgment in the appropriate office or registry of public records (typically the recorder of deeds for real property and the title agency for personal property). Other States may require a custodial parent to file a certified copy of the support order, and perhaps attach an affidavit specifying the amount claimed to be due as of the date of recording. Additionally, some States maintain a centralized registry for liens and thus keep track of all liens that are filed.

Duration of liens. Liens are creatures of statute, so they have various lifespans depending on State law. Once a lien is created, it remains a cloud on the title as security for the child support judgment until it is released or expires. State statutes specify the duration of liens. Typically, such statutes also prescribe a method to extend or “revive” the lien. Assuming a case warrants continuation of the lien as security for payments, the lien should be revived before its expiration. Failure to revive the lien might allow the noncustodial parent to dispose of property without having to apply the sale proceeds to his or her arrearage.

Revival procedures vary among States. Some States employ the common law procedure. The custodial parent must obtain a writ of *scire facias* from the

⁹⁸ See, e.g., Mo. Rev. Stat. § 454.522 (2001).

tribunal that entered the order and attempt service of the writ on the noncustodial parent. The issuance of the writ generally affects the revival, even if it cannot be served until after the initial lien expires, and the second lien dates back to the date of the initial lien's creation for priority purposes.

Some States allow a judgment lien to be revived by issuance of a writ of execution at any time before dormancy. In other States, the lien must be revived by a separate “action in debt,” seeking the entry of a new judgment based on the first judgment and an allegation of nonsatisfaction. The custodial parent or CSE agency must comply anew with the lien perfection procedures to revive the lien. The second judgment lien attaches to property owned by the noncustodial parent as of the date of the creation of the second lien, and the priority of the lien is determined as of that date.

Satisfaction and release. Most lien statutes allow for a voluntary lien release by the custodial parent and establish a procedure whereby the noncustodial parent can petition the rendering tribunal for an order releasing the lien if the custodial parent refuses to execute a voluntary release. The release can be general or limited to specific property. To obtain a court order releasing the lien, the noncustodial parent generally must post a bond, provide other security, or satisfy the tribunal that releasing the lien will not leave the custodial parent in an insecure position.

Most liens will expire of old age or be released voluntarily by the custodial parent. A lien expires of old age when it is not renewed or perfected within the time prescribed by statute. The noncustodial parent generally requests a voluntary release when he or she attempts to sell the property or borrow money using it as collateral, and the existence of the lien becomes known to the purchaser or lender. At this point, the lien becomes a powerful collection remedy. Clearly, the custodial parent has a great deal of leverage in such a situation. It might not be advantageous to object to the transfer, particularly if the sale or loan is likely to produce funds from which a substantial payment on the support arrearage can be made. If the transfer is a sale, it is likely that the noncustodial parent has some equity in the property after prior lienholders (i.e., mortgagees) are paid off; otherwise the sale price would not be acceptable to the noncustodial parent. If the transfer is a loan or second mortgage, sometimes a portion of the loan proceeds can be applied to the child support obligation. The custodial parent or CSE agency, subject to the custodial parent’s approval, may also make other arrangements, such as conditioning the release agreement on payment of all or a substantial portion of the arrearage.

In cases where public assistance is not an issue, the IV-D attorney should confer with the custodial parent to determine whether to release the lien based on the best terms available. Where the lienholder is the State, the IV-D attorney should confer with the State official who possesses authority to execute a release on behalf of the State. If that authority has been delegated to the attorney, the

attorney should follow State policy in determining whether to agree to the release.

Once an agreement is reached, a third party is usually involved in the transfer (i.e., a real estate agent or closing attorney) who is willing to act as escrow agent to facilitate the exchange of the lien release for the payment. This allows the judgment to be paid and the lien to be lifted as part of the same transaction, thereby diminishing any insecurity the subsequent purchaser might have regarding the validity of the title.

A lien release is a contract and, like any other contract, must be drafted carefully so that it embodies the entire agreement entered into between the parties. Lien releases are often the product of negotiations that can be quite unique. Furthermore, the result of the negotiation process can have profound effects on subsequent purchasers of the noncustodial parent's property (and the noncustodial parent's children) should something go awry. Thus, it is crucial that forms be tailored to the specific case, and that the IV-D attorney be involved in the negotiation and drafting of each agreement and release. The legal description of the property must be transcribed carefully from the deed, and the statement of exactly what is being released must be explicitly stated. A poorly drawn lien release could be construed as a satisfaction of the entire judgment, or a limitation of the custodial parent's right to use other remedies to enforce any arrears that might remain.

In addition to executing lien releases, a judgment creditor occasionally is asked to enter a formal "satisfaction of judgment" with the tribunal that entered the order. A formal satisfaction is the only way a judgment debtor in such a situation can obtain a clear record. The custodial parent generally can enter the satisfaction by sworn affidavit or in person under oath. Any future review of the judgment record by a title searcher or abstractor would indicate that the lien has been released.

Levy and execution. The statutory procedure that allows a judgment creditor to obtain an order directing the sheriff (or other similar official) to seize property in the possession of the noncustodial parent, sell the property at a sheriff's sale, and apply the proceeds, less the costs of the sale, in satisfaction of the judgment debt is known as execution and/or levy. Because execution is statutory, the exact procedure will vary from State to State. The CSE attorney who wants to levy against the obligor's property must ensure that the agency complies with State law.

Procedure. Generally, the levy and execution process is initiated by requesting that a writ of execution, or attachment, be issued by the clerk of the court that issued the order. In some States, the writ is issued in the county where the property to be seized is located, regardless of the identity of the issuing tribunal. In such a State, the support order or judgment must first be transferred

to, or registered in, the county where the property is situated. The writ orders the sheriff of the appropriate county to levy the property described in the writ and, after appraisal and a specified form of public notice, to sell the property at a sheriff's sale. Issuance of the writ is usually a ministerial act of the court clerk, and as such does not allow for notice and a hearing; nor does the clerk have discretion to refuse the writ request if all procedural steps required by the statute have been completed. Most court clerks provide forms for making the request, or a *praecipe* can be filed.

Once the writ is issued, it typically has a limited lifespan. The expiration date specified on the writ is referred to as the "return date." The sheriff must seize the property, appraise it, schedule the sale and issue public notice, hold the sale, and turn over the proceeds less costs before the return date. If the sheriff is unable to locate the property during the period of the writ, the sheriff will make a "*nulla bona*" return. Successive writs are referred to as *alias* and *pluribus*, as appropriate.

The procedure the sheriff follows to seize the property depends on whether the property to be seized is real or personal property. Levying against real property is easier. The legal description and street address give the sheriff sufficient information to identify and seize the property. The seizure is accomplished by placing a notice on the property, notifying anyone on the property at the time of the levy, and placing a notice in the office of the recorder of deeds.

For personal property, the procedure is more difficult. First, the property is often movable and thus difficult to locate. Second, the property might not be particularly unique in the community. As a result, the execution request should include very specific and complete information. The court clerk transfers this information to the writ, enabling the sheriff to locate the piece of property. It might be desirable for the IV-D attorney or caseworker to accompany the sheriff to identify the property. If the property can be seized physically and taken away, the sheriff will do so. If not, the seizure will be accomplished by some other act that effectively removes the item from the noncustodial parent's possession and notifies third parties that the property has been seized. This may be achieved by placing a sheriff's seal on the item in a manner that makes it incapable of being removed. If the item is physically seized, it will be transported to a storage facility maintained or arranged for by the sheriff.

Notice and sale procedures are also specified by State statute and may differ depending on whether the property to be sold is real or personal property. After the sheriff has seized the property and appraised its value to determine whether additional property should be seized to satisfy the judgment, the sheriff must schedule the sale and provide public notice as required by statute. The notice may include newspaper advertisements, notices posted in the courthouse, or other similar methods.

The statute also might prescribe the number of days in advance of the sale that the notice must appear, and the place and timing of the sale. For instance, some statutes provide that a sheriff's sale must take place at a real estate exchange between the hours of 9:00 a.m. and 5:00 p.m. Personal property is often sold "on the steps of the courthouse."

Costs incurred for the storage and sale of the property, along with execution and sheriff's fees, if applicable, are subtracted from the sale price, and the sheriff distributes the remainder to the judgment creditor together with a sheriff's deed to the property. The purchaser takes the property subject to prior liens and encumbrances, and subject to any right granted the debtor by statute to "redeem" the property by submitting the sale price, costs, and fees to the sheriff within a specified period of time. When the redemption period expires, the sheriff's deed matures into a regular deed.

Exemptions. In most States, certain types of a judgment debtor's property are exempt from execution. The exemptions are established by statute and generally protect tools of the noncustodial parent's trade, books, family heirlooms, and similar items from execution. Many States also allow the judgment debtor a homestead and an automobile exemption in limited amounts.⁹⁹ By statute, court rule, case law, or practice, the sheriff may be responsible for notifying the debtor of his or her exemption rights. The notice usually is accomplished with a form "notice of exemptions" provided by the court clerk's or the sheriff's office. Often, the sheriff provides a verbal explanation of the exemption rights to ensure that the debtor understands them. The exemption process usually requires that the debtor choose the property to be protected by the exemption, substituting nonexempt property for the exempt property listed in the writ.

Many States have enacted statutes providing that the normal exemptions do not apply to protect delinquent noncustodial parents. The underlying theory is that exemptions are designed to protect the judgment debtor's ability to provide for his or her family and should not be applied to frustrate the custodial parent's attempt to force payment of child support. The IV-D attorney should ensure that the exemption forms and practices being used by courts and sheriffs in such States reflect the special nature of executions for child support.

Additional State Remedies. Many States have implemented unusual enforcement remedies against noncustodial parents when traditional methods are unsuccessful. Often these alternative techniques are successful because of their shock value. Media attention about the success of these techniques often promotes community awareness of, and support for, the child support collection efforts.

⁹⁹ *But see In re Jensen*, 414 N.W.2d 742 (Minn. Ct. App. 1987) (the "homestead" is not exempt from seizure or sale to pay a child support judgment).

Alternative enforcement measures include vehicle booting, wanted posters or advertisements, sheriff sweeps, and sting activities, such as an offering of athletic event tickets to draw delinquent noncustodial parents out so that IV-D officials can secure payment.

High Volume Administrative Enforcement in Interstate Cases

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996¹⁰⁰ (PRWORA) permits States to use high-volume automated administrative enforcement in interstate cases (AEI).¹⁰¹ AEI is a process designed to enable CSE agencies to locate and secure assets held by delinquent noncustodial parents in another State or jurisdiction without opening a full-blown interstate IV-D case in the second State.

A requesting State can submit an AEI request by electronic or other means. The request must include sufficient information to enable the assisting State to compare the information about the noncustodial parent and the debt to the information in the State's databases. This request constitutes a certification by the requesting State of the delinquent amount owed by the noncustodial parent and of compliance with all procedural due process requirements applicable to any noncustodial parent included in the request.

On receipt of an AEI request, an assisting State must use automatic data processing to search its various State databases, including financial institutions, license records, and employment service data, to determine whether information is available regarding a delinquent noncustodial parent. When asset information is discovered, the assisting State must proceed to seize the identified asset. Additionally, the assisting State must promptly report the results of any enforcement procedures to the requesting State and send any collections to the requesting State. The assisting State must also maintain records of the number of AEI requests that it receives and the amount of support collected.

AEI is not intended to be an ongoing or long-term enforcement remedy, but a "one-shot" enforcement action. If the data match uncovers location information or an asset suitable for ongoing enforcement, the assisting State must promptly notify the requesting State. Unless the requesting State opts to implement a direct income withholding, it should submit the case to the assisting State for all appropriate enforcement remedies.¹⁰²

Because of the difficulties inherent in enforcing another State's order, without registration, AEI is not yet in widespread use. Its use may become more

¹⁰⁰ P. L. No. 104-193 (1996).

¹⁰¹ 42 U.S.C. § 666(a)(14) (Supp. V 1999).

¹⁰² For a more detailed discussion of interstate case processing, see Chapter Twelve: Interstate Child Support Remedies.

prevalent as States increase their reliance on the child support enforcement network (CSENet) and as Federal and State partners develop rules and regulations for interstate case processing. Additionally, attorney involvement in AEI will be very limited because it is an automated enforcement tool.

FEDERAL OFFSET PROGRAMS

The Federal offset program is another support enforcement tool. This program permits a CSE agency to request the intercept of a noncustodial parent's Federal income tax refunds and other types of payments to fulfill past-due support obligations. Additionally, the CSE agency can locate assets of noncustodial parents pursuant to a Financial Institution Data Match (FIDM), or can seek denial of a delinquent noncustodial parent's passport, through cooperation with the Secretary of State.

Federal Tax Refund Intercept

The Federal Tax Refund Offset Program collects past-due child support payments from the income tax refunds of parents who have been ordered to pay child support. The program is a cooperative effort of OCSE, the Internal Revenue Service (IRS), the Financial Management Service (FMS) of the Department of Treasury, and the State CSE agencies.

Legislative history. The Omnibus Budget Reconciliation Act of 1981 authorized the IRS to withhold Federal income tax refunds, in whole or in part, to satisfy delinquent support obligations.¹⁰³ Originally this was restricted to child support debts owed in public assistance cases. With passage of the Child Support Enforcement Amendments of 1984, however, the Federal intercept program was extended to all IV-D cases.¹⁰⁴ It is important to note, however, that the tax refund offset remedy is only available through the State IV-D agency. Private counsel cannot make direct tax refund intercept requests.

Procedure. Under the Federal offset program, Federal income tax refunds owed to noncustodial parents are intercepted and sent to the CSE agency, through OCSE, to pay the noncustodial parent's past-due child support. Only cases receiving full services through the State IV-D child support enforcement agency are eligible for Federal Tax Refund Offset. In addition to past-due child support, the tax refund intercept can recover past-due spousal support, so long as the child support order includes an award for spousal support. In a public assistance case, a Federal tax refund offset can be requested when the past-due amount is at least \$150 and the support has been delinquent for three or more months.¹⁰⁵ For other IV-D cases, the unpaid support amount must be at least \$500; the State can require that amount to have accrued after the application for

¹⁰³ P.L. No. 97-35 (1981), codified at 42 U.S.C. § 664(a)(1) (Supp. V 1999).

¹⁰⁴ P.L. No. 98-378 (1984), codified at 42 U.S.C. § 664(a)(2) (Supp. V 1999).

¹⁰⁵ 45 C.F.R. § 303.72(a)(2) (2000).

IV-D services. Additionally, the law requires that the child must be a minor at the time of submission.¹⁰⁶ For both types of cases, the CSE agency must have in its records a copy of the underlying support order and any modifications, and a copy of any payment records or an affidavit signed by the custodial parent attesting to the arrearage.¹⁰⁷ In nonassistance cases, the address of the custodial parent is also required.¹⁰⁸

State CSE agencies, through OCSE, certify to the Department of Treasury the names, Social Security Numbers, and the amount of past-due support for people who are delinquent and meet the established criteria. The CSE agency, or OCSE if the State requests and OCSE agrees, must send an advance written notice to the noncustodial parent of the arrearage amount that is being referred for Federal tax refund intercept. This notice informs the noncustodial parent of his or her right to contest the State's arrearage determination, the right to request an administrative review by either the submitting State or, at the noncustodial parent's request, the State with the order on which the referral is based, and the procedures and timeframes for contacting the CSE agency to request administrative review. The notice also informs the noncustodial parent about how to protect any portion of the refund due the noncustodial parent's spouse.¹⁰⁹

Injured spouse claims. A noncustodial parent's spouse typically does not have a duty to pay support for the noncustodial parent's child from another relationship.¹¹⁰ Thus, if the noncustodial parent and the spouse file a joint tax return, the portion of the tax refund attributable to the spouse is not subject to intercept. If an intercept includes an amount owed to the spouse, there is recourse. The nonobligated, or injured, spouse is allowed to request relief directly from the IRS.¹¹¹ The IRS requires submission of an *Injured Spouse Claim and Allocation of a Joint Return* form for the spouse to claim his or her portion of the offset refund. Money received through a tax refund intercept can be held for up to 6 months to see if an injured spouse will file a claim for a portion of the refund.

Request for review by the noncustodial parent. In addition to the requirement that noncustodial parents receive notice, Federal regulations set out procedures for contesting offsets in intrastate cases¹¹² and interstate cases.¹¹³

In intrastate cases, if the noncustodial parent requests a review, the CSE agency must notify the noncustodial parent—and in non-TANF cases, the custodial parent—of the time and place of the review. In cases where the issue is

¹⁰⁶ 45 C.F.R. § 303.72(a)(3) (2000).

¹⁰⁷ 45 C.F.R. § 303.72(4)(i) and (ii) (2000).

¹⁰⁸ 45 C.F.R. § 303.72(4)(iii) (2000).

¹⁰⁹ 45 C.F.R. § 303.72(e)(iv) (2000).

¹¹⁰ An exception might be when the spouse has adopted the child, or otherwise undertaken a parent-child relationship.

¹¹¹ 45 C.F.R. § 303.72(f)(2) (2000).

¹¹² 45 C.F.R. § 303.72(f) (2000).

¹¹³ 45 C.F.R. § 303.72(g) (2000).

a joint return that has not yet been offset, the CSE agency must inform the noncustodial parent that the Secretary of the Treasury will notify the noncustodial parent's spouse of the steps to take at the time of the offset in order to secure the portion of the refund due him or her. If the refund has been offset, the CSE agency will refer the noncustodial parent to the IRS.¹¹⁴

If the review results in an adjustment to the amount referred for offset, there are specified procedures for the State to follow to make the adjustment. If the amount is deleted or decreased, the State will put OCSE on notice of the modification to the amount. If the intercepted amount exceeds the amount of past-due support, the CSE agency should take the necessary steps to refund the excess to the noncustodial parent.¹¹⁵

In interstate cases, if the noncustodial parent makes the request for a review and the review is conducted in the State that submitted the case for offset, the procedure is identical.¹¹⁶ If the matter cannot be resolved by the State that submitted the case, and the noncustodial parent requests a review in the State that issued the order on which the referral for offset was based, the submitting State must place the issuing State on notice and, within 10 days of the noncustodial parent's request, provide sufficient information to allow that State to conduct the review.¹¹⁷ A notice must be sent to the noncustodial parent—and in non-TANF cases to the custodial parent—of the time and place of the review. A decision must be made within 45 days.¹¹⁸ Notice of any deletion or reduction of the amount is sent by the issuing State to the submitting State.¹¹⁹ The submitting State is bound by the decision rendered in the State with the order and must refund any amount required by the decision in the issuing State.¹²⁰

Distribution.¹²¹ Collections received by a IV-D agency as a result of a Federal tax refund intercept, both for TANF and non-TANF cases, must be distributed as past-due support as required by 42 U.S.C. § 657. For individuals who have never received public assistance, the amount collected will be sent to them. In former assistance cases and in current TANF cases, some past-due child support payments are assigned to the State as a condition of receiving TANF. When the State receives intercepted Federal tax refunds, the refunds are retained to satisfy any support assigned to the State. After the debt to the State has been satisfied, the refund amount can be applied to any child support owed to the family.

¹¹⁴ 45 C.F.R. § 303.72(f)(1) and (2) (2000).

¹¹⁵ 45 C.F.R. § 303.72(f)(4) (2000).

¹¹⁶ 45 C.F.R. § 303.72(g)(1) (2000).

¹¹⁷ 45 C.F.R. § 303.72(g)(2) (2000).

¹¹⁸ 45 C.F.R. § 303.72(g)(3) (2000).

¹¹⁹ 45 C.F.R. § 303.72(g)(4) & (5) (2000).

¹²⁰ 45 C.F.R. § 303.72(g)(6) & (7) (2000).

¹²¹ For additional information on distribution, see Chapter Three: State and Local Roles in the Child Support Enforcement Program.

Constitutionality. Federal tax refund intercept has been challenged in both State and Federal courts. Originally, noncustodial parents raised issues of denial of due process based on notice requirements and on an interpretation of the earned income tax credit portion of a Federal return.¹²² As courts routinely upheld the validity of Federal tax refund interception, noncustodial parents have raised questions pertaining to the definition of the term “past due.” Courts have held that a supporting parent must fall behind in his or her ordered payments before having his or her Federal tax refund intercepted. The issue often arises in the context of a modification when the court orders that a modification take effect retroactively. Courts have found that, although the noncustodial parent was in arrears based on the entry of a modified order, he or she was not in arrears as the term “past due” was defined by 42 U.S.C. § 664.¹²³

Administrative Offset¹²⁴

Unlike Federal Tax Refund Offset, which is a program in which State CSE agencies must participate, administrative offset is a voluntary program. The administrative offset program allows a wide range of Federal payments to be intercepted in order to enforce past-due child support. All payments eligible for offset under the Debt Collection Improvement Act of 1996 (DCIA),¹²⁵ other than Federal Tax refunds, are categorized as “administrative” offsets. The process is managed by OCSE, through the Financial Management Service (FMS) of the Department of Treasury, in conjunction with the Federal Tax Refund Offset program.

Currently vendor and miscellaneous payments, such as expense and travel reimbursements, and Federal retirement payments, are included in administrative offset. Vendor and miscellaneous payments are offset at 100 percent, while retirement pay is offset at 25 percent. Federal salary payments, though eligible for offset, are not currently being offset. These salary amounts are subject to the limits of the Consumer Credit Protection Act¹²⁶ along with any collections pursuant to income withholding from the obligor.

Some payments are exempted from offset by Federal law.¹²⁷ They include military survivor benefits, payments under the Longshore and Harbor Worker’s

¹²² See, e.g., *Sorenson v. Secretary of the Treasury*, 475 U.S. 851 (1986); *Coughlin v. Regan*, 584 F. Supp. 687 (D. Me. 1984); *Nelson v. Regan*, 560 F. Supp. 1101 (D. Conn. 1983).

¹²³ See, e.g., *David v. North Carolina Dep’t of Human Resources, Div. of Social Servs., Child Support Enforcement Section*, 126 N.C. App. 383, 485 S.E.2d 342 (1997); *Gladysz v. King*, 103 Ohio App. 3d 1, 658 N.E.2d 309 (1995).

¹²⁴ Additional information regarding Administrative Offset can be found in OCSE-AT-99-14 (1999).

¹²⁵ P.L. No. 104-134 (1996), codified at 31 U.S.C. § 3716(c) (Supp. V 1999).

¹²⁶ 15 U.S.C. § 1673(a), (b) (Supp. V 1999).

¹²⁷ See 31 U.S.C. § 3716(c)(3)(B) (Supp. V 1999); 31 C.F.R. § 285.1(i) (2001). See also OCSE-AT 99-14 (1999), Table 1.

Compensation Act,¹²⁸ payments under any law administered by the Secretary of Veteran Affairs, and payments made under the Social Security Act, except as provided for under DCIA. Others are exempted by Action of the Secretary of the Treasury.¹²⁹ These include benefit payments from the Department of Agriculture, Federal Emergency Management Administration payments under disaster relief and emergency assistance programs, and certain Pension Benefit Guaranty payments.

A case is eligible for an administrative offset when the noncustodial parent owes at least \$25 and is at least 30 days delinquent in his or her child support obligation, although States have the option of setting a higher threshold. Persons who owe child support debts subject to administrative offset will be notified by the same notice sent for Federal tax refund offset purposes.¹³⁰ Administrative offset cases are submitted through the same process as Federal tax refund offset cases. When a match occurs between the records of persons who owe child support debts and the payment records for Federal payees, FMS will seize the amount and transmit it to the State, through OCSE. A notice is also sent by FMS to the noncustodial parent, explaining the offset and referring him or her to the local CSE agency for more detail.

Administrative offsets can be contested. Either party, or the IV-D agency of the State that issued the underlying support order, can initiate the challenge in the State that submitted the offset request. While there is no mandated court review in the event of a challenge, there is authorization for a review in the manner prescribed by the State.¹³¹

Passport Denial

Passport denial is another effective enforcement tool. With this remedy, the Secretary of State must refuse to issue a new or renewed passport to any person known to owe a child support debt exceeding \$5,000.¹³² Further, the Secretary of State may take action to revoke, restrict, or limit a passport previously issued to an individual owing such a child support debt.¹³³ Currently, there are no procedures for revocation, restriction, or limitation on a passport.

All cases receiving services through State CSE agencies are eligible for passport denial. Any case that a State submits to the OCSE for the Federal tax refund offset process also is eligible for passport denial if the arrears exceed \$5,000. OCSE automatically forwards appropriate cases from the tax refund

¹²⁸ Longshore and Harbor Workers Comp. Act, P.L. No. 89-554 (1966), codified at 33 U.S.C. §§ 901 – 950 (Supp. V 1999).

¹²⁹ 31 U.S.C. § 3716(c)(3)(B) (Supp. V 1999). See also OCSE-AT-99-14 (1999), Table 2.

¹³⁰ 31 C.F.R. § 285.1(e) (2001).

¹³¹ 42 U.S.C. § 659(c)(2) (Supp. V 1999).

¹³² 42 U.S.C. § 652(k) (Supp. V 1999).

¹³³ 42 U.S.C. § 652(k)(2) (Supp. V 1999).

offset file to the State Department for passport denial unless the case has been specifically excluded.¹³⁴

After a case has been referred to the State Department, if the noncustodial parent applies for a new or renewed passport, he or she receives notice of the denied application.¹³⁵ The notice advises the applicant to contact the listed State IV-D agency for further information. A noncustodial parent then can make arrangements with the State IV-D agency to pay the past-due amount. A State will contact OCSE to remove the case from passport denial status after appropriate payment arrangements are made. It is important to note that there is no contest procedure included in the enabling legislation for the passport denial program. Additionally, once issued, a passport is valid for 10 years. Proceed with caution in reaching any arrangements to allow the noncustodial parent to pay less than the full amount overdue in order to avoid passport denial. Once a parent obtains a passport, passport denial will not be an enforcement option for another 10 years, even if the noncustodial parent reneges on the agreement.

Passport denial is only available in IV-D cases.¹³⁶

Financial Institution Data Match (FIDM)

PRWORA added the Financial Institution Data Match (FIDM) process to the enforcement arsenal of IV-D agencies.¹³⁷ FIDM is a means of locating certain obligor assets, which later can be levied to fulfill the unpaid support amount. These assets include demand deposit accounts, checking accounts or negotiable withdrawal order accounts, savings accounts, time deposit accounts and money-market mutual fund accounts.

As provided in PRWORA, financial institutions are required to participate in the FIDM process. For FIDM purposes, financial institutions include:

- a depository institution, or institution-affiliated party, as defined in the Federal Deposit Insurance Act¹³⁸;
- a Federal or State credit union; and
- a benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity.¹³⁹

By using financial institution data, IV-D agencies can identify accounts belonging to delinquent child support obligors. After finding such accounts, the

¹³⁴ 42 U.S.C. § 652(k)(1) (Supp. V 1999).

¹³⁵ 42 U.S.C. § 652(k)(2) (Supp. V 1999).

¹³⁶ Additional information on passport denial can be obtained in OCSE-AT-99-14 (1999).

¹³⁷ 42 U.S.C. § 666(a)(17) (Supp. V 1999).

¹³⁸ 42 U.S.C. § 669a(d)(1) (Supp. V 1999).

¹³⁹ 42 U.S.C. § 666(a)(17)(D)(i) (Supp. V 1999); 42 U.S.C. § 669a(d)(1) (Supp. V 1999).

State CSE agency, consistent with State law, can seek to attach these assets and seize them to satisfy delinquent support debts.

In-state FIDM. Each State is required to develop and operate, in coordination with in-state financial institutions, a data match system in which each financial institution provides quarterly to the State CSE agency the name, record address, and Social Security Number or other taxpayer identification number for each delinquent obligor who maintains an account at such institution. The financial institution data is matched with child support data in order to identify assets of the delinquent noncustodial parent.

After such assets are identified, the State CSE agency will proceed with the proper enforcement action to attach the asset or proceed with a lien and levy action. Financial institutions subject to the matching provision must encumber or surrender the assets of the delinquent noncustodial parent, which the institutions hold, in response to the notice of attachment/lien and levy from the State. Financial institutions are not liable under any Federal or State law to any person for:

- disclosing data match information to the State IV-D agency or its designated representative;
- encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the State CSE agency; or
- taking any other action in good faith to comply with the financial institution data match.¹⁴⁰

Multistate FIDM. The Child Support Performance and Incentive Act of 1998¹⁴¹ amended the FIDM process. More particularly, the Act authorized OCSE to act as a conduit between States and multistate financial institutions to facilitate a centralized, quarterly data match.

For multistate FIDM, State CSE agencies use the Federal Offset File. This is the same file used to intercept Federal tax refunds and other Federal administrative payments. The State indicates whether the noncustodial parent should be submitted for multistate financial institution data matching. The file includes the name and Social Security Number of the noncustodial parent. OCSE transmits the file to multistate financial institutions that will compare the child support data to their deposit accounts, and transmit to OCSE account information for delinquent noncustodial parents. OCSE then transmits the data returned from the multistate financial institution to the appropriate State(s). Based on the information from OCSE, and in accord with State law, State CSE agencies can

¹⁴⁰ 42 U.S.C. § 666(a)(17)(C) (Supp. V 1999).

¹⁴¹ P.L. No. 105-200 (1998).

proceed to enforcement. Consistent with State law, the CSE agency can issue liens or levies to attach and seize the assets belonging to the noncustodial parent.

IRS Project 1099¹⁴²

Project 1099 is a cooperative endeavor involving the Internal Revenue Service (IRS), the State IV-D agencies, and OCSE. The program is named for the “1099” IRS reporting form. Project 1099 provides State IV-D agencies with the address reported to the IRS by the noncustodial parent, the addresses of the 1099 reporting organizations (banks, State unemployment agencies, and employers), plus information about the noncustodial parent’s wages, tips, FICA taxes, pensions, annuities, advanced earned income credits, IRA contributions, securities, futures transactions, commodities, bartering exchange transactions, mortgage interest, real estate taxes, insurance unemployment compensation, State and local income tax refunds, agricultural payments, prizes and awards, crop insurance, fishing boat proceeds, and profit-sharing retirement plan/IRA distributions. With the advent of new tools to locate assets and enforce child support, Project 1099 has become less widely used. Although it is still available, the NDNH and the FIDM process are much better sources of data.

IRS Full Collection

Requesting assistance from the Internal Revenue Service to enforce a support obligation is another useful tool, particularly where all other alternatives have been unsuccessful, assets exist, and the noncustodial parent has shirked his or her responsibility to pay support.¹⁴³ It can also be effective against self-employed noncustodial parents who evade other collection measures, or U.S. citizens living abroad who own property in the States. In effect, the IRS treats the support judgment as equivalent to delinquent back taxes owed to the Federal Government.

This remedy is only available in IV-D cases. To use it, the State IV-D agency must submit a certification request to the appropriate OCSE Regional Representative.¹⁴⁴ Only the State IV-D agency can request the certification. There must be a court or administrative order for support entered against the individual. Reasonable efforts must have been made to collect the amount owed, the State must have an assignment of support or application for services, and the delinquency amount must be at least \$750. Certification will not be granted if there has been a request for certification in the case during the previous 6 months.¹⁴⁵

¹⁴² For additional information on Project 1099, see OCSE-AT-87-12 (1987).

¹⁴³ 42 U.S.C. § 652(b) (Supp. V 1999).

¹⁴⁴ 45 C.F.R. § 303.71(d)(1) (2000).

¹⁴⁵ 45 C.F.R. § 303.71(c) (2000).

A State's request must be signed by the Director of the State IV-D agency and include the following items:

- sufficient information to identify the debtor, including:
 - the individual's name;
 - the individual's Social Security Number; and
 - the individual's address and place of employment, including the source of this information and the date it was last verified.
- a copy of all court or administrative orders for support;
- the amount owed under the support orders;
- a statement of whether the amount is in lieu of, or in addition to, amounts previously referred to IRS for collection;
- a statement that the agency, the client, or the client's representative has made reasonable efforts to collect the amount owed using the State's own collection mechanisms or mechanisms that are comparable;
- a description of the actions taken, why they failed, and why further State action would be unproductive;
- dates of any previous requests for referral of the case to the Secretary of the Treasury;
- a statement that the agency agrees to reimburse the Secretary of the Treasury for the costs of collection;
- a statement that the agency has reason to believe that the debtor has assets that the Secretary of the Treasury might levy to collect the support; and/or
- a statement of the nature and location of the assets, if known.¹⁴⁶

The OCSE Regional Representative¹⁴⁷ reviews the request to determine whether it meets the above requirements and forwards the approved request to the Secretary of the Treasury. At the same time, the Regional Office notifies the IV-D agency in writing of the transmittal.¹⁴⁸ If the request does not meet all of the

¹⁴⁶ 45 C.F.R. § 303.71(e) (2000).

¹⁴⁷ Additional information on the responsibilities of OCSE Regional Offices can be found in Chapter Two: The Federal Role in the Child Support Enforcement Program.

¹⁴⁸ 45 C.F.R. § 303.71(f) (2000).

requirements, the Regional Office will attempt to correct the request in consultation with the IV-D agency.¹⁴⁹ If the request cannot be corrected after consultation, the case is returned to the State IV-D agency with an explanation of why the request could not be certified.¹⁵⁰

After transmission of the case to the Regional Office, the State IV-D agency must immediately notify the Regional Office of any change to the amount due, the nature or location of assets, or the address of the noncustodial parent.¹⁵¹ On receipt, the Regional Office will transmit the revised information to the Secretary of the Treasury.¹⁵²

The IRS will attempt to collect the amount certified as it would a tax delinquency, except that:

- no interest or penalty shall be collected;
- the property exemptions contained in 26 U.S.C. § 6334(a)(4), (6), and (8) do not apply;
- as much of the salary, wages, or other income of an individual as is being withheld in garnishment for the support of that individual's minor children shall be exempt from levy pursuant to a judgment entered by a court of competent jurisdiction; and
- in the case of the first assessment against an individual, the collection shall be stayed for a period of 60 days immediately following notice and demand.¹⁵³

The 60-day stay described above presumably gives the noncustodial parent the opportunity to satisfy the arrearage or contest the amount of the arrearage claimed by the State. No Federal court has jurisdiction to restrain or review the assessment or collection. This does not, however, preclude the noncustodial parent from bringing legal, equitable, or administrative action in the appropriate State court or administrative body to determine his or her liability for any amount assessed against him or her, or to recover any such amount collected through this procedure.¹⁵⁴

¹⁴⁹ 45 C.F.R. § 303.71(f)(3)(i) (2000).

¹⁵⁰ 45 C.F.R. § 303.71(f)(3)(ii) (2000).

¹⁵¹ 45 C.F.R. § 303.71(g)(1) (2000).

¹⁵² 45 C.F.R. § 303.71(g)(2) (2000).

¹⁵³ 26 U.S.C. § 6303 (Supp. V 1999).

¹⁵⁴ 26 U.S.C. § 6305 (Supp. V 1999).

STATE TAX REFUND OFFSET

The Child Support Enforcement Amendments of 1984 required States, as a condition of receiving Federal funds, to initiate a State tax refund offset program.¹⁵⁵

All States that have an income tax have enacted setoff statutes, authorizing the State revenue agency to withhold tax refunds due individuals who owe any liquidated debt to any State agency. The procedure is nearly identical to the Federal tax refund offset procedure. The State revenue agency performs a role similar to the IRS.

Judicial challenges to State tax refund offset began almost as soon as States began the State offset process. Oregon, which had a State tax refund offset program predating the Federal requirement, first met with a challenge as early as 1978. In *Brown v. Lobdell*¹⁵⁶ the Oregon Supreme Court found that the State tax intercept procedure withstood all constitutional challenges. Other State statutes and procedures, such as those in California and Maryland, have withstood similar challenges.¹⁵⁷ More recent decisions have also upheld the State's interest in pursuing child support collection via State tax refund offset.¹⁵⁸

Within certain parameters, each State has discretion to tailor the criteria for its State tax refund offset program.¹⁵⁹ The State must establish procedures that provide that any amount that has been submitted is verified and accurate and that the appropriate State office or agency is notified of any significant reductions in an amount referred for collection by State income tax refund offset.¹⁶⁰ Additionally, following advance notice to the noncustodial parent, the State must establish a procedure whereby the noncustodial parent can contest the offset and the State will reimburse any excess amounts that are received.¹⁶¹ States are required to send advance notice in cases in which medical support rights have been assigned and amounts are collected that represent specific dollar amounts designated in the support order for medical purposes.¹⁶² These processes must account for the State's full due process requirements and provide for a procedure to protect any interest the spouse of the noncustodial parent may have in the refund if the return was a joint filing.¹⁶³

¹⁵⁵ P.L. No. 98-378 (1984), codified at 42 U.S.C. § 666(a)(3) (1994).

¹⁵⁶ *Brown v. Lobdell*, 585 P.2d 4 (Or. 1978).

¹⁵⁷ See, e.g., *Wightman v. Franchise Tax Board*, 249 Cal. Rptr. 207 (Ca. Ct. App. 1988); *McClelland v. Massinga*, 786 F.2d 1205 (4th Cir. 1986).

¹⁵⁸ See, e.g., *Turner v. Turner*, 219 Conn. 703, 595 A.2d 297 (1997).

¹⁵⁹ 42 U.S.C. § 666(a)(3) (1994); 45 C.F.R. §§ 303.6(c)(3) (2000), 303.102(a)(2) (2000).

¹⁶⁰ 45 C.F.R. § 303.102(b)(2) (2000).

¹⁶¹ 45 C.F.R. § 303.102(e) (2000).

¹⁶² 45 C.F.R. § 303.102(d) (2000).

¹⁶³ 45 C.F.R. § 303.102 (2000).

LICENSE REVOCATION

As a condition of receiving Federal IV-D funds, Congress required each State to have procedures regarding the withholding, suspension, or restriction of the licenses of noncustodial parents who owe past due support. Specifically, the mandate relates to drivers' licenses, professional and occupational licenses, as well as recreational and sporting licenses.¹⁶⁴ Licenses can be affected when the noncustodial parent meets established criteria or fails to comply with subpoenas or warrants related to child support proceedings. Appropriate notice is required. Use of these procedures is not mandated in every case, but must be available at the State's discretion.

Because the license revocation program follows State law, practices vary across the country. What is consistent, however, is that this remedy is intended to be a coercive tool, not a punitive measure. The goal is not to punish a noncustodial parent for nonpayment of support by depriving him or her of license privileges. Rather, the hope is that once a noncustodial parent receives notice of the State's intention to affect the license, he or she will contact the State CSE agency to negotiate payment of the outstanding amount. In most instances, there should not be a large role for a court or attorney to play in connection with State license revocation programs; however, the court or attorney could become involved if a noncustodial parent challenges the intended action based on an available defense.

Most challenges to license suspension or revocation have been on grounds of due process. In *Alaska Child Support Enforcement Division v. Beans*¹⁶⁵, for example, the Alaska Supreme Court was asked to determine the constitutionality of the statute that allowed for the suspension of a delinquent noncustodial parent's driver's license. The court held that the statute did not violate a noncustodial parent's substantive due process right because it was based on a rational policy interest. The court further held that license revocation was proper even if the parent had insufficient resources to pay off the debt because the noncustodial parent can negotiate a settlement with the IV-D agency. Thus, the court found that the statute satisfied substantive due process requirements.

The South Dakota Supreme Court reached a similar decision.¹⁶⁶ Here, a class of noncustodial parents asked the court to find the entire South Dakota licensing restriction scheme unconstitutional on grounds that it violated substantive due process and equal protection. The court ruled that the statute was neither arbitrary nor irrational and, therefore, was not a violation of the substantive due process rights of the parties. Additionally, the court held that restrictions on licenses imposed on noncustodial parents who meet the required

¹⁶⁴ 42 U.S.C. § 666(a)(16) (Supp. V 1999).

¹⁶⁵ 965 P.2d 725 (Alaska 1998).

¹⁶⁶ *Thompson v. Ellenbecker*, 935 F. Supp. 1037 (D.S.D. 1995).

arrearage threshold were “different than the remedies available to collect debts from persons owing other types of debts.” The court, however, ruled that the treatment was not so “unrelated to the achievement of the legitimate purpose of collecting child support” as to be a violation of equal protection.

CONSUMER REPORTING AGENCIES

PRWORA required the States, as a condition of receiving Federal funds, to institute measures to periodically report unpaid child support to credit bureaus.¹⁶⁷ The law requires that States provide the noncustodial parent with due process, as set out by State law. It permits reporting only to recognized consumer reporting agencies.¹⁶⁸ The information that must be reported includes the name of the delinquent noncustodial parent and the amount of the child support arrears.

Consumer reporting agencies are defined by 15 U.S.C. §1681a(f) as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.”

The OCSE Federal Tax Refund Offset program includes a statement in pre-offset notices that warns the noncustodial parent that child support arrearages are subject to being reported to credit bureaus as a delinquent debt.

Credit bureau reporting serves a two-fold purpose. Not only is it a valuable enforcement tool, but States have also found it an excellent source for gathering locate information.¹⁶⁹

CRIMINAL NONSUPPORT

In some instances, civil actions are not successful in collecting child support due. In those cases, the attorney might want to pursue criminal charges against the delinquent obligor. There are criminal offenses for nonsupport of children at both the State and Federal level.

State Actions

A number of States have state-specific criminal statutes that relate to the failure to pay support in purely intrastate cases. The standard of proof in these

¹⁶⁷ 42 U.S.C. § 666(a)(7)(A) (1994, Supp. IV 1998, & Supp. V 1999).

¹⁶⁸ 42 U.S.C. § 666(a)(7)(B) (1994, Supp. IV 1998 & Supp. V 1999).

¹⁶⁹ For more detail on locating individuals, please refer to Chapter Five: Location of Noncustodial Parents and Their Assets.

cases is high, as in all violations of the penal code—that is, proof beyond a reasonable doubt. In some of these States, the attorneys who establish and enforce child support obligations in civil court are district or prosecuting attorneys who have discretion to file criminal charges against a noncustodial parent. Other States have a referral process where the child support attorney refers the case to the district attorney or prosecutor to review for criminal prosecution. Lastly, some States appoint child support attorneys as special prosecutors solely for the purpose of bringing an action under the State criminal nonsupport statute.

Although civil remedies such as income withholding and tax refund intercept are still the most often used enforcement tools, criminal nonsupport proceedings can be a useful deterrent to noncompliance. Local law might require that all available civil remedies be exhausted prior to resorting to use of criminal nonsupport. Where civil remedies have proven unsuccessful or where the noncustodial parent has been evading civil remedies, however, a criminal charge can be effective in bringing about payment.

In most States, the normal rules of evidence apply to a criminal nonsupport action. Depending on local practice, the action is initiated by filing a criminal complaint, information, or indictment. Based on the initial finding, a judge may issue a warrant or summons. Not unlike any State criminal action, the initial pleading must allege all elements of the crime in such a manner that allows the defendant to understand the charge and prepare a defense.¹⁷⁰ State law defines the elements of the crime.

Federal Actions

There are Federal laws that make the nonpayment of child support a criminal offense. The Child Support Recovery Act of 1992 (CSRA) made it a Federal crime to willfully fail to pay a past-due child support obligation for a child who resides in another State. The statute relates to obligations that remain unpaid for longer than 1 year or that are greater than \$5,000.¹⁷¹ By enacting the CSRA, Congress expressly recognized that collecting past-due child support obligations from out-of-state noncustodial parents has outgrown State enforcement mechanisms.

While Federal prosecutions proved somewhat successful, the simple misdemeanor penalties provided for in CSRA did not have the force to deter serious violators. As a result, Congress passed the Deadbeat Parents Punishment Act in 1998.¹⁷² This made it a felony offense to travel interstate or internationally to evade a child support obligation that has remained unpaid for

¹⁷⁰ See *People v. Scholl*, 88 N.E.2d 681 (Ill. App. Ct. 1949); *Gravitt v. Commonwealth*, 23 S.W.2d 555 (Ky. Ct. App. 1930).

¹⁷¹ P.L. No. 102-521 (1992), codified at 18 U.S.C. § 228(a)(1) (Supp. V 1999).

¹⁷² P.L. No. 105-187 (1998), codified at 18 U.S.C. § 228 (Supp. V 1999).

longer than 1 year or is greater than \$5,000.¹⁷³ In addition, the law covers the willful failure to pay any child support obligation for a child living in another State if the obligation has remained unpaid for a period longer than 2 years or is greater than \$10,000.¹⁷⁴ Additionally, a second or subsequent violation of 18 U.S.C. § 228(a)(1) becomes a felony.

Criteria/elements of the crime. Establishing willful failure to pay has proven difficult. Demonstrating the culpable state of mind of a defendant requires a tribunal to develop a subjective standard. Legislative history might be helpful. According to the legislative history of CSRA, willfulness has the same meaning as it has for purposes of Federal criminal tax law. According to the House Report:

The operative language establishing the requisite intent is ‘willfully fails to pay’. This language has been borrowed from the tax statutes that make willful failure to collect or pay taxes a Federal crime....The willfulness element in the tax felony statutes requires proof of an intentional violation of a known legal duty, and thus described a specific intent crime.... The Committee intends that the willfulness standard be given similar effect as the willful failure contained in these tax felony provisions.¹⁷⁵

In addressing the willfulness concept, the U.S. Supreme Court in *Cheek v. United States*, stated that “[w]illfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.”¹⁷⁶

The Government is not required to prove that the defendant knew his or her failure to pay child support was a violation of a Federal criminal statute. The standard is simply proof that the defendant knew of the legal obligation to pay child support and that the defendant knowingly and intentionally violated the duty. Knowledge of the order is all that is needed, not knowledge of the statute.¹⁷⁷

Establishing “ability to pay,” although not an explicit element of the crime of failure to pay, must be factored into the willfulness proof requirement. Addressing the difficulty of proving ability to pay in CSRA, the Deadbeat Parents Punishment Act created a rebuttable presumption permitting a jury to conclude that a defendant had the ability to pay the support obligation during the period the support obligation was in effect. The legislative history explains:

¹⁷³ 18 U.S.C. § 228(a)(2) (Supp. V 1999).

¹⁷⁴ 18 U.S.C. § 228(a)(3) (Supp. V 1999).

¹⁷⁵ H.R. Rep. No. 102-771, at 6 (1992).

¹⁷⁶ 498 U.S. 192 (1991).

¹⁷⁷ *United States v. Mattice*, 22 F. Supp. 2d 49 (W.D.N.Y. 1998), *aff'd*, 186 F.3d 219 (2d Cir. 1999).

A demonstration of the obligor's ability to pay contributes to a showing of willful failure to pay the known obligation. The presumption in favor of ability to pay is needed because proof that the obligor is earning or acquiring income is difficult. Child support offenders are notorious for hiding assets and failing to document earnings. A presumption of ability to pay, based on the existence of a support obligation determined under State law, is useful in the jury's determination of whether the nonpayment was willful. An offender who lacks the ability to pay a support obligation due to legitimate, changed circumstances occurring after the issuance of an order has State civil means available to reduce the support obligation and thereby avoid violation of the Federal criminal statute in the first instance.¹⁷⁸

Courts have rejected arguments by defendants that it is necessary to demonstrate that the defendant had the ability to pay the entire amount of past-due child support during the period alleged in the indictment rather than just showing an ability to pay at some juncture during the period alleged in the indictment.¹⁷⁹ The courts have reasoned that to require a showing that the defendant had the ability to pay the entire amount was too narrow an interpretation.¹⁸⁰

Penalties. If a defendant is charged with a misdemeanor and the obligation has remained unpaid for longer than 1 year, or is greater than \$5,000, the defendant is subject to a sentence of imprisonment of up to 6 months, fines, and restitution in an amount equal to the total unpaid support amount existing at the time of sentencing.¹⁸¹

For felony offenses, or a second or subsequent misdemeanor, the maximum penalty is up to 2 years of imprisonment, or 5 years of probation, a fine of up to \$250,000, and mandatory restitution in an amount equal to the total unpaid support obligation existing at the time of sentencing.¹⁸²

The Deadbeat Parents Punishment Act requires all sentencing courts to order mandatory restitution pursuant to 18 U.S.C. § 3663A, in an amount equal

¹⁷⁸ 143 Cong. Rec. S126687-01 (daily ed. Nov. 13, 1997). See *United States v. Craig*, 181 F.3d 1124 (9th Cir. 1999), cert. denied, 528 U.S. 981 (1999); *United States v. Ballek*, 170 F.3d 871 (9th Cir. 1999), cert. denied, 528 U.S. 853 (1999); *United States v. Satterly*, 36 F. Supp. 2d 71 (D. Conn. 1998).

¹⁷⁹ *United States v. Mattice*, 22 F. Supp. 2d 49 (W.D.N.Y. 1998), aff'd. 186 F.3d 219 (2d Cir. 1999).

¹⁸⁰ But see *United States v. Grigsby*, 85 F. Supp. 2d 100 (D. R.I. 2000) (the rebuttable presumption with respect to ability to pay is unconstitutional).

¹⁸¹ 18 U.S.C. § 228(c)(1) (Supp. V 1999). See also *United States v. Craig*, 181 F.3d 1124 (9th Cir. 1999) (a restitution order, imposed under the CSRA, can cover the entire amount of unpaid support owed by a delinquent obligor, and not just the arrearages that accrued during the period specified in the indictment. The court also permitted restitution for the full amount owed, without an inquiry into ability to pay.)

¹⁸² 18 U.S.C. § 228(c)(2) (Supp. V 1999).

to the total unpaid child support obligation existing at the time of sentencing.¹⁸³ The total unpaid child support obligation includes the total amount of arrears, even if the arrearage began to accumulate long before the charging period. This may include costs for medical insurance, other medical expenses, college expenses, and life insurance and may also include spousal support.¹⁸⁴ Interest on a child support obligation depends on the law of the State entering the order.

For actions under CSRA and the Deadbeat Parents Punishment Act, Federal Sentencing Guidelines do not apply. This is important because it allows the penalty to be uniquely tailored to suit the nonsupport offense. For example, a defendant might be required to serve the full 5-year probation that is available.¹⁸⁵ Additionally, it is a standard condition of probation that a defendant pay any ongoing child support obligation. A probationary period may also include a requirement that the defendant serve nights or weekends in jail for a up to 1 year to be followed by 4 years of probation.¹⁸⁶

Defenses. Defendants have offered a number of defenses as legal challenges to criminal nonsupport. They have ranged from a contest to venue and jurisdiction to Constitutional grounds of violation of the commerce clause. Courts have routinely upheld criminal nonsupport as an enforcement action.

Venue/jurisdiction. With respect to venue and jurisdiction, courts have found that since failure to pay a child support obligation is considered a continuing offense, venue is appropriate in any district in which the offense continued, including where the child or the noncustodial parent resides. This is true even if the child support order was entered in a State other than where the child or noncustodial parent is residing at the time of indictment.¹⁸⁷

This principle was codified in June 1998 with passage of the Deadbeat Parents Punishment Act, making venue appropriate in the district where either the child or the noncustodial parent resides, or in any other district with jurisdiction otherwise provided for by law.¹⁸⁸ This would include any district in which a child support order was entered.

Constitutional issues. Defendants charged under these Federal criminal nonsupport statutes have raised several Constitutional issues.

¹⁸³ 18 U.S.C. § 228(d) (Supp. V 1999).

¹⁸⁴ *United States v. Brand*, 163 F.3d 1268 (11th Cir. 1998).

¹⁸⁵ 18 U.S.C. § 3561(c)(2) (Supp. V 1999).

¹⁸⁶ 18 U.S.C. § 3563(b)(10) (Supp. V 1999). See *United States v. Bongiorno*, 106 F.3d 1027 (1st Cir. 1997).

¹⁸⁷ *United States v. Muench*, 153 F.3d 1298 (11th Cir. 1998); *United States v. Murphy*, 117 F.3d 137 (4th Cir. 1997); *United States v. Crawford*, 115 F.3d 1397 (8th Cir. 1997), *cert. denied*, 522 U.S. 934 (1997).

¹⁸⁸ 18 U.S.C. § 228(e) (Supp. V 1999).

- Jury Trials

The availability of a jury trial has also been an important issue. In a prosecution pursuant to 18 U.S.C. § 228(a)(1) (a Class B misdemeanor offense), the defendant is not entitled to a trial by jury because the crime is considered to be a petty offense. The most significant factor in determining whether a crime is a petty offense is the maximum term of imprisonment. Where the maximum term of imprisonment is 6 months or less, there is a strong presumption that the offense is petty and, thus, the defendant is not entitled to a jury trial.¹⁸⁹ In *United States v. Ballek*, the defendant argued that in addition to imprisonment, he was ordered to pay a large amount of restitution, taking the offense out of a class ordinarily considered “petty.”¹⁹⁰ The court held, however, that the defendant was not entitled to a jury trial, no matter how large the amount of restitution ordered. The restitution order did not impose an additional obligation on the defendant, but rather recognized the debt that the defendant already owed the victim.

For felony prosecutions under 18 U.S.C. §§ 228 (a)(2) and (a)(3), the defendant is entitled to a jury trial. A defendant is likewise entitled to a jury trial for a second or subsequent violation of Section 228(a)(1).

- Commerce Clause

The district courts had found the CSRA an unconstitutional exercise of Congressional power because the Act did not meet the test of a “substantial relation to interstate commerce,” under the Commerce Clause of the U.S. Constitution. As a basis for their findings, these courts cited the U.S. Supreme Court decision in *U.S. v. Lopez*.¹⁹¹ In reaching that conclusion, the courts found that:

- The law’s requirement that parents reside in different States is not sufficient to provide the necessary interstate nexus. Otherwise, almost any activity could be subject to Federal legislation if that simple language were added.
- Although the description of the Federal statute mentions fleeing a State for the purpose of avoiding payment of support, the actual language of the statute contains no such flight requirement.

¹⁸⁹ *Blanton v. City of North Las Vegas*, 489 U.S. 538, (1989).

¹⁹⁰ 170 F.3d 871 (9th Cir.), *cert. denied*, 528 U.S. 853 (1999).

¹⁹¹ 514 U.S. 549 (1995).

- The effect of nonpayment of support on the Federal AFDC/TANF program does not provide a sufficient nexus with interstate commerce.
- Although there is some interstate activity in the nonpayment of support, (i.e., financial transactions across State lines involving mail, out-of-state travel, or long-distance telephone calls), these transactions are not enough to characterize the willful failure to pay child support as an economic enterprise that substantially affects interstate commerce. One court stressed that nonpayment does not affect the marketplace for goods and services. Nor does it threaten citizens' abilities to travel.

To date, Federal appellate courts have upheld the Constitutionality of the CSRA.¹⁹² A recent case¹⁹³ has, however, raised the issue of Congressional authority to criminalize behavior under the auspices of the interstate commerce clause. The Sixth Circuit Court of Appeals concluded that the CSRA is not a proper exercise of that power. An *en banc* review is pending.

- Equal Protection

Criminal nonsupport statutes have also withstood a challenge based on equal protection grounds. In *United States v. Nichols*, the court found that the CSRA was a gender-neutral statute intended as an enforcement action against noncustodial parents regardless of their sex.¹⁹⁴ The court reasoned that any adverse effect on men was not the product of invidious gender-based discrimination.

- *Ex Post Facto* Prohibition

Defendants have also raised the defense of an *ex post facto* prohibition. They argue that the enactment of criminal nonsupport statutes imposes a penalty for an act that was not punishable at the time it was committed. In a number of decisions, courts have held that the criminalization of failure to pay a child support obligation might have been enacted after the obligation became due, but the obligation was "past due" after the statutes became effective.¹⁹⁵ Moreover, the inclusion of amounts owed before passage of the Act as part of the

¹⁹² See, e.g., *United States v. Mussari*, 95 F.3d 789 (9th Cir. 1996); *United States v. Schroeder*, 92 F.3d 101 (2d Cir. 1996); *United States v. Bailey*, 115 F.3d 1222 (5th Cir. 1997).

¹⁹³ *United States v. Faasse*, 227 F.3d 660 (6th Cir. 2000).

¹⁹⁴ 928 F. Supp. 302 (S.D. N.Y. 1996), *aff'd* 113 F.3d 1230 (2d Cir. 1997).

¹⁹⁵ *United State v. Wilson*, 210 F.3d 230 (4th Cir. 2000); *United States v. Russell*, 186 F.3d 883 (8th Cir. 1999); *United State v. Black*, 125 F.3d 454 (7th Cir. 1997), *cert. denied*, 523 U.S. 1033 (1998).

restitution order does not violate the *ex post facto* prohibition because it does not inflict punishment on the defendant. It merely seeks compensation for a past-due child support obligation.¹⁹⁶

- 13th Amendment

Courts have held that the CSRA does not violate the Thirteenth Amendment prohibition against involuntary servitude.¹⁹⁷

- Other Defenses

Courts have also held that a defendant cannot raise paternity as a defense.¹⁹⁸ One court found that emancipation of the child does not preclude a child support prosecution for an obligation and willful failure to pay that arose before emancipation of the child.¹⁹⁹

Extradition. If a defendant has been tried and convicted of the felony offense of nonpayment of child support and flees the jurisdiction, he or she is subject to extradition as with any federal offense. Federal law provides that the governor or chief magistrate of the State or Territory from which the defendant has fled shall make a request of the governor or chief magistrate of the State or Territory to which the defendant fled that the person be arrested and secured.²⁰⁰ The request should include a “copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed ... felony ... certified as authentic by the governor or chief magistrate of the State or Territory.”

After the defendant has been arrested, the requesting State shall be placed on notice and is required to make arrangements within 30 days to have the defendant returned to the State where the conviction was made. If no arrangements are made within the prescribed 30 days, the defendant may be released.

POSTING BONDS

The Child Support Enforcement Amendments of 1984 required States, as a condition of receiving Federal funds, to enact and use “procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such noncustodial parent of the proposed action, and of the procedures to be

¹⁹⁶ *United States v. Rose*, 153 F.3d 208 (5th Cir. 1998).

¹⁹⁷ *United States v. Ballek*, 170 F.3d 871 (9th Cir.), *cert. denied*, 528 U.S. 853 (1999).

¹⁹⁸ *See United States v. Johnson*, 114 F.3d 476 (4th Cir. 1997), *cert. denied*, 522 U.S. 904 (1997).

¹⁹⁹ *United States v. Black*, 125 F.3d 454 (7th Cir. 1997), *cert. denied*, 523 U.S. 1033 (1998).

²⁰⁰ 18 U.S.C. § 3182 (Supp. V 1999).

followed to contest it (and after full compliance with all procedural due process requirements of the State).²⁰¹

Like most enforcement remedies, bonds might not be appropriate in every case. Pursuant to 45 CFR § 303.104(c), cases should be reviewed individually to ascertain if this is an appropriate remedy. Most State guidelines generally take into account such criteria as the payment record of the noncustodial parent and the availability and success of other enforcement remedies.

The attorney might successfully combine bonds with other enforcement remedies. For example, when a noncustodial parent is found to be in civil contempt, a request that a bond be ordered to secure future payments might be appropriate. Bonds can also be used in lien releases. To secure the release of a lien on real or personal property, the attorney can request that a noncustodial parent be required to post a surety or bond. If the noncustodial parent continues to ignore a support obligation, the bond or surety can be liquidated or released by the court and distributed as support. A noncustodial parent can be given the opportunity to present evidence regarding compliance.

MEDICAL SUPPORT ENFORCEMENT

In addition to enforcement of child support obligations, IV-D agencies now must enforce medical support. Medical child support is the legal provision for the payment of medical, dental, prescription, and other health care expenses. This obligation encompasses insurance coverage for such expenses as well as cash support paid in lieu of coverage and/or for uncovered costs. Note that States vary widely regarding the expenses included in this definition, but all child support orders are now required to provide for medical support.²⁰²

Recognizing that effective enforcement of medical support obligations required cooperation with employers and health care plans, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (OBRA '93),²⁰³ which amended the Employee Retirement Income Security Act of 1974 (ERISA).²⁰⁴ This provided that Qualified Medical Child Support Orders (QMCSOs) could be enforced against ERISA-covered plans.²⁰⁵ The Act also amended Title XIX of the Social Security Act at 42 U.S.C. § 1396g-1, and required States to enact laws prohibiting employers and insurers from denying the enrollment of any child under a family health plan when the child:

- was born out of wedlock;

²⁰¹ P.L. No. 98-378 (1984), codified at 42 U.S.C. § 666(a)(6) (1994).

²⁰² For further discussion of medical support orders, see Chapter Nine: Establishment of Child Support Obligations.

²⁰³ P.L. No. 103-66 (1993).

²⁰⁴ P.L. No. 93-406 (1974).

²⁰⁵ 29 U.S.C. § 1169 (Supp. 2000).

- is not claimed as a dependent on the employee-parent's Federal income tax return;
- does not live with the employee-parent; or
- does not live in the insurer's service area.

Note that a QMCSO generally cannot require a group health plan to provide a specific form of benefit or an option not otherwise provided under the plan. The exception to this rule is that specific orders may be entered to the extent necessary to comply with certain State laws described in Title XIX of the Social Security Act.²⁰⁶

Attorneys should be aware that the Federal Order/Notice to Withhold Income for Child Support does not constitute a QMCSO. Additionally, attorneys who handle interstate cases should become familiar with the rules of the Full Faith and Credit for Child Support Orders Act (FFCCSOA)²⁰⁷ and UIFSA²⁰⁸ regarding modification.²⁰⁹

Developments to Improve Medical Support Order Enforcement

PRWORA and subsequent Federal amendments have added the following important provisions to reduce lapses in children's family health coverage because of a change of employment:²¹⁰

- States must notify a noncustodial parent's new employer about any existing medical support order;²¹¹
- on receipt of such a notice, the new employer must enroll qualified children in its health plan, unless the noncustodial parent contests the notice based on a mistake of fact;²¹²
- orders issued to ERISA-covered plans are subject to QMCSO requirements;²¹³

²⁰⁶ 29 U.S.C. § 1169(a)(4) (Supp. 2000); 42 U.S.C. § 1396g-1 (Supp. V 1999).

²⁰⁷ 28 U.S.C. § 1738B (Supp. V 1999).

²⁰⁸ UIFSA (1996) (amended 2001), 9 Pt. 1B U.L.A. 235 (1999).

²⁰⁹ For additional information, see Chapter Eleven: Modification of Child Support Obligations and Chapter Twelve: Interstate Child Support Remedies.

²¹⁰ 42 U.S.C. § 652(f) (Supp. V 1999).

²¹¹ 42 U.S.C. § 666(a)(19)(B) (Supp. V 1999).

²¹² *Id.*

²¹³ 29 U.S.C. § 1169(a) (Supp. 2000).

- administrative notices, issued by State IV-D agencies and directing enforcement of medical support provisions, are to be recognized as QMCSOs, where a judicial order was previously required; and²¹⁴
- a properly issued National Medical Support Notice (NMSN) is automatically deemed a QMSCO.²¹⁵

As a result of these recent statutory changes, State CSE agencies currently have a number of related responsibilities in connection with the enforcement of medical child support orders. As a condition of receiving Federal funds, each State must develop a system for monitoring whether noncustodial parents are actually obtaining the ordered, employer-based health care coverage. States also must ensure that the administrative notice is issued immediately following the entry of each order that requires coverage, and that such notice is reissued whenever a noncustodial parent's new employer becomes known. States must also monitor and enforce employer compliance with administrative notices, use the NMSN to enforce appropriate IV-D child support orders with a medical support component, and pass necessary State laws, by October 1, 2001, or by the next following session of the State legislature.²¹⁶

LIMITATIONS ON ENFORCEMENT/DEFENSES

Although child support enforcement techniques continue to expand, there remain limitations on how far-reaching they can be. Additionally, noncustodial parents use a variety of defenses in an attempt to avoid payment of child support obligations. Limitations on child support collection are vested in the concept of fairness. They deal with the length of time in which an enforcement action can be brought to avoid the obligation becoming stale, and on the amount of a noncustodial parent's income that is subject to income withholding. Defenses offered by noncustodial parents customarily revolve around the noncustodial parent's ability to pay the child support amount.

Statutes of Limitations

Statutes of limitations prevent the assertion of claims that have become dormant. The statutes of limitations for enforcement vary by State. Thus, State law dictates the length of time that the CSE agency has to collect arrears.

Customarily, a money judgment is based on a fixed amount and does not accrue any new or additional rights from the date of rendition. A child support order, however, is ongoing and the resulting judgment is a variable sum that

²¹⁴ 29 U.S.C. § 1169 (Supp. 2000).

²¹⁵ P.L. No. 105-200 (1998), codified at 42 U.S.C. § 666(a)(19)(A) (Supp. V 1999). The form can be found on the OCSE web site (<http://www.acf.dhhs.gov/programs/cse/rpt/medrpt/index.html>).

²¹⁶ 42 U.S.C.A. § 666(a)(19) (Supp. 2001).

increases with each installment. As a result, the statute of limitations for child support purposes does not begin to run until each installment becomes a judgment by operation of law.²¹⁷

Note that the statute of limitations issue becomes critically important in interstate cases. Both FFCCSOA²¹⁸ and UIFSA²¹⁹ clearly address the issue. In an action to enforce support arrears, the statute of limitations to apply will be that of the forum State or the State that issued the controlling order, whichever has the longer period.²²⁰ The intent of these provisions is to prevent a noncompliant obligor from moving to a State with a short statute of limitations period in order to avoid collection of the arrears.

Laches

Some States allow a laches defense to be used in a child support case. Laches is an equitable defense providing that one who neglects to assert a right or a claim, when coupled with the passage of time, causes prejudice to the adverse party, thereby acting as a bar to the claim by the moving party. Typically, the application of laches requires clean hands by the noncustodial parent as well as a showing of, and some prejudice as a result of, the reliance that the custodial party was not going to act on the claim. In *Fogarty v. Rasbeary*, a mother waited 17 years to enforce her support order, and the noncustodial parent claimed the defense of laches.²²¹ The court held that a judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full; however, the court also found that laches can be used as a defense to child support arrears.

Some States have held that a laches defense is inappropriate in a child support case because the right of support belongs to the child and not the parent. An example is Oregon, which disallows such defenses in most collection contexts, although estoppel is available in some situations.²²² States may, however, allow this defense when the facts permit such an equitable consideration.

²¹⁷ See *State of Alaska, Dep't of Revenue, Child Support Enforcement Div., ex rel. Gerke v. Gerke*, 942 P.2d 423 (Alaska 1997); *Johnson v. Lilly*, 823 S.W.2d 883 (Ark. 1992); *Horowitz v. Horowitz*, 600 A.2d 982 (Pa. 1991).

²¹⁸ P.L. No. 103-383 (1994), codified at 28 U.S.C. §1738B (Supp. V 1999).

²¹⁹ Unif. Interstate Family Support Act (1996) (amended 2001) [hereinafter UIFSA], 9 Pt. 1B U.L.A. 235 (1999).

²²⁰ 28 U.S.C. § 1738B(h)(3) (Supp. V 1999); UIFSA § 604(b) (amended 2001), 9 Pt. 1B U.L.A. 355 (1999). See also *King v. State*, 952 S.W.2d 180 (Ark. Ct. App. 1997); *Attorney General v. Litten*, 999 S.W.2d 74 (Tex. Ct. App. 1999).

²²¹ 93 Cal. Rptr. 2d 653 (Cal. 2000). See also *Black v. Dancy*, No. E021923 (Cal. Ct. App. Aug. 8, 2000).

²²² *State ex rel. Dep't of Human Resources of the State of California v. Ramirez*, No. 97-07-186 (Or. Ct. App. May 10, 2000).

Federal Consumer Credit Protection Act

The Federal Consumer Credit Protection Act (CCPA) sets limits on amounts that can be withheld from a noncustodial parent's disposable earnings.²²³ The disposable portion of one's earnings is the income that remains after the withholding of legally required deductions.²²⁴ Required deductions typically include income taxes, Social Security deductions, union dues, amounts exempted by Federal law, and certain public assistance payments. CCPA limits do not apply to nondisposable earnings, such as insurance settlements, inheritance, and winnings.

Under the CCPA, the total amount withheld from disposable earnings for both current support and arrears cannot exceed the specified limits, although States can choose to impose more stringent withholding limitations. Federal law, however, provides that:

- if the arrears are owed for 12 weeks or more, withholding is limited to:
 - 55 percent of the noncustodial parent's disposable earnings if he or she is supporting another spouse or other dependents, or
 - 65 percent of the noncustodial parent's disposable earnings otherwise; or
- if there are no arrears, or if arrears are owed for less than 12 weeks, withholding is limited to:
 - 50 percent of the noncustodial parent's disposable earnings if he or she is supporting another spouse or other dependants, or
 - 60 percent of the noncustodial parent's disposable earnings otherwise.

Federal regulations require the State's notice to a noncustodial parent's employer to set out that the withheld amount, including fees, cannot exceed CCPA limits or the alternative State provisions.²²⁵ Note that the employer must withhold the maximum allowed amount when the ordered support amount exceeds the CCPA limit for the particular noncustodial parent. If, however, the noncustodial parent requests, the tribunal can adjust the withholding, if appropriate. Arrears, however, will continue to accrue.

²²³ 15 U.S.C. § 1673(b) (Supp. V 1999).

²²⁴ See, e.g., *Roach v. Roach*, 61 Ohio App. 3d 315, 572 N.E.2d 772 (1989); *Ward v. Ward*, 164 N.J. Super. 354, 396 A.2d 365 (1978); *Villano v. Villano*, 98 Misc. 2d 774, 414 N.Y.S.2d 625 (1979).

²²⁵ 45 C.F.R. § 303.100(e)(1)(i) (2000).

Inability to Pay

Inability to pay is a frequent defense to a collection action based on the noncustodial parent's alleged lack of means to support himself or herself adequately and still comply with the support order. Often when inability to pay is asserted as a defense, the noncustodial parent seeks a reduction in his or her child support during the course of the enforcement action. A court should not, *sua sponte*, modify a support order during the course of an enforcement proceeding.²²⁶ The two actions are separate.

Depending on State law, inability to pay might be an affirmative defense and it is the noncustodial parent who must demonstrate his or her inability to pay; it is not incumbent on the custodial parent or the IV-D attorney to show ability to pay.²²⁷ Additionally, courts have held that the noncustodial parent's burden of proving inability to pay must be shown with particularity and not in general terms.²²⁸ Wisconsin has provided for the affirmative defense of inability to pay in its statute. Wisconsin Statute § 948.22(6) provides that affirmative defenses include, but are not limited to, inability to provide child, grandchild, or spousal support.²²⁹

The answer to two questions is key when a noncustodial parent claims an inability to pay his or her child support. The first, and most obvious, question is whether the inability to pay is *bona fide*. The noncustodial parent needs to realize that no obligation, such as car payments or cable T.V. fees, comes before the obligation to support his or her children.

A second, but related, question is whether the noncustodial parent's inability to pay results from a willful failure to seek and obtain suitable employment or a voluntary reduction of income. Considering that ability to pay is often a factor in a contempt action, these issues often present themselves in that context. Challenges have arisen when courts have imposed a contempt sanction on a noncustodial parent for the failure to seek and accept available employment commensurate with his or her skills or abilities or for voluntarily reducing his or her income. Noncustodial parents have contended that this constitutes involuntary servitude. This argument has been rejected. The California Supreme Court reasoned that the obligation of a parent to support a child, and to become employed if that is necessary to meet the obligation, is in no way comparable or akin to peonage or slavery.²³⁰

²²⁶ *Nicholson v. Combs*, 703 A.2d 407 (Pa. 1997).

²²⁷ *Moss v. Superior Court*, 17 Cal. 4th 396, 950 P.2d 59 (1997); *Gebetsberger v. East*, 627 So. 2d 823 (Miss. 1993); *State ex rel. Mikkelsen v. Hill*, 315 Or. 452, 847 P.2d 402 (1993); *Ex parte Roosth*, 881 S. W.2d 300 (Tex. 1994).

²²⁸ *Gebetsberger v. East*, 627 So. 2d 823 (Miss. 1993).

²²⁹ Wis. Stat. Ann. § 948.22(6) (West 1999).

²³⁰ *Moss v. Superior Court*, 17 Cal. 4th 396, 950 P.2d 59 (1997).

Noncustodial parents have also argued that imprisonment on a criminal contempt sanction violated the constitutional prohibition against imprisonment for debt. In *In re Marriage of Nussbeck*, a father argued that because his child support arrearage was converted automatically to a judgment against him, he was being imprisoned for a standing debt.²³¹ The court rejected this argument, holding that the father can be imprisoned for failure to pay child support because the contempt order was predicated on his failure to comply with the order, not the existence of a judgment against him. The mere fact that the arrearage converted automatically to a judgment was immaterial to the contempt order for noncompliance.

Incarceration. Assertions of a noncustodial parent's inability to meet a child support obligation arise frequently when the noncustodial parent was incarcerated for a period of time when a child support obligation was due. Courts have taken one of three approaches.

Some courts have found that a noncustodial parent's incarceration does not excuse a child support debt.²³² It is possible, however, that the amount of a child support obligation might be reduced during incarceration to reflect the present ability of the parent to pay and that, following the noncustodial parent's release, the accumulated arrearage will have to be repaid on a schedule consistent with his or her post-incarceration income.²³³ Other States have found, however, that incarceration is a voluntary act precluding modification of a child support obligation.²³⁴ These courts have held that a person who has a support obligation should not profit from criminal conduct, particularly at his or her child's expense.²³⁵

Other jurisdictions have concluded that an incarcerated noncustodial parent should be completely relieved of a child support obligation, finding that elimination of income resulting from incarceration is not a voluntary act and the child support obligation should be suspended unless the noncustodial parent has other assets that can be used to meet a child support obligation.²³⁶

Finally, some courts look at the incarceration of a noncustodial parent as only one factor to consider in determining if a child support obligation should be suspended during incarceration. Other factors that the courts consider are availability of other assets or income, the noncustodial parent's past and future ability to earn income, the length of incarceration, and applicable public policy such as the best interest of the child and the unclean hands doctrine.²³⁷

²³¹ 974 P.2d 493 (Colo. 1999).

²³² *Denton v. Sims*, 884 S.W.2d 86 (Mo. Ct. App. 1994).

²³³ *Id.*

²³⁴ *Mooney v. Brennan*, 848 P.2d 1020 (Mont. 1993).

²³⁵ *Davis v. Vance*, 574 N.E.2d 330 (Ind. Ct. App. 1991).

²³⁶ *Peters v. Peters*, 590 N.E.2d 777 (Ohio Ct. of App. 1990).

²³⁷ *Thomasson v. Johnson*, 903 P.2d 254 (N.M. Ct. App. 1995).

Disability. A noncustodial parent might claim that his or her inability to pay a support obligation results from a disability. As with any claim of inability to pay, the primary issue remains the veracity of these assertions. Fortunately, there are means available to confirm the disability of the noncustodial parent. Traditional discovery methods can be used to uncover any medical documents that would confirm the medical condition alleged by the noncustodial parent. Additionally, if the disability resulted from an injury that is employment related, the noncustodial parent's employer, or former employer, may have documentation relative to any injury or disability of the noncustodial parent. Benefits are available for many types of disabilities. These may be attachable by means of an income withholding or, as in the case of Social Security disability payments, payable directly to a child.

A related question is whether disability benefits paid directly to a child, based on a noncustodial parent's disability, should be included as income of that parent and credited against the parent's support obligation. States vary widely about how to mesh a noncustodial parent's child support obligation with income received by the child as a result of the noncustodial parent's disability. In interstate cases, it is the law of the State that issued the controlling order that governs whether the obligor should receive credit against his or her obligation for Social Security disability benefits.²³⁸

Denial of Visitation

Another equitable defense for failure to pay support is the denial of visitation from the custodial parent. Some State statutes specifically provide that a noncustodial parent shall not fail to pay child support due to the custodial parent's refusal to honor the noncustodial parent's visitation rights.²³⁹ Some courts have allowed this defense in a setoff for child support arrears.²⁴⁰

Equitable Estoppel/Acquiescence

This defense is used when the parties both agree to surrender their rights to something and not bring it before the court. The circumstances must be extreme and compelling, and the child's welfare cannot be jeopardized by the agreement. Courts review these cases with great scrutiny.

In *Pyne v. Black*, the court found that the custodial parent's agreement to forego child support in exchange for the noncustodial parent's agreement to forego visitation rights with children constituted estoppel.²⁴¹ Both mutually surrendered their rights.

²³⁸ See UIFSA § 604 (amended 2001) cmt, 9 Pt. 1B U.L.A. 355 (1999).

²³⁹ Fla. Stat. § 61.13(4)(b) (1999).

²⁴⁰ *Florida Dep't of Revenue v. David*, 684 So. 2d 308 (Fla. Dist. Ct. App. 1996).

²⁴¹ 650 So. 2d 1073 (Fla. Dist. Ct. App. 1995).

Conversely, however, the appellate court in *Fox v. Haislett* held that the facts did not constitute estoppel, foreclosing the custodial parent's right to enforce support. In this case, the trial court had found that the divorce decree required the noncustodial parent to pay for the minor child's tuition at private school.²⁴² The child attended private school for several years and then transferred to public school. When the child began failing, the custodial parent placed the child back in a different private school with higher tuition. The noncustodial parent refused to pay for the tuition, claiming the custodial parent was estopped from enforcing the tuition agreement because she had agreed to a modification of the decree by placing the child in public school. The trial court had concluded that the noncustodial parent was not responsible for the tuition at the child's new school but that the parent should pay for the tuition at the original private school the child had attended. The Appeals court reversed, finding that the noncustodial parent could not prove that the custodial parent mother was estopped from enforcing the tuition agreement. The actions of the custodial parent by sending the child to a public school and then back to private school did not give rise to estoppel. The trial court was in error when it ordered that the obligor was not responsible for the child's tuition at the new school.

Res Judicata

Res judicata is a Latin phrase that means after something is adjudicated, the issue cannot be raised again by either party; the order is final. In the context of child support enforcement, *res judicata* applies to assessments of arrears by administrative process or by a court. After the assessment is made or the judgment enrolled, the matter cannot be relitigated.

Bankruptcy

Many noncustodial parents seek relief from their financial obligations in the U.S. Bankruptcy Courts. Typically, such actions are filed under Chapter 7 or 13 of the Bankruptcy Code. In a Chapter 7 action, the relief sought is discharge from all dischargeable debts. Filings under Chapter 13 are for an adjustment of debts of an individual with regular income.

Over the years, numerous shifts in bankruptcy law have affected child support enforcement proceedings and provided IV-D practitioners with challenges and opportunities. The Bankruptcy Reform Act of 1994 provides increased protection for debts owed to the children and former spouses of debtors in bankruptcy.²⁴³

Automatic stay. By virtue of 11 U.S.C. § 362(a), creditors generally are prohibited from taking any actions to establish or collect debts while the debtor's

²⁴² 388 So. 2d 1261 (Fla. Dis. Ct. App. 1980).

²⁴³ P.L. No. 103-394 (1994).

bankruptcy proceeding is pending. This “stay” arises automatically on the filing of the bankruptcy petition.

The Bankruptcy Reform Act exempts actions to establish paternity and those to establish or modify alimony, maintenance, or support from the scope of the automatic stay.²⁴⁴ Additionally, it exempts alimony, maintenance, or support as property of the bankruptcy estate. Accordingly, actions to establish paternity or to establish or modify alimony, maintenance, or support are not subject to the automatic stay in the first place and, therefore, a child support practitioner need not move for relief from the stay.

Dischargeability. Child support debts are generally not dischargeable in bankruptcy. They are excepted, demonstrating a public policy favoring financial responsibility toward children. The changes to 11 U.S.C. § 523 made by the Bankruptcy Reform Act added a new exception to the discharge for some debts arising out of a divorce decree or separation agreement that are not in the nature of alimony, maintenance, or support.

Debt priority. Debts owed for child support and alimony or maintenance also have a high priority over other debts of the bankrupt noncustodial parent.²⁴⁵ This is important because, as the bankruptcy estate is liquidated and the debtor’s funds disbursed, there might not be sufficient funds to satisfy the claims of all creditors. Increasing the priority of child support claims makes it more likely they will be paid. If the full child support debt is not paid as part of the disbursement, they remain debts of the noncustodial parent and must ultimately be paid.

Debtor’s responsibility. In addition to providing notice to all affected creditors, the debtor is required to file a schedule of his or her assets, liabilities, exempt property, current income and expenditures, as well as a statement of financial affairs.²⁴⁶ This can be valuable information to the CSE attorney and should be obtained from the bankruptcy court. When a bankruptcy filing is made and the filing indicates the existence of a child support debt and its status, child support creditors or their representatives are allowed to intervene in bankruptcy proceedings without charge and without meeting any special local court rule or requirement for attorney appearances that they might otherwise have had to meet.²⁴⁷

Property exempt from execution. A provision of the Bankruptcy Code²⁴⁸ allows a debtor to exempt a portion of his or her property from the claims of creditors. A question arises as to whether child support debts can be enforced against property exempted from the petition. Claims for tax debts, alimony, and

²⁴⁴ 11 U.S.C. § 362(b)(2) (Supp. V 1999).

²⁴⁵ 11 U.S.C. § 507(a) (Supp. V 1999).

²⁴⁶ 11 U.S.C. § 521 (Supp. V 1999).

²⁴⁷ 11 U.S.C. § 547(c) (Supp. V 1999).

²⁴⁸ 11 U.S.C. § 522(d) (Supp. V 1999).

child support are neither dischargeable nor exemptible. As a result, exemption law is inoperative against claims for these debts. Creditors with claims for these debts, including child support obligees, are entitled under the Bankruptcy Code to proceed against a debtor's otherwise exempt property.²⁴⁹

INTERSTATE CASES

The problems of enforcing a support order are compounded when the noncustodial parent and the child live in different States. In the past, States attempted to enforce support obligations through the filing of an action under the Uniform Reciprocal Enforcement of Support Act (URESA)²⁵⁰. URESA only offered a two-state process for support enforcement purposes. With passage of the Uniform Interstate Family Support Act (UIFSA), however, States are now permitted to use either the traditional two-state enforcement approach or new direct enforcement mechanisms.²⁵¹

One-State Remedies

Even if a case involves two States, the following methods allow a CSE agency to enforce an order without the involvement of the second State court.

Direct income withholding. This remedy permits an individual or IV-D agency in one State to send an income withholding order directly to the obligor's employer, or other income holder, in another State. Nothing additional is required. Income withholding begins immediately, and continues unless the obligor raises a challenge.²⁵²

Administrative enforcement. UIFSA also permits an obligee in one State to request administrative enforcement of a support or income withholding order in the obligor's State or in a State with jurisdiction over his or her assets. Administrative enforcement does not require registration of the support order, and the process opens up any administrative remedy that is otherwise available in a local case.²⁵³ PRWORA's expansion of direct income withholding and administrative enforcement to all States will undoubtedly make these UIFSA procedures desirable enforcement options.

²⁴⁹ *S. & C Home Loans, Inc. v. Farr*, 224 B.R. 438 (Bankr. N.D. Cal. 1998).

²⁵⁰ Unif. Reciprocal Enforcement of Support Act (1950) (amended 1952 & 1958) (superceded by Rev. Unif. Reciprocal Enforcement of Support Act (1968)), 9B U.L.A. 553 (1987).

²⁵¹ For further discussions about interstate child support cases, see Chapter Twelve: Interstate Child Support Remedies.

²⁵² UIFSA §§ 501-506 (amended 2001), 9 Pt. 1B U.L.A. 336-348 (1999).

²⁵³ UIFSA § 507 (amended 2001), 9 Pt. 1B U.L.A. 349 (1999).

Two-state Remedies

UIFSA's two-state process of registration for enforcement mirrors URESA's registration procedures for the most part.²⁵⁴ Permissible defenses continue to be extremely limited.²⁵⁵ Unlike URESA, however, a challenge to the *amount* of alleged arrearages is time-limited.²⁵⁶ When an order is registered under UIFSA for enforcement only, the Act also specifically precludes modification.²⁵⁷ As with URESA, enforcement remedies are cumulative.²⁵⁸

Non-UIFSA Enforcement Remedies

There are enforcement remedies, apart from UIFSA, that might be effective in interstate cases. As a precondition for receiving Federal funding, every State is required to grant its IV-D agency authority to take certain enforcement actions administratively, without a court order.²⁵⁹ Administrative remedies must include authority to order income withholding; seize periodic or lump sum payments; attach and seize assets held in financial institutions; attach public and private retirement funds; impose liens, force the sale of property, and distribute proceeds; and increase monthly payments to cover amounts for arrearages. These remedies are available for other State IV-D cases as well.

Liens. One interstate enforcement option is a lien. On the date each support installment becomes due, it becomes a judgment by operation of law, if unpaid. This judgment is entitled to full faith and credit, and is enforceable in every State.²⁶⁰ Based on the judgment, the State can impose a lien against any real or personal property held by the obligor.²⁶¹ Each lien also is entitled to full faith and credit in other States, and can be imposed administratively across State lines, without registration of the underlying support order.²⁶² Child support liens serve as the basis for the seizure of bank accounts, Government benefits, lottery winnings, and other assets.

High-volume, automated administrative enforcement in interstate cases (AEI). As previously mentioned, States also are required to implement AEI, which involves using automation to request and provide interstate enforcement assistance for blocks of cases.²⁶³ Requests must include specific

²⁵⁴ UIFSA §§ 601- 615 (amended 2001), 9 Pt. 1B U.L.A. 352 -382 (1999).

²⁵⁵ UIFSA § 607 (amended 2001), 9 Pt. 1B U.L.A. 365 (1999).

²⁵⁶ UIFSA § 608, 9 Pt. 1B U.L.A. 367 (1999).

²⁵⁷ UIFSA § 603(c), 9 Pt. 1B U.L.A. 356 (1999).

²⁵⁸ UIFSA § 103, 9 Pt. 1B U.L.A. 272 (1999). *See, e.g., Commonwealth v. Sweat*, No. CR96-277, 41 Va. Cir. 104, 1996 Va. Cir. Lexis 456 (Cir. Ct. Spotsylvania Cty. Oct. 15, 1996) (UIFSA does not affect the availability or applicability of other remedies, including Virginia's criminal non-support statute and its relatives.)

²⁵⁹ 42 U.S.C. § 666(c) (Supp. V 1999).

²⁶⁰ 42 U.S.C. § 666(a)(9) (Supp. V 1999).

²⁶¹ 42 U.S.C. § 666(a)(4)(A) (Supp. V 1999).

²⁶² 42 U.S.C. § 666(a)(4)(B) (Supp. V 1999).

²⁶³ 42 U.S.C. § 666(a)(14) (Supp. V 1999).

information, including each noncustodial parent's name and Social Security Number, so that the assisting State can electronically seek matches from its databases. AEI can be used to enforce ongoing support as well as arrears. Note, however, that, in making an AEI request, the requesting State certifies that the arrears amount is accurately stated and that the requesting State has complied with all applicable due process requirements.²⁶⁴

The assisting State can use automated processing to search various State resources, including license records, the State Directory of New Hires, and financial institution data, to locate an obligor and that person's assets to assist in meeting the child support obligation.²⁶⁵ When a match is found, the assisting State IV-D agency can attach wages; suspend motor vehicle, recreational, or professional licenses; impose liens; and seize property, as appropriate, to enforce current and past-due support.

Full Faith and Credit for Child Support Orders Act. Although not truly a remedy, it is important to mention FFCCSOA.²⁶⁶ As amended by PRWORA, FFCCSOA requires the courts²⁶⁷ of each State and territory to accord full faith and credit to a child support order issued by a sister State that exercised proper personal and subject matter jurisdiction. One State's court must enforce another State's order, according to its terms.²⁶⁸ Objections are limited to the standard defenses of fraud, duress, and mistake of fact.²⁶⁹

FFCCSOA mirrors UIFSA's requirements regarding how to determine which of several existing orders prospectively controls the support obligation. FFCCSOA is also consistent with UIFSA's modification and choice of law provisions. Further, like UIFSA, FFCCSOA prohibits a State tribunal from entering a new order when one already exists or from modifying another State's order when one of the individual parties or the child remains in the issuing State. Both laws allow the individual parties to transfer jurisdiction from the State of continuing, exclusive jurisdiction by filing a written consent.²⁷⁰

CONCLUSION

Most of the work done by State CSE agencies is geared toward enforcing a child support obligation. Location of parties, paternity and support

²⁶⁴ *Id.*

²⁶⁵ *Id.* See also 42 U.S.C. § 666(a)(17) (Supp. V. 1999).

²⁶⁶ P.L. No. 103-383 (1994), codified at 28 U.S.C. § 1738B (Supp. V 1999).

²⁶⁷ FFCCSOA defines *court* to include a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or to modify a child support order.

²⁶⁸ 28 U.S.C. § 1738B(a)(1) (Supp. V 1999).

²⁶⁹ See, e.g., *Bednarsh v. Bednarsh*, 660 A.2d 575 (N.J. Super Ct. Ch. Div. 1995); *State v. Fenner*, 510 S.E.2d 534 (Ga. 1998) (fraud can be a basis for refusing to give a child support order full faith and credit).

²⁷⁰ 28 U.S.C. § 1738B(c) (Supp. V 1999).

establishment, and review and adjustment of orders are all important components in the child support enforcement process.

The process of child support enforcement has evolved. At the outset of the CSE program, tools accessible to child support enforcement attorneys were restricted to those available for collection of most any judgment for money. They were labor intensive, heavily reliant on the judiciary, and limited in scope. Now actions such as license revocation and passport denial are available. More traditional child support enforcement mechanisms, such as income withholding and liens, have taken on administrative qualities, making them even more efficient but requiring less work on the part of the attorney. Child support enforcement has even been expanded to allow the collection of medical support.

These changes to enforcement have affected the attorney's role. With the advent of administrative process and automated enforcement, such as liens and income withholdings, the attorney can concentrate his or her efforts on more complex enforcement actions. These actions, when coupled with administrative remedies, should result in greater child support collections and enhance the process of enforcement.

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Exhibit 10-1, Statutes of Limitations for the Enforcement of Child Support Arrears

STATE	STATUTORY PROVISION/CASE LAW
Alabama	A cause of action for child support arrears accrues on the date that each payment becomes due. An action to collect arrearages is barred 20 years after each payment comes due. Ala. Code § 6-2-32; <i>Leslie v. Beringer</i> , 636 So. 2d 441 (Ala. Civ. App. 1994); <i>Hardy v. Hardy</i> , 600 So. 2d 1013 (Ala. Civ. App. 1992).
Alaska	No time limitation applies to an action to enforce a domestic judgment debt. However, if a judgment creditor attempts to execute after 5 years, a writ will not issue in the absence of good cause. <i>Department of Revenue ex rel. Valdez v. Valdez</i> , 941 P.2d 144 (Alaska 1997); <i>State ex rel. Inman v. Dean</i> , 902 P.2d 1321 (Alaska 1995).
Arizona	A 3-year statute of limitations applies after the emancipation of the last child who was included in the support order. Ariz. Rev. Stat. Ann. § 25.503.
Arkansas	An action to recover accrued child support arrearages can be brought at any time up to and including 5 years after the child reaches age 18 years. Ark. Stat. Ann. § 9-14-236. No statute of limitations applies to an action to collect a child support arrearage from a party who leaves or remains outside Arkansas in order to avoid the payment of child support. Ark. Stat. Ann. § 9-14-36.
California	Child support judgments are enforceable until paid in full. Cal. Civ. Proc. Code § 351.
Colorado	The statute of limitations is 20 years for debts accrued before July 1, 1981; 6 years for debts accrued after that time. Colo. Rev. Stat. § 13-80-103.5; <i>In re Marriage of Aragon</i> , 773 P.2d 1110 (Colo. Ct. App. 1989). Judgments are renewable before expiration.
Connecticut	There is no statute of limitations for child support enforcement.

STATE	STATUTORY PROVISION/CASE LAW
Delaware	The obligation for the payment of arrears or past due child support terminates by operation of law when all arrears or past due support have been paid. Del. Code Ann. tit. 13, § 517(c). Pursuant to case law, laches is not a defense to the payment of court ordered child support.
District of Columbia	Each support payment becomes a separate judgment as of the date it falls due. The life of each judgment is 12 years, whether or not recorded. <i>Loman v. Spriggs</i> , 404 A.2d 943 (D.C. 1979).
Florida	There is no statute of limitations for an action to recover child support or alimony. <i>Dean v. Dean</i> , 665 So. 2d 244 (Fla. Ct. App. 1995).
Georgia	There is no statute of limitations for child support enforcement. Ga. Code § 9-12-60.
Hawaii	Unless an extension is granted, the statute of limitations is 10 years after the date each payment becomes due. Hawaii Rev. Stat. § 657.5; <i>Lindsey v. Lindsey</i> , 6 Haw. App. 201, 716 P.2d 496 (1986). A decree creditor can avoid the effect of the statute of limitations, on the unpaid enforceable arrears on which the statute has not run, by obtaining a new decree for the total unpaid, enforceable balance.
Idaho	An action to collect child support arrears must be brought within 5 years after the child reaches the age of majority or within 5 years after the child's death, if the child dies before reaching majority. Idaho Code § 5-245.
Illinois	A support order is a series of judgments against the obligor in the amount of each payment or installment. Each judgment is entered as of the date that the corresponding payment or installment becomes due. 305 Ill. Comp. Stat. 5/10-10. A 20-year statute of limitations applies to past due child support and alimony payments. <i>Kramer v. Kramer</i> , 253 Ill. App. 3d 923, 624 N.E.2d 808 (1993).

STATE	STATUTORY PROVISION/CASE LAW
Indiana	The obligation to pay child support arrearages does not terminate when the person's duty to support a child ceases under the Code. Ind. Code § 31-16-12-3. An action to enforce a child support obligation or arrears must be commenced within 10 years after the child's 18th birthday or emancipation, whichever occurs first. Ind. Code § 34-11-2-10.
Iowa	There is no statute of limitations on child support collection. Iowa Code § 614.1(6).
Kansas	There is a 3-year statute of limitations following the age of majority, with a 7-year cap. Kan. Stat. Ann. §§ 60-24.03 and 60-24.04.
Kentucky	The statute of limitations is 15 years. Ky. Rev. Stat. § 413.090; <i>Heisley v. Heisley</i> , 646 S.W.2d 477 (Ky. Ct. App. 1984). Unpaid payments become vested when due. <i>Stewart v. Raikes</i> , 627 S.W.2d 586 (Ky. 1982). At the time the action accrues, if the obligor is absent from the State, the limitations period is computed from the time of his or her return to the State. Ky. Rev. Stat. § 413.190. An action on behalf of a child can be brought within 15 years of the child's emancipation. Ky. Rev. Stat. § 413.170.
Louisiana	In civil cases, the statute of limitations is called <i>liberative prescription</i> . An action to make executory arrearages of child support is subject to a liberative prescription of 10 years. La. Civ. Code Ann. art. 3501.1.
Maine	There is a 6-year statute of limitations after a cause of action accrues. Me. Rev. Stat. Ann. § 14-752. Every judgment and decree is presumed to be paid and satisfied at the end of 20 years after any duty or obligation accrued thereunder. Me. Rev. Stat. Ann. § 14-864.
Maryland	There is a 3-year statute of limitations, from the date the payment becomes due, to bring a contempt action for failure to pay child support. Md. Code Ann., Fam. Law § 10-102. Judgments can be collected on for 12 years and may be renewed before expiration. Md. Code Ann., Cts. & Jud. Proc. § 5-102; <i>Miller v. Miller</i> , 70 Md. App. 1, 519 A.2d 1298 (1987).

STATE	STATUTORY PROVISION/CASE LAW
Massachusetts	An action to recover arrears must be commenced within 6 years after the child reaches age 21. Mass. Gen. Laws Ann. ch. 260, §§ 2 and 7. If an obligor lives outside of the Commonwealth, this time is excluded in determining the period for commencement of the action. Mass. Gen. Laws Ann. ch. 260, § 9.
Michigan	The statute of limitations is 10 years after the last support payment is due under the support order. Mich. Comp. Laws § 600.5809(4).
Minnesota	There is a general statute of limitations of 10 years. Minn. Stat. § 541.04.
Mississippi	For support arrearages, the statute of limitations is 3 years after the child reaches age 21, if the obligor is a Minnesota resident. If the obligor is a nonresident, the statute of limitations is 7 years after the child reaches age 21. Miss. Code Ann. § 15-1-45; <i>Keith v. Department of Human Services</i> , 702 So. 2d 397 (Miss. 1997).
Missouri	The statute of limitations is 10 years from the date due. If the judgment is revived, there may be an additional 10 years. Mo. Rev. Stat. § 516.350.
Montana	An action to collect past due child support, which accrued after October 1, 1993, must be commenced within 10 years of the termination of the support obligation or within 10 years after the entry of a lump-sum judgment or order for support arrears, whichever is later. Mont. Code Ann. § 27-2-201. The statute of limitations for an action to collect past due child support, which accrued before October 1, 1993, is 10 years after the cause of action accrues, but not more than 10 years after the child reaches the age of majority. Mont. Code Ann. §§ 27-2-201 and 27-2-401.
Nebraska	All judgments and orders for the payment of money are liens; however, they cease to be liens 10 years from the date the youngest child reaches majority or dies, or the most recent execution was issued to collect the judgment, whichever is later. Such a lien may not be reinstated. Neb. Rev. Stat. § 42-371.

STATE	STATUTORY PROVISION/CASE LAW
Nevada	If a court issues a child support order, there is no statute of limitations on the time to collect arrearages under that order. Nev. Rev. Stat. §125B.050(3). There is no limitation on arrears accrued after July 1, 1987. <i>Washington ex rel. Anglin v. Bagley</i> , 1998 Nev. Lexis 109 (Nev. Sept. 1, 1998); <i>McKellar v. McKellar</i> , 190 Nev. 200, 871 P.2d 296 (1994).
New Hampshire	The statute of limitations to collect arrears is within 6 years after the cause of action accrues. N.H. Rev. Stat. § 508.4; <i>Griffen v. Avery</i> , 120 N.H. 783, 424 A.2d 175 (1980).
New Jersey	There is no statute or case law establishing a statute of limitations for enforcement of support arrears. The S/L is 20 years on judgments issued by a N.J. court of record. For a foreign judgment, <u>other than child support</u> , it is 20 years or the period allowed in the issuing State, whichever is shorter (unlike UIFSA in interstate support cases). N.J. Rev. Stat. Ann. § 2A:14-5.
New Mexico	An action by the custodial party or a third party is subject to the 14-year statute of limitations, which pertains to an action on a judgment. N.M. Stat. Ann. § 37-1-2. The statute of limitations is 1 year after the child reaches the age of majority. N.M. Stat. Ann. § 37-1-10; <i>Slade v. Slade</i> , 81 N.M. 462, 468 P.2d 627 (1970).
New York	The statute of limitations on alimony arrears is 20 years after default. N.Y. Civ. Prac. Law § 211; <i>Re Will of Johhanson</i> , 76 Misc. 2d 472, 350 N.Y.S. 2d 93 (1972). Actions for child support arrears may be brought until paid in full. N.Y. Fam. Ct. Act § 451; <i>In re Connors v. Connors</i> , 425 N.Y.S. 2d 746 (N.Y. Fam. Ct. 1980).
North Carolina	The statute of limitations is 10 years to bring an action on a judgment for child support arrears. N.C. Gen. Stat. § 1-47; <i>Adkins v. Adkins</i> , 82 N.C. 289, 346 S.E. 2d 220 (1986).
North Dakota	The statute of limitations on child support arrears is 10 years. N.D. Cent. Code § 28-01-15; <i>Richter v. Richter</i> , 126 N.W. 2d 634 (N.D. 1964). Actions by the State or on behalf of the child may be brought within 10 years of the time the child reaches majority. <i>Fusion v. Schible</i> , 494 N.W. 2d 593 (N.D. 1992). Child support arrears become judgments as a matter of law on the date of accrual. N.D. Cent. Code § 14-08.1.05.

STATE	STATUTORY PROVISION/CASE LAW
Ohio	The statute of limitations for child support arrears is within 10 years after the cause of action accrues. Ohio Laws § 2305.14. When the cause of action accrues while the obligor is out of the State or concealed, the period does not begin to run. Also, any time of imprisonment does not count as a part of the limitation period. Ohio Laws § 2305.15.
Oklahoma	There is no statute of limitations for unpaid child support due after October 1, 1982. Okla. Stat. tit. 12, § 95; <i>Logon v. Logon</i> , 877 P.2d 51 (Okla. 1994).
Oregon	Notwithstanding other provisions, a judgment resulting from an unpaid child support obligation, entered after January 1, 1994, and any docketed or recorded lien thereon, expires 25 years after entry of the child support judgment and is not subject to renewal. A judgment resulting from an unpaid child support obligation entered before January 1, 1994, and any docketed or recorded lien thereon, may be renewed for a 10-year period as provided in § 18.360. The 10-year period does not apply to any judgment that expired before January 1, 1994. The entry of a child support judgment before January 1, 1994 creates a continuing personal obligation that is enforceable for 25 years after the date of entry. Enforcement by means of foreclosure against real property requires a judgment lien. However, all other remedies are available on the child support judgment.
Pennsylvania	There is no statute of limitations on actions against a support obligor brought by the Commonwealth, a county, or an institution to recover the cost of supporting a person who was a public charge. However, an enforcement action to collect arrears against real property is limited to 20 years. 42 Pa. Cons. Stat. § 5529. An obligor's concealment or absence from Pennsylvania may extend the limitations period. 42 Pa.Cons. Stat. § 5532.
Rhode Island	The general limitation period applies to an action on a judgment. That period is 20 years after the cause of action accrues. R.I. Gen. Laws §§ 9-1-17 and 15-5-16.3; <i>Healey v. Healey</i> , 591 A.2d 1216 (R.I. 1991). There is no statute of limitations for income or wage withholding to enforce child support arrears. R.I. Gen. Laws §§ 15-5-24(g) and 15-5-25(f).

STATE	STATUTORY PROVISION/CASE LAW
South Carolina	When the cause of action accrues against a person who is outside of the State, the action may be commenced after the person's return. If the person remains outside of the State continuously for 1 year or more, this period is not to be considered a part of the time for the commencement of the action. A paternity or child support enforcement action, brought by the child, may be commenced within 1 year after the child reaches age 21, if the statute of limitations expired before that time. The statute of limitations on an action to collect child support arrears is 10 years. S.C. Code Ann. § 15-3-600.
South Dakota	To recover child support arrears, an action may be brought on a judgment within 20 years after the child reaches the age of majority. S.D. Codified Laws Ann. § 15-2-22.
Tennessee	Judgments for child support payments are enforceable without limitation as to time. Tenn. Code Ann. § 36-2-321.
Texas	A court rendering an order for child support arrearages retains jurisdiction until current support, medical support, and arrearages (including interest, fees, and costs) are paid. Tex. Fam. Code §§ 157.005(b) and 157.269. The time to bring a contempt action is limited to 6 months after the child becomes an adult or after the obligation terminates by order or by operation of law.
Utah	The statute of limitations on all civil actions is 8 years. Utah Code Ann. § 78-12-22.
Vermont	The statute of limitations is 8 years. Vt. Stat. Ann. tit. 12, § 506. Child support arrears may be collected for up to 6 years after the last child named in the order reaches the age of emancipation. Vt. Stat. Ann. tit. 15, § 606(c).
Virginia	The statute of limitations is 10 years after the due date. Va. Code § 38-3-18.
Washington	For an order issued after July 23, 1989, the limitations period on child support is 10 years after the 18th birthday of the youngest child named in the order. The limitations period is 10 years from the date accrued for arrears accrued before July 23, 1989. Wash. Rev. Code Ann. § 4.16.020.

STATE	STATUTORY PROVISION/CASE LAW
West Virginia	The statute of limitations is 10 years. W. Va. Code § 38-3-18.
Wisconsin	If an action is brought on behalf of a child, the limitations period is 20 years after the payment accrues or the child reaches the age of majority, whichever is later. Wis. Stat. Ann. §§ 893.16 and 893.40; <i>Kroeger v. Kroeger</i> , 353 N.W.2d 60 (Wis. Ct. App.1984). An independent action for a money judgment for child support arrearages cannot be brought until the child reaches age 18.
Wyoming	A judgment becomes dormant 5 years after the last execution. Wyo. Stat. § 1-17-307. However, it can be revived for 21 years after it becomes dormant. Wyo. Stat. § 1-16-503; <i>Hollingshead v. Hollingshead</i> , 942 P.2d 1104 (Wyo. 1997). Thus, arrearages can be enforced for a minimum of 26 years after accrual.

Exhibit 10-2, State Child Support Lien Information

Condensed from the State Child Support Lien Contacts Matrix

Department of Health and Human Services
 Administration for Children and Families
 Office of Child Support Enforcement, April 1999

STATE	PROCESS	TRIGGER CRITERIA	WHERE FILED	FEES
Alabama	Administrative Judicial	\$1,500 arrearage Income withholding not possible or NCP has or is likely to acquire property	Administrative:County, Judge of Probate's Office -where real property is located County, Secretary of State - personal property . In records where Uniform Commercial Code financing statements are filed Judicial: County, Judge Probate's Office -where property located	Varies
Alaska	Administrative	\$2,500 arrearage or 1 year behind in payments	County	None
Arizona	Administrative Judicial	Unpaid balance equals 2 months' support money. Unpaid amount constitutes lien by operation of law	County where property exists	Waived
Arkansas	Judicial	Any arrearage balance Operation of law	County	\$100 filing fee
California	Judicial	RP-IV-D child support order PP-At discovery of personal assets, Notice of Judgment Lien filed	RP-County Recorder's Office PP- Secretary of State	Varies
Colorado	Administrative	Any arrearage	RP-County clerk and recorder Where property located PP-Central Indexing System Vehicles-County clerk and Recorder except Denver County--DMV	No fee RP or PP \$20 MV All must have value of \$5,000
Connecticut	Quasi-Judicial	Past due Support of \$500 or more	Local	\$10.00

STATE	PROCESS	TRIGGER CRITERIA	WHERE FILED	FEES
Delaware	Judicial Administrative	IV- D Case Varies	RP:Register of Wills, or Prothonotary PP:Register of Wills, or Clerk of Court, or Prothonotary, or Attorneys' of Record, or Sec. of Industrial Accident Board.	Varies
District of Columbia	Administrative Judicial	Any arrearage	State, Recorder of Deeds	None
Florida	Administrative Judicial	RP - any delinquency PP - \$600 Arrearage	State RP - Clerk of Court PP - Department of Highway and Safety Motor Vehicles	RP-None Out/State - \$6+4.50 pg PP -\$7 MV Vessels, \$1.50
Georgia	Administrative Judicial	Arrearage equal to 1 month support payment	County - RP County - PP, Secretary of State, Motor Vehicles, County Recording Office	None
Guam	Administrative	Arrearage equal to 6 times monthly support obligation <u>and</u> obligor is delinquent in court established plan to repay	RP - Guam Dept of Land Management PP - Guam Dept of Revenue and Taxation	None
Hawaii	Administrative Judicial	Any arrearage	Central State Filing Location: Bureau of Conveyances	\$25 for private & out of state requests
Idaho	Administrative	\$2,000 arrearage or 90 days past due	State	None
Illinois	Judicial	\$1,000 arrearage for PP \$10,000 arrearage for RP	County, County Recorder of Deeds	Varies
Indiana	Administrative Judicial	RP & PP - any delinquent amount \$1,000 arrearage for motor vehicle	County State Child Support Bureau for BMV lien	None
Iowa	Administrative Judicial	Automatic judgment in County where support order is filed	County	RP--\$10.00 PP—none (Vehicles)
Kansas	Judicial	Unpaid installment (full or partial)	County	\$5.00 PP Others vary

STATE	PROCESS	TRIGGER CRITERIA	WHERE FILED	FEES
Kentucky	Administrative Judicial	Arrearage equal to 1 month and support has been assigned to the Cabinet for Families and Children	County	Varies County to County
Louisiana	Administrative Judicial	Any arrearage	County	\$18.00 Filing Fee
Maine	Administrative	21 Days after receipt of Notice of Debt OR 30-days after IV-D Agency's decision that requires noncustodial parent to pay child support.	RP – County Registry of Deeds PP – Secretary of State	\$8.00 copy Additional pages are \$2.00 \$20.00
Maryland	Judicial	Judgment	Circuit Court for the County in which the asset is located	Statewide: \$15 for Recording, \$25 Writ of Garnish- Ment
Massachusetts	Administrative	Property subject to lien 30 days after DOR sends notice of child support debt. Where agency determines collection of debt will be jeopardized by delay, lien may be filed without regard to 30-day period.	RE – County Registry of Deeds PP – Secretary of State	None
Michigan	Administrative Judicial	Past due support	RE - County Registry of Deeds PP - Secretary of State	RE Only \$9-1 st page, \$2-2 nd page up
Minnesota	Administrative Judicial	Judgment	County District Courts	None
Mississippi	Judicial	Judgment	State, County, Local Circuit Clerk's Office	\$7.50 per document
Missouri	Administrative	\$1,000 arrearage for PP \$500 arrearage for RP	State - PP County - RP	None

STATE	PROCESS	TRIGGER CRITERIA	WHERE FILED	FEES
Montana	Administrative	Delinquency greater than \$150 Debt unenforceable by income withholding Value of property exceeds value of any exemptions, service of process and execution, and amount of any superior liens	RP-County Clerk of District Court where property located Under Montana District Court are 21 Districts, 56 Counties PP-State Office of Secretary of State, SOS, (non-licensed, non-Titled PP) MV-State Dept of Justice Motor Vehicle Division	MV-\$4.00 SOS-\$7.00
Nebraska	Judicial	Child support order	County	Varies
Nevada	Judicial	Child support order	County RP & PP - County Recorder's Offices	None Fixed rate - Copying & Certifying
New Hampshire	Administrative Judicial	\$1,500 arrearage	RP – County Registry of Deeds PP – Local City Clerk Directly with Bank after Asset Location	None
New Jersey	Judicial	Any arrearage	State	\$25 Judgments \$5.00 Writ
New Mexico	Judicial	Any arrearage Operation of law	County	Varies
New York	Judicial	Arrears greater than 4 months (not including amounts of any unpaid retroactive support ordered).	County Level	Minimal
North Carolina	Administrative	3 months arrearage or \$3,000. Interstate requests need proof of service of process on noncustodial parent, and location of property	NC Central Registry forwards to County where property is located	TBD by Clerk of Court

STATE	PROCESS	TRIGGER CRITERIA	WHERE FILED	FEES
North Dakota	Administrative	RP-due date of support obligation PP-arrearage equals 6 times monthly obligation <u>and</u> obligor is delinquent in court established plan to repay	County Court Clerk - RP ND DOT - Vehicle ND Secretary of State-Vessel	Appropriate filing entity determines actual costs
Ohio	Administrative Judicial	Default. Liens are discretionary given case circumstances	County Recorder's Office	None
Oklahoma	Administrative	90-day arrearage balance	County	Based on actual costs
Oregon	Administrative	Any arrearage SED or DA issues a writ to be executed by Sheriff	County Clerk	None at county
Pennsylvania	Judicial Administrative	Any child support arrearage	County	\$5 - \$25
Puerto Rico	Administrative. Judiciary responsible for interstate actions pending in court prior to 7/95	30-day arrearage and associated penalties, costs and fees count towards amount	Local or wherever underlying lien statute provides	None
Rhode Island	Administrative Judicial	\$500 or more arrearage	RP – Local Boat – DEM Directly with bank after asset location PP – Secretary of State	None
South Carolina	Administrative	\$1,000 or more arrearage	County - Registrar of Mesne Conveyance	None
South Dakota	Administrative	Any arrearage	County Register of Deeds	None
Tennessee	Administrative Judicial	\$500 or more arrearage	Local	None
Texas	Administrative Judicial	Any arrearage balance Operation of law	County	None
Utah	Administrative Judicial	\$150 TANF, \$500 non-TANF. 1 month delinquent, annual notice + 30 days, no bank, no good cause	County	None

STATE	PROCESS	TRIGGER CRITERIA	WHERE FILED	FEES
Vermont	Administrative Judicial	Court Order is 30-days old with no appeal pending. Debts must be greater than 1/12 th of annual obligation	Town and/or City Clerks	\$7.00 Per Page
Virgin Islands	Administrative Judicial	Any amount of arrearage pursuant to statute (30-days minimum arrearage)	RE – Lt. Governor Others – Central locations for each Island	None
Virginia	Administrative Judicial	Arrears equal or exceed \$500 or evidence that NCP owns real or personal property	Circuit Court where assets are located	None
Washington	Administrative	Any arrearage \$500 or more	County	None. Central Registry-- \$8 - 1 st page filed in County + \$1 additional page
West Virginia	Judicial	PP - 14 days delinquent, whole or partial payments RP - 30 days arrears	County	For PP and RP Liens, \$5. \$10 Writ of Execution. County Office, \$1 Abstract \$1.50 Writ SOP, \$10 CertMail \$20 Sheriff
Wisconsin	Administrative	Arrearage equal to or greater than one month's support or \$500, whichever is greater	County Registry of Deeds State Department of Transportation	None
Wyoming	Judicial	Arrearage equal to 3 times monthly support obligation	County	None

This document is part of an attachment to Dear Colleague Letter 99-48.

Exhibit 10-3, Interest Chart

STATE	STATUTE	PERTINENT TEXT
Alabama	Ala. Code § 8-8-10	Judgments for the payment of money, other than costs, if based upon a contract action, bear interest from the day of the cause of action, at the same rate of interest as stated in said contract; all other judgments shall bear interest at the rate of 12 percent per annum, the provisions of section 8-8-1 to the contrary notwithstanding; provided that fees allowed a trustee, executor, administrator, or attorney and taxed as a part of the cost of the proceeding shall bear interest at a like rate from the day of entry.
Alaska	Alaska Stat. § 25.27.020(a)(2)(B)	<p>The agency shall adopt regulations to carry out the purposes of this chapter, including regulations that establish subject to AS 25.27.025 and to federal law, a uniform rate of interest on arrearages of support that shall be charged the obligor upon notice if child support payments are 10 or more days overdue or if payment is made by check backed by insufficient funds; however, an obligor may not be charged interest on late payment of a child support obligation, other than a payment on arrearages, if the obligor is</p> <ul style="list-style-type: none"> (i) employed and income is being withheld from the obligor's wages under an income withholding order; (ii) receiving unemployment compensation and child support obligations are being withheld from the obligor's unemployment payments under AS 23.20.401; or (iii) Receiving compensation from disabilities under AS 23.30 and child support obligations are being withheld from the obligor's compensation payments. <p>The rate of interest imposed under AS 25.27.020(a)(2)(C) shall be 6% a year or a lesser rate that is the maximum rate of interest permitted to be imposed under Federal law.</p>

Arizona	Ariz. Rev. Stat. Ann. § 44-1201(A)	Interest on any loan, indebtedness, judgment or other obligation shall at the rate of ten percent per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to.
Arkansas	Ark. Code Ann. § 9-14-233(a)	All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum.
California	Cal. Civ. Proc. Code § 685.010(a)	Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.
Colorado	Colo. Rev. Stat. § 14-14-106. Interest. Colo. Rev. Stat. § 5-12-101. Legal rate of interest.	Interest per annum at four percent greater than the statutory rate set forth in section 5-12-101, C.R.S. (if there is no agreement or provision of law for a different rate, the interest on money shall be at the rate of eight percent per annum, compounded annually), on any arrearages and child support debt due and owing may be compounded monthly and may be collected by the judgment creditor; however, such interest may be waived by the judgment creditor, and such creditor shall not be required to maintain interest balance due accounts.
Connecticut	None. This is part of the State's father-friendly initiative.	
Delaware	No automatically accruing interest.	
District of Columbia	D.C. Code Ann. § 30-504 and § 28-3302 (c)	An award of child support is a money judgment that becomes absolute, vested, and upon which execution may be taken, when it becomes due.
Florida	None	
Georgia	Ga. Code Ann. § 19-11-7(e)	The department may collect the legal rate of interest on any judgment obtained in any support action initiated by the department.
Hawaii	Haw. Rev. Stat. § 478-3	Interest at the rate of ten percent a year, and no more, shall be allowed on any judgment recovered before any court in the State, in any civil suit.

Idaho	Idaho Code Ann. § 28-22-104	<p>The legal rate of interest on money due on the judgment of any competent court or tribunal shall be the rate of five percent (5%) plus the base rate in effect at the time of entry of the judgment. The base rate shall be determined on July 1 of each year by the Idaho State treasurer and shall be the weekly average yield on United States treasury securities as adjusted to a constant maturity of one (1/8%). The base rate shall be determined by the Idaho State treasurer utilizing the published interest rates during the second week in June of the year in which such interest is being calculated. The legal rate of interest as announced by the treasurer on July 1 of each year shall operate as the rate applying for the succeeding twelve (12) months to all judgments declared during such succeeding twelve (12) month period. The payment of interest and principal on each judgment shall be calculated according to a three hundred sixty-five (365) day year.</p>
Illinois	<p>735 ILCS 5/12-109</p> <p>735 ILCS 5/2-1303</p>	<p>Every judgment except those arising by operation of law from child support orders shall bear interest thereon as provided in Section 2-1303. Every judgment arising by operation of law from a child support order shall bear interest as provided in Section 2-1303 commencing 30 days from the effective date of each judgment.</p> <p>Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied or 6% per annum when the judgment debtor is a unit of local government, as defined in Section 1 of Article VII of the Constitution, a school district, a community college district, or any other governmental entity. When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. Interest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time. The judgment debtor may be tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment.</p>

Indiana	Ind. Code Ann. § 31-6-6.1-35.5	<p>(a) The court may, upon application by a person or agency entitled to receive child support payments ordered by that court, order interest charges equal to one and one half percent (1.5%) per month to be paid on any delinquent child support payments that occur. An application may be made by the person or agency at the time the support order is issued or modified, or whenever support payments are not made in accordance with the support order.</p> <p>(b) Interest charges may be collected in the same manner as support payments.</p>
Iowa	Iowa Code Ann. § 535.2	...the rate of interest shall be five cents on the hundred by the year...
Kansas	Kan. Stat. Ann. § 16-204(e)(2)	...the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure for limited action shall be 12% per annum.
Kentucky	Ky. Rev. Stat. § 360.040	A judgment shall bear twelve percent (12%) interest compounded annually from its date. A judgment may be for the principal and accrued interest; but if rendered for accruing interest on a written obligation, it shall bear interest in accordance with the instrument reporting such accruals, whether higher or lower than twelve percent (12%) if the court rendering such judgment, after a hearing on that question, is satisfied that the rate of interest should be less than twelve percent (12%). All interested parties must have due notice of said hearing.
Louisiana	La. Civil Code Ann. art. 2000 and art. 2024 , La. Code Civ. Proc. art. 1921	<p>Interest on child support arrears is governed by La.C.C. Art. 2000, regarding collecting interest on monetary obligations, the rate of interest is fixed by Article 2024 and varies from year to year.</p> <p>No specific provision authorizes interest for child support arrears.</p> <p>La.C.C.P.Art.1921 states the court shall award interest in the judgment as prayed for or as provided by law –the party seeking interest on an arrearage must include in the pleading a prayer asking the court to award interest on each payment from the time it fell due. While attorneys in private cases routinely ask for interest on child support arrearages, state attorneys in IV-D cases do not usually ask for interest on arrearage.</p>

<p>Maine</p>	<p>Me. Rev. Stat. Ann. tit. 14, § 1602-A</p>	<p>From and after the sate of entry of an order of judgment, including the period of the pendency of an appeal, interest shall be allowed at a rate:</p> <ol style="list-style-type: none"> 1. For actions in which the damages claimed or awarded do not exceed the jurisdictional limit of the District Court set forth in Title 4, section 153, of 15% per year; and 2. For other actions, equal to the coupon issue yield equivalent, as determined by the United States Secretary of the Treasury, of the average accepted auction price for the last auction of 52-week United States Treasury bills settled immediately prior to the date from which the interest is calculated, plus 7%. <p>If the prevailing party at any time requests and obtains a continuance for a period in excess of 30 days, interest shall be suspended for the duration of the continuance. On petition of the nonprevailing party and on a showing of good cause, the trial court may order that interest awarded by this section shall be fully or partially waived.</p>
<p>Maryland</p>	<p>Md. Code Ann., Cts. & Jud. Proc. § 11-107(a)</p>	<p>Except as provided in §11-106 of this article, the legal rate of interest on a judgment shall be at the rate of 10 percent per annum on the amount of judgment.</p>
<p>Massachusetts</p>	<p>Mass. Ann. Laws ch. 231, § 6H</p>	<p>In any action in which damages are awarded, but in which interest on said damages is not otherwise provided by law, there shall be added by the clerk of court to the amount of damages interest thereon at the rate provided by section six B to be determined from the date of commencement of the action even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law.</p>
<p>Michigan</p>	<p>1995 Mich. Public Acts141</p>	<p>Michigan is unique in that it does not charge interest on child support arrears but requires the Friend of the Court to levy an annual surcharge of 8% on all support payments that are past due as of January 1 and July 1 each year. Any surcharge collected on support due to a parent will be paid to that parent. For amounts due to the State of Michigan, the surcharge is payable to the State.</p>

Minnesota	Minn. Stat. Ann. § 518.585	Any judgment or decree of dissolution or legal separation containing a requirement of child support and any determination of parentage, order under chapter 518C, order under section 256.87, or order under section 260B.331 or 260C.331, must include a notice to the parties that section 548.091, subdivision 1a, provides for interest to begin accruing on a payment or installment of child support whenever the unpaid amount due is greater than the current support due.
Mississippi	Miss. Code Ann. § 75-17-7	All judgments or decrees founded in any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered. All other judgments or decrees shall bear interest at a per annum rate set by the judge hearing the complaint from a date determined by such judge to be fair, but in no event prior to the filing of the complaint.
Missouri	Mo. Ann. Stat. § 454.520	<ol style="list-style-type: none"> 1. All delinquent child support and maintenance payments which have accrued based upon judgments or orders of courts of this State entered prior to September 29, 1979 shall draw interest at the rate of six percent per annum through September 28, 1979; at the rate of 9% per annum from September 29, 1979 through August 31, 1982; and thereafter at the rate of one percent per month. 2. All delinquent child support and maintenance payments which have accrued based upon judgments or order of courts of this State entered after September 28, 1979, but prior to September 1, 1982, shall draw interest at the rate of nine percent per annum through August 31, 1982, and thereafter at the rate of one percent per month. 3. All delinquent child support and maintenance payments which accrue based upon judgments of courts of this State entered on or after September 1, 1982 shall draw interest at the rate of one percent per month.
Montana	Mont. Code Ann. § 25-9-205 and Rule 31	Although there is statutory authority to collect interest on a judgment, there is no provision that relates to collection of interest on child support arrearages. As a general rule, it is not calculated by the IV-D agency.

Nebraska	Neb. Rev. Stat. § 125B.095	<ol style="list-style-type: none"> 1. Except as otherwise provided in NRS 125B.012, if an installment of an obligation to pay support for a child which arises from the judgment of a court becomes delinquent in the amount owed for 1 month's support, a penalty must be added by operation of this section to the amount of the installment. This penalty must be included in a computation of arrearages by a court of this State and may be so included in a judicial or administrative proceeding of another State. 2. The amount of the penalty is 10 percent per annum, or portion thereof, the installment that remains unpaid. Each district attorney or other public agency in this State undertaking to enforce an obligation to pay support for a child shall enforce the provisions of this section.
Nevada	Nev. Rev. Stat. § 99.040	<p>When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the commissioner of financial institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due.</p>
New Hampshire	N.H. Rev. Stat. Ann. § 336:1	<ol style="list-style-type: none"> 1. The annual rate of interest in all business transactions in which interest is paid or secured, unless otherwise agreed upon in writing, shall equal 10 percent. No consumer credit transaction, as defined in RSA 358-K:1,V, shall be subject to this paragraph. If agreed upon in writing, interest on business transactions may include charging other than simple interest.

<p>New Jersey</p>	<p>N.J. Stat. Ann. § 2A:17-56-20</p>	<ul style="list-style-type: none"> a. In enforcing all existing and future orders for support, and notwithstanding other provisions to the contrary, the State IV-D agency, without a new order, shall have the authority to assess interest or late payment fees on any support order not paid within 30 days of the due date. b. The late payment fee or interest shall be determined by the State IV-D agency within amounts specified by the Federal Department of Health and Human Services. c. The fee or interest shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee or interest may be collected only after the full amount of overdue support is paid and all State requirements for the notice to the obligor have been met. d. The collection of the fee or interest shall not directly or indirectly reduce the amount of current or overdue support paid to the obligee to whom it is owed. e. The late payment fee or interest shall be uniformly applied in all cases administered under the State IV-D program, including public assistance, and foster care cases.
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<p>New Mexico</p>	<p>N.M. Stat. Ann. § 40-4-7.3</p> <p>§ 56-8-4</p>	<p>A. Interest shall accrue on delinquent child support and spousal support at the rate set for in Section 56-8-4 NMSA 1978 in effect when the support payment becomes due and shall accrue from the date the support is delinquent until the date the support is paid or consolidated in a judgment.</p> <p>B. Interest shall accrue on a consolidated judgment for delinquent support at the rate provided in Section 56-8-4 NMSA 1978 in effect when the consolidated judgment is entered until the judgment is satisfied.</p> <p>C. Unless the order, judgment, decree or wage withholding order specifies a due date other than the first day of the month, support shall be due on the first day of each month and, if not paid by that date, shall be delinquent.</p> <p>D. In calculation of support arrears, payments of support shall be first applied to the current support obligation, next to any delinquent support, next to any consolidated judgment of delinquent support, next to any accrued interest on delinquent support and next to any interest accrued on a consolidated judgment of support.</p> <p>A. Interest shall be allowed on judgments and decrees for the payment of money from entry and shall be calculated at the rate of eight and three-quarters percent per year, unless the judgment is rendered on a written instrument having a different rate of interest, in which case interest shall be computed at a rate no higher than specified in the instrument or the judgment is based on tortious conduct, bad faith, or intentional or willful acts, in which case interest shall be computed at the rate of fifteen percent.</p>
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New York	N.Y. Civ. Prac. L. & R. 5003 and 5004	Interest on a judgment is 9% and starts to accrue from the date the money judgment is issued until it is paid in full.
North Carolina	N.C. Gen. Stat. § 24-5(b)	In an action other than contract, the portion of money judgment designated by the fact finder as compensatory damages bears interest from the date the action is instituted until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate.
North Dakota	N.D. Cent. Code § 28-20-34	Interest is payable on judgments recovered in the courts of this State at the same rate as is provided in the original instrument upon which the action resulting in the judgments is based, which rate may not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest is payable at the rate of twelve percent per annum and may not be compounded in any manner or form. Interest on all judgments recovered in the courts of this State before July 1, 1981 must remain at the rate per annum which was legally prescribed at the time the judgments were entered, and such interest may not be compounded in any manner or form.

Ohio	Ohio Rev. Code Ann. § 1343.03(a)	In cases other than those provided for in section 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate of ten percent per annum, and no more, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract.
Oklahoma	Okla. Stat. Ann. tit. 43, § 114	When ordered by the court, court-ordered child support payments and court-ordered payments of suit moneys shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

<p>Oregon</p>	<p>Or. Rev. Stat. § 82.010</p>	<p>(1) The rate of interest for the following transactions, if the parties have not otherwise agreed to a rate of interest, is nine percent per annum and is payable on:</p> <p>(a) All moneys after they become due; but open accounts bear interest from the date of the last item thereof.</p> <p>(b) Money received to the use of another and retained beyond a reasonable time without the owner's express or implied consent.</p> <p>(c) Money due or to become due where there is a contract to pay interest and no rate specified.</p> <p>(2) Except as provided in this subsection, the rate of interest on judgments for the payment of money is nine percent per annum. The following apply as described:</p> <p>(a) Interest on a judgment under this subsection accrues from the date of the entry of the judgment unless the judgment specifies another date.</p> <p>(b) Interest on a judgment under this subsection is simple interest, unless otherwise provided by contract.</p> <p>(c) Interest accruing from the date of the entry of a judgment shall also accrue on interest that accrued before the date of entry of a judgment.</p> <p>(d) Interest under this subsection shall also accrue on attorney fees and costs entered as part of the judgment.</p> <p>(e) A judgment on a contract bearing more than nine percent interest shall bear interest at the same rate provided in the contract as of the date of entry of the judgment.</p> <p>(3) Except as provided in ORS 82.025, no person shall:</p> <p>(a) Make a business or agricultural loan of \$50,000 or less at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate, including any surcharge on the discount rate, on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made; or</p> <p>(b) Make a loan of \$50,000 or less, except a loan made under paragraph (a) of this subsection, at an annual rate of interest exceeding the greater of</p>
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Pennsylvania	Pa. Stat. Ann. § 8101	Except as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award.
Rhode Island	R.I. Gen. Laws § 9-21-8	Every judgment for money shall draw interest at the rate of twelve percent (12%) per annum to the time of its discharge.
South Carolina	S.C. Code Ann. § 34-31-20(B)	All money decrees and judgments of courts enrolled or entered shall draw interest according to law. The legal interest shall be at the rate of fourteen percent per annum.
South Dakota	<p>S.D. Codified Laws § 25-7A-14</p> <p>§ 54-3-16</p>	<p>The department of social services or any support obligee may collect interest on the unpaid principal balance of a support debt or judgment for support at the Category D rate of interest as established in § 54-3-16</p> <p>The official State interest rates, as referenced throughout the South Dakota Codified Laws are as follows:</p> <p>Category D rate of interest is one percent per month of fraction thereof.</p>
Tennessee	Tenn. Code Ann. § 47-14-121	Interest on judgments, including decrees, shall be computed at the effective rate of ten percent (10%) per annum, except as may be otherwise provided or permitted by statute; provided, however, that where a judgment is based on a note, contract, or other writing fixing a rate of interest within the limits provided in § 47-14-103 for that particular category of transaction, the judgment shall bear interest at the rate so fixed.

Texas	Texas Fam. Code Ann. §§157.261 and 157.265	<p>(a) Interest accrues on delinquent child support at the rate of 12 percent simple interest per year from the date the support is delinquent until the date the support is paid or the arrearages are confirmed and reduced to money judgment. (b) Interest accrues on child support arrearages that have been confirmed and reduced to money judgment as provided in this subchapter at the rate of 12 percent simple interest per year from the date the order is rendered until the date the judgment is paid. (c) Interest accrues on a money judgment for retroactive or lump-sum child support at the annual rate of 12 percent simple interest from the date the order is rendered until the judgment is paid.</p>
Utah	Utah Code Ann. §15-1-4	<p>(1) As used in this section, "federal post judgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.</p> <p>(2) Any judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.</p> <p>(3) (a) Except as otherwise provided by law, other civil and criminal judgments of the district court and justice court shall bear interest at the federal post judgment interest rate as of January 1 of each year, plus 2%.</p> <p>(b) The post judgment interest rate in effect at the time of the judgment shall remain the interest rate for the duration of the judgment.</p> <p>(c) The interest on criminal judgments shall be calculated on the total amount of the judgment.</p> <p>(d) Interest paid on State revenue shall be deposited in accordance with Section 63A-8-301.</p> <p>(e) Interest paid on revenue to a county or municipality shall be paid to the general fund of the county or municipality.</p>
Vermont	Vt. Rules of Appellate Procedure Rule 37	<p>Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the superior or District Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the superior or District Court, the mandate shall contain instructions with respect to allowance of interest. In either event, the interest allowed shall be computed by the clerk of the superior or District Court.</p>

Virginia	Va. Code Ann. § 20-78.2	The entry of an order or decree of support for a spouse or for support and maintenance of a child under the provisions of this chapter or §§ 20-107.1 through 20-109 shall constitute a final judgment for any sum or sums in arrears. This order shall also include an amount for interest on the arrearage at the judgment interest rate as established by § 6.1-330.54 unless the obligee, in writing submitted to the court, waives the collection of interest.
Washington	Wash. Rev. Code § 4.56.110(2)	All judgments of unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.
West Virginia	W. Va. Code § 56-6-31	Except where it is otherwise provided by law, every judgment or decree for the payment of money entered by any court of this State shall bear interest from the date thereof, whether so stated in the judgment or decree or not. Provided, that if the judgment or decree, or any part thereof is for special damages, as defined below, or for liquidated damages, the amount of such special or liquidated damages shall bear interest from the date the right to bring the same shall have accrued, as determined by the court. Special damages include lost wages and income, medical expenses, damages to tangible personal property, and similar out-of-pocket expenditures, as determined by the court. The rate of interest shall be ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time, notwithstanding any other provisions of law.

Wisconsin	Wis. Stat. Ann. § 767.51(5p)	<p>A party ordered to pay child support under this section shall pay simple interest at the rate of 1.5% per month on any amount unpaid, commencing the first day of the 2nd month after the month in which the amount was due. Interest under this subsection is in lieu of interest computed under §807.01(4), 814.04(4) or 815.05(8), and is paid to the clerk of court under § 767.29. The clerk of court shall apply all payments received for child support as follows:</p> <ul style="list-style-type: none"> (a) First, to payment of child support due within the calendar month within which the payment is received. (b) Second, to payment of child support due before the payment is received. (c) Third, to payment of interest accruing on unpaid child support.
Wyoming	Wyo. Stat. § 1-16-103	<ul style="list-style-type: none"> (a) As used in this section, “judgment by operation of law” means a periodic payment or installment for child support or maintenance which is unpaid on the date and which has become a judgment by operation of law pursuant to W.W. 14-2-113, 14-2-204, 20-2-113, or 20-4-123. (b) Any judgment by operation of law which is not paid within thirty–two (32) calendar days from the date the judgment by operation of law arises is subject to an automatic late payment penalty in an amount equal to ten percent (10%) of the amount of judgment by operation of law. (c) In order to recover penalties assessed under subsection (b) of this section, the obligee shall file with the clerk of court a sworn affidavit setting forth the payment history resulting in assessment of any penalty and a compulsion of all penalties claimed to be due and owing. It shall not be the responsibility of the clerk to compute the amount of the penalties due and owing. If the obligor disputes the payment history or penalty computation as stated in the obligee’s sworn affidavit, the obligor shall file with the clerk of court a written request for a hearing within ten (10) days after seizure of his property under execution. (d) This section shall apply only to judgments by operation of law arising on or after July 1, 1990.