

CHILD SUPPORT: A SURVEY OF THE STATUTES

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ABSTRACT

The laws providing for the support of children by their absent parents--i.e., a parent with whom the child does not live--differ from state to state. Even though there are many similarities and common themes across state legislation, each state unfortunately organizes its statutes on an individual basis, making it often difficult to locate statutory provisions among several states.

This publication offers an overview of some areas of child support law, plus compilations for the fifty states and the District of Columbia, as an aid to those seeking information on state provisions for child support.

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INTRODUCTION

In 1980, 12,163,600 children -- about 20% of the children under eighteen -- lived with only one parent.¹ Although a small number of these single-parent households resulted from the death of one of the parents,² most of these children had a living parent who was absent from the household because the parents were separated or divorced or were never married. The duty of those absent or noncustodial parents to pay money toward the support of their children is assessed and enforced under a system found in the statutes of each of the 50 states and the District of Columbia.

The structure that these statutes establish is often a fragmented one. The laws frequently differ, depending on the reasons giving rise to the need for support by an absent parent: (1) the parents are unmarried, (2) the parents are married but separated, or (3) the parents are divorced. In many states, each of the above situations is dealt with in separate statutory enactments, often found in quite separate sections of the statutes.

This survey of the child support laws, as amended through December 1983, of the fifty American states and the District of Columbia, together with a compilation of the important features of those statutes was undertaken under the auspices of a committee of the Family Law Section of the American Bar Association.³ The statutes were examined to identify five general areas of interest: uniform acts, establishment of paternity, enforcement of support, enforcement mechanisms, and collection of support for Aid to Families with Dependent Children (AFDC).

This publication contains brief summaries of each of the five areas, thirteen tables illustrating certain important features of the state statutes,

and, most important, a state-by-state compilation of statutory provisions.⁴ Because the provisions were so scattered, because there often appeared to be gaps in the statutory structure, and because many states have recently amended their child support statutes, an effort was made to have the statutory compilations, which are reproduced here, checked by someone in each state. After the compilation for each state was completed, it was mailed to an individual in that state for verification.⁵ All but six jurisdictions replied to this request.

SUMMARY OF UNIFORM ACTS

The activity of the National Conference of Commissioners on Uniform State Laws has exerted important influence on the statutes of the individual states. Over the years that organization has produced a number of uniform acts dealing with various problems in child support. The first act was recommended as early as 1910. It was the Uniform Desertion and Nonsupport Act, which created a criminal action against fathers who failed to support their children under sixteen years old. The act was adopted with various modifications by twenty-four states. Although the act is no longer formally proposed by the conference,⁶ it remains as the basis for the criminal nonsupport statutes of many of the states.

Concern about identifying fathers of children born out of wedlock has spawned four uniform acts by the National Conference. None of the proposals has received widespread adoption by the states. The first, the Uniform Illegitimacy Act, recommended in 1922, established a duty of support by both parents of an illegitimate child and provided a procedure for determining paternity and enforcing support against the father. The procedure was a quasi-criminal one in which a warrant was issued for the alleged father; a

preliminary hearing to determine probable cause was held; and the defendant was required to post bail for his appearance at trial. The remainder of the procedure was civil.⁷

The development of scientific blood tests, making it possible to determine nonpaternity in some cases resulted in a Uniform Act on Blood Tests to Determine Paternity, proposed by the conference in 1952. Under the act, if the blood test experts agreed that the father was excluded by the test, that evidence was conclusive. If the experts disagreed, the act provided that the tests were to be submitted with the other evidence. If the experts concluded that the tests indicated a possibility of the alleged father's paternity, the court was authorized to admit the evidence in its discretion, depending on the infrequency of the blood type.

In 1960 the conference replaced the Illegitimacy Act with a Uniform Act on Paternity that dropped the quasi-criminal procedures and incorporated the provisions for blood tests of the Uniform Act on Blood Tests to Determine Paternity. In 1973 the conference proposed the Uniform Parentage Act which provides that the parent-child relationship is the same regardless of the marital status of the parents. It was prompted by a number of United States Supreme Court cases declaring unconstitutional state legislation that discriminated against illegitimate children.

The other major area of concern to the conference has been that of interstate enforcement of support. The first move in this direction was the criminal nonsupport act, mentioned earlier. However, the commissioners of the conference had found that "the avenue of criminal enforcement was not . . . fruitful."⁸ The out-of-state parent had to be returned to the home state for trial, at considerable expense. In addition to being expensive, extradition was "narrowly technical." Furthermore, the criminal proceeding often rendered

reconciliation with the family impossible, took the supporter away from the job he or she had, and by branding that person a criminal made future employment more difficult.

In 1950, the Uniform Desertion and Nonsupport Act was replaced by the Uniform Reciprocal Enforcement of Support Act (URESA). Under URESA each state agrees to prosecute an action for support against noncustodial parents in its jurisdiction for the benefit of a child in another state. In the two-state proceeding, action is commenced in the state where the child and custodial parent reside and is prosecuted with an order of support entered in the state where the absent parent resides. The duty to support is determined by the law of any state in which the alleged supporter is present during the period for which support is sought. The presumption is that this is the law of the forum state.⁹ The emphasis of the 1950 act was mainly on the civil action, although the act "attempted to improve and extend by reciprocal legislation the enforcement of duties of support through both the criminal and the civil law."¹⁰ The act was amended in 1952 and 1958 and then issued in revised form in 1968.

In one form or another, URESA has been adopted by all fifty states and the District of Columbia.¹¹

One other act proposed by the conference should be noted in a discussion of child support. The Uniform Civil Liability for Support Act, first recommended by the conference in 1954, is intended to promote and facilitate the use of URESA. At the time the act was proposed, the commissioners of the conference found that in fifteen states there was no statutory statement of a duty to support and that the age to which a child must be supported by parents was often not stated. The act was intended to raise the level of uniformity and to make information on the duties of support readily available.¹²

Table 1 shows the uniform acts currently found in the statutes of the fifty-one jurisdictions studied. In the case of the Uniform Desertion and Nonsupport Act, only those states that still identify the provisions as the uniform act are shown. The Uniform Illegitimacy Act is not shown because it has been superseded by the Blood Test, Paternity, and Parentage Acts.

Table 1
Uniform Acts in Effect in the Various Jurisdictions

| | Desertion and Nonsupport | Blood Tests to Determine Paternity | Paternity | Parentage | URESA: Version Adopted | Civil Liability for Support |
|-------------------------|--------------------------------|---|-----------|-----------|------------------------------|--------------------------------------|
| Alabama | | | | | 1950 | |
| Alaska | | | | | 1950 ^a | |
| Arizona | | | | | 1968 | |
| Arkansas | | | | | 1968 | |
| California | X | X | | X | 1968 | X |
| Colorado | | | | X | 1968 | |
| Connecticut | | | | | 1950 ^a | |
| Delaware | | | | | 1950 ^a | |
| District of Columbia | | | | | 1950 ^b | |
| Florida | | | | | 1968 | |
| Georgia | | | | | 1950 ^a | |
| Hawaii | | | | X | 1950 ^b | |
| Idaho | | | | | 1968 | |
| Illinois | X | X | | | 1968 | |
| Indiana | | | | | 1950 ^c | |
| Iowa | | | | | 1950 ^a | |
| Kansas | | | | | 1968 | |
| Kentucky | | | X | | 1968 | |
| Louisiana | | X | | | 1968 | |
| Maine | | | X | | 1968 | X |
| Maryland | | | | | 1950 ^c | |
| Massachusetts | X | | | | 1950 | |
| Michigan | | | | | 1950 ^a | |
| Minnesota | | | | X | 1968 | |
| Mississippi | X | | X | | 1950 ^a | |
| Missouri | | | | | 1950 ^c | |
| Montana | | | | X | 1968 | |

(table continues)

Table 1 (continued)

Uniform Acts in Effect in the Various Jurisdictions

| | Desertion and Nonsupport | Blood Tests to Determine Paternity | Paternity | Parentage | URESA: Version Adopted | Civil Liability for Support |
|------------------------|--------------------------------|---|-----------|-----------|------------------------------|--------------------------------------|
| Nebraska | | | | | 1968 | |
| Nevada | X | | | X | 1968 | |
| New Hampshire | | X | X | | 1968 | X |
| New Jersey | | | | X | 1950 ^a | |
| New Mexico | | | | | 1968 | |
| New York ^d | | | | | | |
| North Carolina | | | | | 1968 | |
| North Dakota | X | | | X | 1968 | |
| Ohio | | | | X | 1968 | |
| Oklahoma | X | X | | | 1968 | |
| Oregon | | X | | | 1950 | |
| Pennsylvania | | X | | | 1968 | |
| Rhode Island | | | | | 1968 | |
| South Carolina | | | | | 1950 ^c | |
| South Dakota | | | | | 1968 | |
| Tennessee | | | | | 1950 | |
| Texas | | | | | 1950 ^c | |
| Utah | | X | | | 1950 ^c | |
| Vermont | X | | | | 1968 | |
| Virginia | | | | | 1968 | |
| Washington | X | | | X | 1950 ^c | |
| West Virginia | | | | | 1968 | |
| Wisconsin ^e | X | | | | 1968 | |
| Wyoming | | | | X | 1968 | |

a. Alaska, Connecticut, Delaware, Georgia, Iowa, Michigan, Mississippi, and New Jersey have adopted the 1952 amendments to the 1950 version of URESA. Georgia also has incorporated some of the elements of the 1968 version.

b. The District of Columbia and Hawaii have adopted both the 1952 and the 1958 amendments to the 1950 version of URESA.

c. Indiana, Maryland, Missouri, South Carolina, Texas, Utah, and Washington have adopted the 1958 amendments to the 1950 version of URESA. Texas also has incorporated some of the elements of the 1968 version.

d. New York adopted the Uniform Support of Dependents Law, which is similar to URESA.

e. Wisconsin has incorporated much of the Uniform Parentage Act in its statutory provisions.

ESTABLISHMENT OF PATERNITY

When a child's parents are not married, the first step in obtaining support from the absent parent, who in this case is always the father, is that he must be identified and legally determined to be the father of the child.

All states (except Missouri and South Carolina)¹³ have statutory procedures for identifying the father of a child born out of wedlock. These are usually special proceedings called paternity actions. The establishment of paternity can be for purposes other than obtaining support,¹⁴ but historically the action was conceived as a support measure¹⁵ and is so used primarily today.

Jurisdiction over Out-of-State Defendants

The determination of paternity has traditionally been treated as a matter that requires personal jurisdiction over the father.¹⁶ This means that, if the father is not a resident of the same state as the child, he must have sufficient minimum contacts with that state so that adjudicating his rights in a lawsuit in that state does not "offend traditional notions of fair play and substantial justice."¹⁷

Table 2 shows which states have statutes designed to give jurisdiction over a nonresident in a paternity action. The most common statutory statement of minimum contacts with the alleged father no longer in the state is contained in the Uniform Parentage Act: a person who has sexual intercourse in the state submits to the jurisdiction of that state in any action with respect to a child who may be conceived by that act of intercourse. Ten of the eleven states that have adopted the Uniform Parentage Act have used this language.¹⁸ Ten other states have similar statutes. Five jurisdictions have a variation requiring sexual intercourse in the state plus some additional

factors, such as that the mother or the child continues to be a resident of the state.

Although a number of states have general statutes authorizing the exercise of jurisdiction over out-of-state defendants in certain types of general circumstances, we found none other than the Minnesota statute, that specifically included a reference to a paternity action.¹⁹

Table 2
Statutory Provisions for Jurisdiction Over Nonresident Fathers
in Paternity Actions

| | Conception in State ^a | Conception in State and One Party Continues to Reside in State | No Statutory Provision |
|------------------------|--|--|------------------------------|
| Alabama | | | X |
| Alaska | | | X |
| Arizona | | | X |
| Arkansas | | | X |
| California | X | | |
| Colorado | X | | |
| Connecticut | | | X |
| Delaware | | | X |
| District of Columbia | | | X |
| Florida | | | X |
| Georgia | | X ^b | |
| Hawaii | X | | |
| Idaho | | | X |
| Illinois | | | X |
| Indiana | | | X |
| Iowa | | | X |
| Kansas | | X | |
| Kentucky ^c | X | X | |
| Louisiana | X | | |
| Maine | X | | |
| Maryland | | X ^d | |
| Massachusetts | | | X |
| Michigan | | | X |
| Minnesota ^e | | | |

(table continues)

Table 2 (continued)

Statutory Provisions for Jurisdiction Over Nonresident Fathers
in Paternity Actions

| | Conception in State ^a | Conception in State and One Party Continues to Reside in State | No Statutory Provision |
|----------------|--|--|------------------------------|
| Mississippi | | | X |
| Missouri | | | X |
| Montana | X | | |
| Nebraska | | | X |
| Nevada | X | | |
| New Hampshire | | | X |
| New Jersey | X | | |
| New Mexico | | | X |
| New York | X ^f | | |
| North Carolina | X | | |
| North Dakota | X | | |
| Ohio | X | | |
| Oklahoma | | | X ^g |
| Oregon | X | | |
| Pennsylvania | | | X |
| Rhode Island | X | | |
| South Carolina | | | X |
| South Dakota | X | | |
| Tennessee | | | X |
| Texas | X ^f | X ^b | |
| Utah | | | X |
| Vermont | | | X |
| Virginia | | | X |
| Washington | X | | |
| West Virginia | | | X |
| Wisconsin | X | | |
| Wyoming | X | | |

a. Some states use the term "intercourse" whereas others use the term "conception" in their statutes. We use the term "conception," since no action could arise without the birth of the child conceived by that act of intercourse.

b. Georgia and Texas provide that one of the parents had to be a resident at the time of the intercourse by which the child was conceived.

(table continues)

Table 2 (continued)

c. The Kentucky statute also states that, if the act of intercourse is a tort or crime, personal jurisdiction is conferred.

d. The Maryland statute specifies that the mother must be a resident of the state.

e. The Minnesota version of the uniform Parentage Act refers to the general long-arm statute, § 543.19, which authorizes jurisdiction over a person who "commits any act in Minnesota causing injury."

f. New York and Texas also provide that, if a person has caused the child to live in the state, or has lived with the child in the state, or there is a constitutional basis, jurisdiction is conferred.

g. Oklahoma does not have a specific statute on jurisdiction for paternity, but does provide for personal jurisdiction over a person who lived in a parental relationship in the state, which may authorize jurisdiction in some paternity cases.

Action to Establish a Father-Child Relationship

Because the paternity action has traditionally been viewed as a device to obtain support for a nonmarital child, the right to bring that action has usually been limited to the mother or a governmental authority that is providing support.

In the early part of this century, when the federal Children's Bureau first studied illegitimacy as a child welfare problem, it recommended that an authorized public authority should have the right to bring proceedings to establish paternity when, in its judgment, such proceedings should be brought.²⁰ However, the Conference of Commissioners on Uniform State Laws, which proposed the Uniform Illegitimacy Act in response to the suggestions of the Children's Bureau, did not follow that recommendation. The Illegitimacy Act, approved in 1922, limited the right to bring a paternity action to the mother or, if the child was likely to be a public charge, to the authority charged with its support.²¹ The Commissioners took the view that a paternity

proceeding should not be initiated over the objection of a mother who was able and willing to support her child.²² Our analysis indicates that most existing statutes reflect this view, and the ability of the public to bring a paternity action is limited to cases where the mother requests it or the child is receiving, or is likely to receive, public support.

In 1981, recognizing that identification of a child's father has purposes other than support, the National Conference of State Legislatures recommended that states adopt legislation authorizing anyone with an interest in the welfare of the child to bring an action.²³ This included not only the mother or the agency providing public support, but also the father and the child itself.²⁴

Settlement Agreements

The issues in a paternity suit are, first, whether a parent-child relationship can be established -- i.e., whether an obligation to support exists at all -- and, second, where there is liability, what the amount of the support should be. It is the problems of proof on the first issue that give rise to the need to settle paternity actions.²⁵ In fact, if there are no problems of proof as to the father-child relationship, a formal settlement of the support obligation of the father of an illegitimate child may encounter equal protection objections if a parent's obligation for support of a legitimate child is open to modification until the child reaches the age of majority.²⁶

The best statutory statement on the issues involved in the settlement of a paternity claim is found in the Uniform Parentage Act. It requires the court in approving the settlement to assess "the improbability . . . of establishing the alleged father's paternity or nonpaternity of the child . . ."²⁷

Burden of Proof

Because paternity proceedings historically followed a quasi-criminal format,²⁸ the burden of proof was sometimes thought to be greater than that required in a regular civil proceeding. This, of course, increased the difficulty of establishing the father-child relation. However, our review of the state statutes indicated that only a very few require more than the civil burden -- preponderance of the evidence. Rhode Island, West Virginia and Wisconsin provide that the burden of proof is clear and convincing evidence. Wisconsin requires proof by clear and satisfactory preponderance of the evidence. North Carolina and Virginia require proof beyond a reasonable doubt.²⁹

Default Judgment

Historically, a defendant in a paternity case was arrested and brought before the court to answer the complaint. This procedure led to confusion as to whether the court could proceed when an alleged father failed to respond or appear even though properly served. In the usual civil lawsuit, the court proceeds to enter a default judgment in such a case.

Our examination of the statutes showed that a few states still retain the requirement of a warrant and bail, raising an issue of whether a default judgment is allowed. However, eight states deal specifically with the entry of a judgment although the defendant defaults. In addition, most jurisdictions provide by statute that the action is civil or that the rules of civil procedure apply, with the result that a default judgment should be possible.

Use of Blood Test Data

In the determination of paternity, the scientific tests used are usually called blood tests because they are based on the genetic markers found in the

blood of the parents and their child. Genetic markers carry the inherited characteristics of each person's parents and are paired, one inherited from the father and one from the mother. By identifying the markers in the blood of the mother and the child, it is possible to determine the possible range of markers in the alleged father's blood. If his blood does not match those markers, he is excluded as the father. Depending on the number of markers examined and their rarity, tests are now available that will positively exclude the incorrectly named father in 95 to 99 percent of the cases. Although the blood tests only positively exclude alleged fathers, information from the tests may also be used to help identify the alleged father in terms of the statistical probability that a given man is the father of the child.³⁰

Given the ability of blood tests to provide helpful evidence, it is not surprising that all but eight of the American jurisdictions studied have statutory provisions dealing with the administration and use of blood tests. These statutes have at least three important features: (1) who may request the tests, (2) the effect of a refusal to be tested, and (3) the use to be made of the test results. The provisions of the various statutes in these three areas are charted in Tables 3, 4, and 5.

Table 3 shows that the most common statutory provision (thirty-four states) provides for blood tests on the motion of any party. The second most common statute (thirty-three) allows the tests on the court's own motion. Twenty-eight states have both of these provisions. In five states only the alleged father may request the blood tests. In a few cases the statutes appear not to require the court to order a blood test even though it is requested by the father or by one of the parties. Table 3 indicates that this is the case in nine states.

Table 3

Statutory Provisions for
Court-Ordered Blood Tests

(R = required; O = optional)

| | No Statutory Provision | On Court's Own Motion | At Defendant's Request | On Any Party's Motion |
|----------------------|------------------------------|--------------------------|------------------------------|-----------------------------|
| Alabama | | | R | |
| Alaska | X | | | |
| Arizona | | O | | R |
| Arkansas | | O | | |
| California | | O | | O |
| Colorado | | O | | R |
| Connecticut | | | | O |
| Delaware | X | | | |
| District of Columbia | | O | | |
| Florida | X | | | |
| Georgia | | | | O |
| Hawaii | | O | | R |
| Idaho | | O | | R |
| Illinois | | O | | O |
| Indiana | | | | R |
| Iowa | | O | | R |
| Kansas | | O | | O |
| Kentucky | | | R | |
| Louisiana | | O | | R |
| Maine | | O | | R |
| Maryland | | R | | R |
| Massachusetts | | | R | |
| Michigan | | R | | R |
| Minnesota | | O | | R |
| Mississippi | | | R | |
| Missouri | X | | | |
| Montana | | O | | R |
| Nebraska | X | | | |
| Nevada | | O | | R |
| New Hampshire | | O | | R |
| New Jersey | | O | | R |
| New Mexico | X | | | |
| New York | | O ^a | | R |
| North Carolina | | | | R |
| North Dakota | | O | | R |
| Ohio | | O | | O |
| Oklahoma | | O | | R |

(table continues)

Table 3 (continued)

Statutory Provisions for
Court-Ordered Blood Tests

(R = required; O = optional)

| | No Statutory Provision | On Court's Own Motion | At Defendant's Request | On Any Party's Motion |
|----------------|------------------------------|--------------------------|------------------------------|-----------------------------|
| Oregon | | O | | R |
| Pennsylvania | | O | | R |
| Rhode Island | | O | | R |
| South Carolina | X | | | |
| South Dakota | | | | O |
| Tennessee | | O | R | |
| Texas | | R | | |
| Utah | | R | | |
| Vermont | X | | | |
| Virginia | | | | O |
| Washington | | O | | R |
| West Virginia | | O | | O |
| Wisconsin | | O | | R |
| Wyoming | | O | | R |

Note: "Optional" indicates that the statutory language is "the court may";
"required" indicates that the statutory language is "the court shall."

a. The New York court is given authority to order blood tests in support proceedings.

Although twenty-five jurisdictions have no provision for refusal by one of the parties to submit to the tests, those states which do deal with the issue provide for two types of response. Either the refusal to take the test is submitted as evidence to the fact finder, or the issue is resolved against the party refusing the test, i.e., the mother's action is dismissed or the alleged father is adjudicated as father. Table 4 illustrates that 14 states resolve the issue against either party who refuses to take the tests. Additionally, three states resolve against a petitioning mother who refuses, while refusal by the father is introduced along with other evidence in the case.

Table 4

Statutory Provisions Concerning
Refusal to Submit to Blood Tests

| | No Statutory Provision | Refusal by Mother: Disclosed at Trial | Refusal by Party: Disclosed at Trial | Refusal by Party: Issue Resolved Against the Party |
|-----------------------|------------------------------|--|---|--|
| Alabama | | X | | |
| Alaska | X | | | |
| Arizona | X | | | |
| Arkansas | | | X | |
| California | | | | X |
| Colorado | | | | X |
| Connecticut | X | | | |
| Delaware | X | | | |
| District of Columbia | X | | | |
| Florida | X | | | |
| Georgia | | | X ^a | X ^b |
| Hawaii | X | | | |
| Idaho | | | | X |
| Illinois ^c | | | | |
| Indiana | X | | | |
| Iowa | X | | | |
| Kansas | | | | X |
| Kentucky | | X | | |
| Louisiana | | | | X |
| Maine | | | | X |
| Maryland | | | X ^d | |
| Massachusetts | | | X | |
| Michigan | | | X | |
| Minnesota | | | X | |
| Mississippi | | | | X |
| Missouri | X | | | |
| Montana | X | | | |
| Nebraska | X | | | |
| Nevada | | | | X |
| New Hampshire | | | | X |
| New Jersey | | | X | |
| New Mexico | X | | | |
| New York | X | | | |
| North Carolina | X | | | |
| North Dakota | X | | | |

(table continues)

Table 4 (continued)

Statutory Provisions Concerning
Refusal to Submit to Blood Tests

| | No Statutory Provision | Refusal by Mother: Disclosed at Trial | Refusal by Party: Disclosed at Trial | Refusal by Party: Issue Resolved Against the Party |
|----------------|------------------------------|--|---|--|
| Ohio | X | | | |
| Oklahoma | | | | X |
| Oregon | | | | X |
| Pennsylvania | | | | X |
| Rhode Island | | | | X |
| South Carolina | X | | | |
| South Dakota | X | | | |
| Tennessee | X | | | |
| Texas | | | X ^e | X ^e |
| Utah | | | | X |
| Vermont | X | | | |
| Virginia | X | | | |
| Washington | X | | | |
| West Virginia | X | | | |
| Wisconsin | | | X | X ^f |
| Wyoming | X | | | |

a. In Georgia, evidence of refusal to submit to a blood test is admissible to show that the alleged father is not precluded from being the father of the child.

b. In Georgia, if the petitioner refuses to submit to an order for a blood test, the court upon motion of the defendant may dismiss the suit.

c. Illinois specifically provides that refusal by the alleged father to submit to a blood test should not be disclosed at trial.

d. Maryland also provides that, if a party refuses to submit to a blood test, the state's attorney may apply to the court for an order directing such person to submit to the test.

e. Texas provides that, if the petitioner refuses to submit, the suit is dismissed. If the respondent refuses, that fact may be introduced as evidence.

f. In Wisconsin, if the mother brings the action and refuses to submit herself or her child to the tests, the action shall be dismissed.

Table 5 sets forth statutory provisions dealing with use of the results of the blood tests. Only one state making statutory provision for blood tests, South Dakota, appears to have no statutory provision on the subject. Twenty-two states provide that, if the blood test result excludes the alleged father, the proceedings against him are to be dismissed. Nine states provide that, if the test results exclude the alleged father, that fact is admissible as evidence. Eleven states deal with the possibility that the experts will disagree: two provide that the evidence is then inadmissible; nine admit the evidence and the disagreement.

Thirty-six states allow admission of evidence that indicates the possibility that the alleged father is the father of the child. This is the most controversial use of the blood test data because it allows the adjudication of a fact, i.e., paternity, based on a statistical probability that it is so.³¹ Seven of the statutes provide that whether the evidence of inclusion is admitted depends on the blood type; seventeen provide that the statistical probability of the alleged father's paternity based on the blood tests should be admitted. Twelve jurisdictions have statutory provisions that provide generally for the admission of the evidence of blood tests. Of these jurisdictions, the District of Columbia provides that such evidence can be admitted only if the alleged father does not object. Illinois provides that the evidence of paternity is to be admitted only if it is clear and convincing.

Table 5
Statutory Provisions Concerning Use of Blood Test Results

| | No Statutory Provision | Defendant Excluded by Test: Question Resolved | Defendant Excluded by Test: Results Admissible | Experts Disagree: Results Admissible | Experts Disagree: Results Inadmissible | Defendant Included by Test: Depends on Blood Type | Defendant Included by Test: Statistical Probability Admissible | Results Received in Evidence |
|-------------------------|------------------------------|---|--|---|---|---|---|---------------------------------------|
| Alabama | | | X | | X | | | |
| Alaska | X | | | | | | | |
| Arizona | | | | | | | | X ^a |
| Arkansas | | | | | | | | X |
| California | | X | | X | | | X ^b | |
| Colorado | | | | | | | X | |
| Connecticut | | | X | | | | | |
| Delaware | X | | | | | | | |
| District of Columbia | | | | | | | | X ^c |
| Florida | X | | | | | | | |
| Georgia | | X ^d | | | | | | |
| Hawaii | | | | | | | X | |
| Idaho | | X | | | | | X | X |
| Illinois | | X | | | X | | | X ^e |
| Indiana | | X | | | | | | X |
| Iowa | | | | | | | X | |
| Kansas | | | | | | | | X |
| Kentucky | | X | | | | X | | |
| Louisiana | | X | | X | | X | | |
| Maine | | X | | X | | X | | |
| Maryland | | | X | | | | | |
| Massachusetts | | | X | | | | | |
| Michigan | | | X | | | | X | X |
| Minnesota | | | | | | | X | |
| Mississippi | | X | | | | | | |
| Missouri | X | | | | | | | |
| Montana | | X | | | | | X | |
| Nebraska | X | | | | | | | |
| Nevada | | | | | | | X | X |
| New Hampshire | | X | | X | | X | | |

(table continues)

Table 5 (continued)

Statutory Provisions Concerning Use of Blood Test Results

| | No Statutory Provision | Defendant Excluded by Test: Question Resolved | Defendant Excluded by Test: Results Admissible | Experts Disagree: Results Admissible | Experts Disagree: Results Inadmissible | Defendant Included by Test: Depends on Blood Type | Defendant Included by Test: Statistical Probability Admissible | Results Received in Evidence |
|----------------|------------------------------|---|--|---|---|---|---|---------------------------------------|
| New Jersey | | | X | | | | X | |
| New Mexico | X | | | | | | | |
| New York | | | X | | | | | |
| North Carolina | | X ^f | | | | | X ^f | |
| North Dakota | | | | | | | X | |
| Ohio | | X | X | X | | | X | |
| Oklahoma | | X | | | | | | |
| Oregon | | X | | X | | X | | |
| Pennsylvania | | X | | X | | | | |
| Rhode Island | | X | | X | | X | | |
| South Carolina | X | | | | | | | |
| South Dakota | X | | | | | | | |
| Tennessee | | | X | | | | | |
| Texas | | X | | | | | | X |
| Utah | | X | | X | | X | | |
| Vermont | X | | | | | | | |
| Virginia | | | | | | | | X |
| Washington | | | | | | | X | |
| West Virginia | | X | | | | | X | |
| Wisconsin | | X | | | | | X | X |
| Wyoming | | X | | | | | X | |

- a. Results shall be received in evidence if requested by any party to the proceeding.
- b. In California, if the blood tests show a probability that the defendant is included, the results are admissible.
- c. Results may be admitted as evidence only in cases where the respondent does not object to its admissibility.
- d. The jury shall be instructed to so find.
- e. Results may be received into evidence when they are clear and convincing evidence of paternity as well as when they exclude paternity, but they cannot be the only grounds for determining paternity.
- f. North Carolina has both a criminal and a civil proceeding. These provisions apply to the criminal proceeding.

ENFORCEMENT OF SUPPORT

Enforcement Apart from Paternity and Dissolution Proceedings

Child support orders are usually entered as part of a paternity proceeding or incident to a proceeding for marriage dissolution. However, the need for child support may arise in other contexts. In our search of the statutes, we were interested in determining state provisions for enforcing the duty to support in cases not involving paternity or marriage dissolution proceedings.

We found that all states impose a criminal penalty for failure to support a child, although in some cases the criminal penalty applies to only one of the parents, a provision that is probably unconstitutional. Making nonsupport a crime has the advantage of providing the child with the help of the public prosecutor in bringing an action and in searching out the defaulting parent. Technically, of course, the purpose of the criminal action is to vindicate the state's interest in child support, not to serve as a collection mechanism for unsupported families. However, this is not the way in which the proceedings have been viewed. For example, many statutes provide for the suspension of proceedings if the defendant pays arrears or for placing the defendant on probation with an order to pay support.³²

In some states this criminal penalty takes the form of both a misdemeanor and a felony. The felony penalty is used primarily in the case of a parent who leaves the jurisdiction.³³

In addition to criminal nonsupport statutes, civil actions are available to enforce support in most states.³⁴

Once a divorce or other dissolution action is started, all states except Louisiana and Tennessee have specific statutory provisions authorizing support pending the proceedings, although in a few states the statute mentions only alimony.

Establishing and Enforcing the Duty to Support by Out-of-State Parents

In the mobile society of the 1980s, a major problem in establishing or enforcing the duty to support arises when the parent from whom support is sought is out of state. An action for support requires the exercise of in personam jurisdiction over the parent ordered to pay it. This usually requires that the person owing support must be served with process within the state where the court is located.³⁵

The statutes of the states contain two specific responses to this problem. One response is that all American jurisdictions have adopted some version of the Uniform Reciprocal Enforcement of Support Act (URESA), discussed above. The use of URESA has been fraught with problems of delay³⁶ and of concern over support orders that are lower in amount than those in the child's home state. The latter problem arises because, under URESA, the action is a two-part one in which the court of the supporter's state either sets the amount of support or has the authority to modify a support order set by the child's state.³⁷ There is a feeling that the courts of the jurisdiction where the child resides are the ones most concerned with that child's support, and the courts of the supporter's state are inclined to be more concerned about the problems of the supporting parent, with the result that the amount of award is lower.

Interest therefore centers on another response to the out-of-state supporter: the enactment of "long-arm" statutes that subject the out-of-state parent to a support suit in the courts of the state where the child resides. Thirty-one states have such statutes. Table 6 presents the features of these statutes.

There are, however, considerable constitutional limitations on such proceedings. Jurisdiction by a state over a nonresident may be exercised only

in cases where that nonresident has sufficient minimum contacts with the state to make it fair to require defense of the action in that state.³⁸ The United States Supreme Court has already ruled that residence of the child in the state, even with the consent and blessing of the absent parent, is not sufficient connection between that state and the absent parent to make it fair to require that parent to defend a support action there.³⁹ Therefore, those statutes in Table 6 that authorize jurisdiction over a nonresident parent because the action is one for support or because the child is a resident of the state may be constitutionally defective. Most states, however, require the out-of-state parent to have additional contacts with the forum state. For example, the great majority of the statutes require that the defendant has lived in the state in a marital relationship or with the child. Fifteen of them require, in addition, that the other spouse continues to reside in the state.

Table 6
Statutory Provisions for Jurisdiction Over Nonresident Parent

| | No Statutory Provision | Maintained Marital Domicile Within State | Maintained Marital Domicile and Spouse Now Resides In State | Child Resides in State | Obligation from State Law or Agreement in State | Sufficient Contacts with State |
|-------------|------------------------------|--|--|---------------------------------|---|--------------------------------------|
| Alabama | | | X | | | X |
| Alaska | X | | | | | |
| Arizona | X | | | | | |
| Arkansas | | X | | | | |
| California | X | | | | | |
| Colorado | X | | | | | |
| Connecticut | X | | | | | |
| Delaware | X | | | | | |

(table continues)

Table 6 (continued)

Statutory Provisions for Jurisdiction Over Nonresident Parent

| | No Statutory Provision | Maintained Marital Domicile Within State | Maintained Marital Domicile and Spouse Now Resides In State | Child Resides in State | Obligation from State Law or Agreement in State | Sufficient Contacts with State |
|-------------------------|------------------------------|--|--|---------------------------------|---|--------------------------------------|
| District of Columbia | X | | | | | |
| Florida | | X | | | | |
| Georgia | X | | | | | |
| Hawaii | X | | | | | |
| Idaho | | X | | | | |
| Illinois | | X | | | | |
| Indiana | | | X | | | |
| Iowa | X | | | | | |
| Kansas | | | X | | | |
| Kentucky | | X | | | | |
| Louisiana | | X | | | X | |
| Maine | | X | | | | |
| Maryland | | | X | | X | |
| Massachusetts | | | X | | | |
| Michigan | | X | | | | |
| Minnesota | X | | | | | |
| Mississippi | | | X | | | |
| Missouri | | | X | | | |
| Montana | | | | X | | X |
| Nebraska | X | | | | | |
| Nevada | | | X | | | |
| New Hampshire | X | | | | | |
| New Jersey | X | | | | | |
| New Mexico | | | X | | | |
| New York | | | X | | X | |
| North Carolina | X | | | | | |
| North Dakota | X | | | | | |
| Ohio | | | X | | | |
| Oklahoma | | X | | | | X |
| Oregon ^a | | X | | | | |
| Pennsylvania | X | | | | | |
| Rhode Island | X | | | | | |
| South Carolina | | | X | X | | |
| South Dakota | | | | X | | |
| Tennessee | | | X | | | X |
| Texas | | | X ^b | | | X |
| Utah | | X | | | | |
| Vermont | X | | | | | |

(table continues)

Table 6 (continued)

Statutory Provisions for Jurisdiction Over Nonresident Parent

| | No Statutory Provision | Maintained Marital Domicile Within State | Maintained Marital Domicile and Spouse Now Resides In State | Child Resides in State | Obligation from State Law or Agreement in State | Sufficient Contacts with State |
|-------------------------|------------------------------|--|--|---------------------------------|---|--------------------------------------|
| Virginia | | | X | | X | |
| Washington ^c | | | X | | | |
| West Virginia | X | | | | | |
| Wisconsin | | X ^d | | | | |
| Wyoming ^e | | | | | | |

a. Oregon grants jurisdiction if the parties to the marriage have either separately or together maintained a residence within the state for at least six months and an action for support is commenced within the following year.

b. Texas requires that the action be commenced within 2 years after the date on which the marital residence ended.

c. Washington provides that "the act of sexual intercourse within this state with respect to which a child may have been conceived" gives jurisdiction of "any cause of action arising from the doing of such acts. . ."

d. Wisconsin requires the parties lived in a marital relationship for not less than six consecutive months within the prior six years.

e. Wyoming provides for constructive service if the father has property within the state.

Setting the Amount of Support

The amount of child support is set in the discretion of the court. Historically, this discretion has been exercised with minimal statutory guidelines; statements such as that the court should award a "fair and reasonable sum" for support have been common. The result has been variation in the amount of support awarded in similar circumstances,⁴⁰ and a feeling that lack of guidance has been a major factor in the inadequacy of many support awards.⁴¹

A recent development, confirmed by our review of the statutes, is a change in the willingness of legislatures to spell out in detail the factors to be considered by the courts in setting support. Thirty-four of the states now have statutes that specify particular factors when support is set in a divorce or separation proceeding. A smaller number, twenty-three plus the District of Columbia, also have statutes applicable to the setting of support for illegitimate children.

Table 7 shows the various factors specified in child support statutes that are usually connected with marriage dissolution provisions, and Table 8 lists the factors found in paternity statutes.

In setting up the tables, the criteria specified in the statutes were divided into three groups: factors relating to the needs of the child; factors dealing with the financial situation of the custodial parent (mother in paternity cases); and factors relating to the financial circumstances of the noncustodial parent (father in paternity cases). These are broad categories. For example, the financial circumstances of the parents include such specified items as occupation, earning potential, or outside income -- all related to the ability of a parent to give or receive support. In tabulating the statutory factors relating to the child, the need for vocational training was placed under educational needs. The health category includes factors relating to both the physical and emotional condition of the child. In some cases, factors specified in the statutes did not fit into these broad categories. We have mentioned them in the table notes.

In setting child support, it could be argued that the process should begin with the needs of the child. Studies have found, however, that the primary emphasis is on the ability of the parent to pay.⁴² Tables 7 and 8 confirm that this is true of the statutory statements -- the most commonly

specified consideration in both the general child support statutes and the paternity provisions the ability of the noncustodial parent to pay.

Interestingly, the second most common factor specified concerns the financial circumstances of the custodial parent (the mother in paternity actions).

Thirty-one of the general child support statutes and sixteen of the paternity statutes considered this factor.

Table 7

Factors Considered in Setting Child Support
in Marital Dissolution Proceedings

| | No Statutory Provision | Circumstances of Child | | | | | Financial Circum- stances of Custodial Parent | Financial Circum- stances of Non- custodial Parent |
|-------------------------|------------------------------|------------------------|----------------------|-----|--------|--------------------------------|--|--|
| | | Financial Needs | Educational Needs | Age | Health | Previous Living Standard | | |
| Alabama | X | | | | | | | |
| Alaska | | X | | | | X | X | X |
| Arizona | | X | X | | X | X | X | X |
| Arkansas | X | | | | | | | |
| California | | | | | | | X ^{a,b,c,d} | X ^{a,b,c,d} |
| Colorado | | X | X | | X | X | X | X |
| Connecticut | | X | X | X | X | | X ^e | X ^e |
| Delaware | | X | | | X | X | X ^a | X ^a |
| District of Columbia | X | | | | | | | |
| Florida | | X ^f | | | | | | X ^f |
| Georgia | X | | | | | | | |
| Hawaii | | | | | | | X ^g | X ^g |
| Idaho | | X | X | | X | X | X | X |
| Illinois | | X | X | | X | X | X | X |
| Indiana | | | X | | X | X | X | X |
| Iowa | | X | X | | X | X | X ^{b,h} | X ^h |
| Kansas | | X | | | X | | X | X |
| Kentucky | | X | X | | X | X | X | X |
| Louisiana | | X | | | | | | X |
| Maine | | | | | | | X ^a | X ^{a,i} |
| Maryland ^j | X | | | | | | | |

(table continues)

Table 7 (continued)

Factors Considered in Setting Child Support
in Marital Dissolution Proceedings

| | No Statutory Provision | Circumstances of Child | | | | Previous Living Standard | Financial Circum- stances of Custodial Parent | Financial Circum- stances of Non- custodial Parent |
|------------------------|------------------------------|------------------------|----------------------|-----|--------|--------------------------------|--|--|
| | | Financial Needs | Educational Needs | Age | Health | | | |
| Massachusetts | | X | | X | | X | X ^b | X |
| Michigan | | | | | | | X | X |
| Minnesota ^k | | X | X | | X | X | X | X |
| Mississippi | X | | | | | | | |
| Missouri | | X | X | | X | X | X | X |
| Montana ^k | | X | X | | X | X | X | X |
| Nebraska | | | | | | | X | X |
| Nevada | X | | | | | | | |
| New Hampshire | | | | | X | | X ^a | X ^{a,i} |
| New Jersey | X | | | | | | | |
| New Mexico | | | | | | | | X |
| New York ^k | | X | X | | X | X | X ^b | X ⁱ |
| North Carolina | | X | X | | X | X | X ^b | X ^b |
| North Dakota | X | | | | | | | |
| Ohio | | X | X | | X | X | X | X |
| Oklahoma | X | | | | | | | |
| Oregon | | | | X | X | | X ^{a,c,d} | X ^{a,d,i} |
| Pennsylvania | X | | | | | | | |
| Rhode Island | | X | X | | X | X | X | X ⁱ |
| South Carolina | X | | | | | | | |
| South Dakota | X | | | | | | | |
| Tennessee | X | | | | | | | |
| Texas | X | | | | | | | |
| Utah | | X ^f | | | | | X ^a | X ^{a,i} |
| Vermont | | X | X | | X | X | X | X ⁱ |
| Virginia | | X | | X | X | X | X | X ⁱ |
| Washington | X | | | | | | | |
| West Virginia | | | | | | | X | X ⁱ |
| Wisconsin ^k | | X | X | | X | X | X ^{b,h} | X ^{b,h} |
| Wyoming | X | | | | | | | |

(table continues)

Table 7 (continued)

a. Delaware includes health of the parents as a consideration. California and Oregon specify age and health of the parents. Maine, New Hampshire, and Utah include age of the parties.

b. California, Iowa, Massachusetts, and Wisconsin recognize child care services as a factor. Iowa, New York, North Carolina, and Wisconsin also recognize the value of the parents' services for child care.

c. The statute includes as a factor the need of the custodial parent to obtain training or education for employment.

d. These states include the duration of marriage as a factor.

e. The statute provides that the court consider the age, health, station in life, occupation, earning capacity, amount and sources of income, estate, vocational skills, and employability of each of the parents.

f. For public assistance cases only.

g. The statute provides that the court consider the relative abilities of the parties, the condition in which each party will be left by the divorce, and the burdens imposed on either party for the benefit of the children.

h. In these states, the statute also looks at the tax consequences to the parties.

i. These states include as a factor the responsibility of the supporter for the support of others. In Oregon, the statute refers to "all other financial demands on the parent." In Rhode Island and Vermont, this factor is limited to welfare cases. In Virginia, it is limited to welfare cases in which the department of welfare administratively determines support.

j. Maryland has a special provision relating to the use of the family home.

k. Montana, New York, and Wisconsin have authorized the development of a formula or suggested scale. Minnesota uses a percentage of income standard in welfare cases and requires the court in other cases to give reasons if the amount set is lower than that percentage amount.

Table 8

Factors Considered in Setting Child Support
in Paternity Cases

| | No Statutory Provision | Circumstances of Child | | | | Previous Living Standard | Financial Circum- stances of Mother | Financial Circum- stances of Father |
|---------------------------|------------------------------|------------------------|----------------------|-----|--------|--------------------------------|---|---|
| | | Financial Needs | Educational Needs | Age | Health | | | |
| Alabama | X | | | | | | | |
| Alaska | X | | | | | | | |
| Arizona | X | | | | | | | |
| Arkansas | X | | | | | | | |
| California ^a | X | | | | | | | |
| Colorado ^b | | X | X | X | | X | X | |
| Connecticut | X | | | | | | | |
| Delaware | | X | | | X | X | X | |
| District of Columbia | | | | | | | X | |
| Florida ^c | | | | | | | | |
| Georgia | X | | | | | | | |
| Hawaii ^b | | X | X | X | | X | X | |
| Idaho | X | | | | | | | |
| Illinois | | X | X | | | X | X | |
| Indiana | | | X | | X | X | X | |
| Iowa | X | | | | | | | |
| Kansas | X | | | | | | | |
| Kentucky | X | | | | | | | |
| Louisiana | X | | | | | | | |
| Maine | X | | | | | | | |
| Maryland | X | | | | | | | |
| Massachusetts | | | | | | | X | |
| Michigan | X | | | | | | | |
| Minnesota ^{a,d} | | | | | | | | |
| Mississippi | X | | | | | | | |
| Missouri | X | | | | | | | |
| Montana ^b | | X | X | X | | X | X | |
| Nebraska | X | | | | | | | |
| Nevada ^b | | X | X | X | | X | X | |
| New Hampshire | X | | | | | | | |
| New Jersey ^b | | X | X | X | X | X | X | |
| New Mexico | | X | X | X | | X | X | |
| New York ^e | | | | | | | | |
| North Carolina | | | | | | | X ^f | |
| North Dakota ^b | | X | X | X | | X | X | |
| Ohio ^b | | X | X | X | | X | X | |

(table continues)

Table 8 (continued)

Factors Considered in Setting Child Support
in Paternity Cases

| | No | Circumstances of Child | | | | Financial Circum- stances of Mother | Financial Circum- stances of Father |
|---------------------------|----|------------------------|--------------------|----------------------|-----|---|---|
| | | Statutory Provision | Financial Needs | Educational Needs | Age | | |
| Oklahoma | X | | | | | | |
| Oregon ^d | | | | | | | |
| Pennsylvania | X | | | | | | |
| Rhode Island ^b | | X | X | X | | X | X |
| South Carolina | X | | | | | | |
| South Dakota | X | | | | | | |
| Tennessee | X | | | | | | |
| Texas | X | | | | | | |
| Utah | X | | | | | | |
| Vermont | X | | | | | | |
| Virginia ^d | | | | | | | |
| Washington ^b | | X | X | X | | X | X |
| West Virginia | | | | | | X | X |
| Wisconsin ^b | | X | X | X | | X | X |
| Wyoming ^b | | X | X | X | | X | X |

a. Although Minnesota and California have adopted the Uniform Parentage Act, they did not adopt the section containing the factors to consider in setting support.

b. These states have adopted the provisions set forth in the Uniform Parentage Act. (Rhode Island and Wisconsin have not, however, adopted the act.) The factors include all relevant facts, specifically the child's needs, education, age, and financial resources and capacities; the parents' standard of living, earning ability, and responsibility of support for others; and the value of any services rendered by the custodial parent.

c. Florida sets specific amounts for child support at various age levels of the child. However, if public assistance is involved, the court shall consider (if there is no prior support order) the income, needs, and earning capacity of the responsible parent and the child's needs.

d. Minnesota, Oregon, and Virginia look at the same factors as if the child had been born in wedlock. See Table 7.

e. New York has a general child support formula that is prima facie evidence of an ability to support.

f. This factor is specified for only the criminal proceeding.

Because ability to pay is a major factor in setting the amount of support, information on the income and assets of the parties is of particular importance in a child support action. However, the availability of that information -- or rather its lack of availability -- is a recurring problem in child support proceedings.

Civil rules of discovery would seem to be applicable here, but the parties may not make full use of them. Therefore, a number of states have enacted specific statutes that authorize the court itself to order an investigation of the financial ability of the parties or require financial statements to be filed with the court in all cases. Fifteen states have these types of court- or agency-initiated discovery in divorce and separation actions, although in a few states the authorization may be limited to the welfare agency. Table 9 sets forth the characteristics of the various state enactments.

Table 9

Statutory Provisions Concerning
Procedures to Obtain Information on Assets

| | No Statutory Provision | Independent Court Investigation | Court Requires Disclosure or Financial Statements | Financial Statements Required by Support Agency |
|-------------|------------------------------|---------------------------------------|--|---|
| Alabama | X | | | |
| Alaska | X | | | |
| Arizona | X | | | |
| Arkansas | X | | | |
| California | | | X | X |
| Colorado | X | | | |
| Connecticut | X | | | |

(table continues)

Table 9 (continued)

Statutory Provisions Concerning
Procedures to Obtain Information on Assets

| | No Statutory Provision | Independent Court Investigation | Court Requires Disclosure or Financial Statements | Financial Statements Required by Support Agency |
|-------------------------|------------------------------|---------------------------------------|--|---|
| Delaware ^a | X | | | |
| District of Columbia | X | | | |
| Florida | X | | | |
| Georgia | X | | | |
| Hawaii | | X | X | |
| Idaho | X | | | |
| Illinois | X | | | |
| Indiana | X | | | |
| Iowa | | | X | |
| Kansas | | X | | |
| Kentucky | | X | | |
| Louisiana | X | | | |
| Maine | X | | | |
| Maryland | X | | | |
| Massachusetts | | X | | |
| Michigan | X | | | |
| Minnesota | X | | | |
| Mississippi | X | | | |
| Missouri | X | | | |
| Montana | | | X | X |
| Nebraska | | | | X ^b |
| Nevada | X | | | |
| New Hampshire | | | X | |
| New Jersey | X | | | |
| New Mexico | X | | | |
| New York | | X ^c | X | |
| North Carolina | X | | | |
| North Dakota | X | | | |
| Ohio | X | | | |
| Oklahoma | X | | | |
| Oregon | | X | X | |
| Pennsylvania | | X ^c | X | |
| Rhode Island | X | | | |
| South Carolina | X | | | |
| South Dakota | X | | | |

(table continues)

Table 9 (continued)

Statutory Provisions Concerning
Procedures to Obtain Information on Assets

| | No Statutory Provision | Independent Court Investigation | Court Requires Disclosure or Financial Statements | Financial Statements Required by Support Agency |
|---------------|------------------------------|---------------------------------------|--|---|
| Tennessee | X | | | |
| Texas | X | | | |
| Utah | X | | | |
| Vermont | X | | | |
| Virginia | | X ^d | | X |
| Washington | X | | | |
| West Virginia | X | | | |
| Wisconsin | | | X | |
| Wyoming | | | X | |

a. The court may require the obligor to notify obligee of any extraordinary expenditures made after the order of support.

b. Statute provides for investigation by the Department of Public Welfare to determine absent parent's income and employer.

c. Paternity cases only.

d. If a desertion or nonsupport petition is filed, the court may require this.

Visitation and Support

A frequently used justification for the failure to pay support is interference by the custodial parent with the visitation rights of the absent parent who has been ordered to pay support. There is a substantial body of case law dealing with the viability of this justification. Although the reaction of the courts is divided, the most common view holds that the failure to pay support is not excused because of interference with visitation rights.⁴³ Eleven states⁴⁴ have specific statutory provisions dealing with the

issue and stating that the duty to pay support is not affected by failure to allow, or interference with, visitation by the custodial parent.

SUPPORT ENFORCEMENT MECHANISMS

One of the most important factors influencing whether the payments ordered by the court will actually be received by the child is the structure which the state has established for collecting the support.⁴⁵ Much of the legislation enacted in recent years dealing with the problem of child support has involved the mechanism for child support enforcement.

In examining the statutes of the various states, we looked for four general types of statutes relating to the enforcement mechanism for child support: (a) those relating to the enforcement structure, (b) those relating to help from public agencies in collecting support, (c) those providing special access to particular sources of funds, and (d) those designed to prevent nonpayment. The next two sections deal with the statutes in the first group; the two that follow deal with those in the second group. The subsequent section discusses those in the third classification; and the final section deals with those in the last group.

Payments Through an Official Agency

Historically, child support in most jurisdictions has been payable directly to the custodial parent. This structure has resulted in a number of enforcement problems. First, when an enforcement action was brought, nonpayment had to be proved, sometimes leading to conflicting testimony by parents -- for example, as to delivery of cash payments. As a result, the process was often slow and expensive. Second, a custodial parent who received public aid on behalf of the child was expected to turn support payments over

to the public treasury. Again, there were often disputes as to amounts received.

Payments of child support to a public agency obviates these problems. When nonpayment is claimed, there is a public record of the payment or nonpayment. In the case of children receiving public assistance, the transfer of support payments to the public treasury can be made directly.

Public monitoring of child support payments has other advantages. It allows early documentation of default and, if the state has the proper mechanism,⁴⁶ may provide for early reminders to defaulting parents. One factor that often aggravates the problem of child support enforcement is the accumulation of arrearages. Some students of the problem judge that one of the most effective enforcement mechanisms is early detection of default and quick enforcement before substantial arrears accumulate.

As Table 10 indicates, only a few states do not at least authorize the court to order payment of support to a public agency. Seven jurisdictions require that all support payments be made to an official agency. Two provide for payment to an official agency unless the court orders otherwise. Another fifteen require payment to an official agency if public assistance is involved.

The rules and regulations adopted under the Child Support Enforcement Act⁴⁷ require that state plans for child support provide for payments to a public agency if public assistance is being received. These statutory provisions appear to fulfill this requirement.⁴⁸ Some states use a single state agency as the collection agency, but most use an agency at the county level, such as the clerk of court or county welfare agency.

Table 10

Statutory Provisions Concerning
Support Payments To a Public Agency

| | No Statutory Provision | Payment to Agency at Court Discretion | Mandatory to Pay Agency | | |
|-------------------------|------------------------------|---|-------------------------------|----------------------|-------------------------------------|
| | | | Adminis- trative Agency | Clerk of Court | To Friend of Court or Trustee |
| Alabama | | X ^a | | X ^b | |
| Alaska | | | X ^c | | |
| Arizona | | | | X | |
| Arkansas | | | | X ^d | |
| California | | X | | X ^b | |
| Colorado | | X | | | |
| Connecticut | | X ^e | X ^{a, b} | | |
| Delaware | | X | | | |
| District of Columbia | | X | | | |
| Florida | | X | | | |
| Georgia | | X ^a | | | |
| Hawaii | | X ^a | | | |
| Idaho | | | | X ^c | |
| Illinois | | X ^g | X ^f | X ^g | |
| Indiana | | X | X ^b | X ^b | |
| Iowa | | X ^a | | X | |
| Kansas | | | X ^b | | |
| Kentucky | | X | X ^b | | |
| Louisiana | | X | | | |
| Maine | X | | | | |
| Maryland | | X ^a | | | |
| Massachusetts | X | | | | |
| Michigan | | | | X ^h | X ^h |
| Minnesota | | X ^a | X ^b | | |
| Mississippi | | | X ^b | | |
| Missouri | | X | | X ^b | |
| Montana | | X | | | |
| Nebraska | | | | X | |
| Nevada | | X | X ^b | | X ⁱ |
| New Hampshire | | X ^a | X ^b | | |
| New Jersey | X | | | | |
| New Mexico | | X ^a | | | |
| New York | | X | X ^b | | |
| North Carolina | | X | | | |
| North Dakota | | X ^a | | X | |
| Ohio | | X ^j | | | |
| Oklahoma | X | | | | |
| Oregon | | | X ^k | X ^k | |

(table continues)

Table 10 (continued)

Statutory Provisions Concerning
Support Payments To a Public Agency

| | No Statutory Provision | Payment to Agency at Court Discretion | Mandatory to Pay Agency | | |
|----------------|------------------------------|---|-------------------------------|----------------------|-------------------------------------|
| | | | Adminis- trative Agency | Clerk of Court | To Friend of Court or Trustee |
| Pennsylvania | | | | X | |
| Rhode Island | X | | | | |
| South Carolina | | X | | | |
| South Dakota | | X | x ^b | | x ^{a,i} |
| Tennessee | | X | | | x ^{a,i} |
| Texas | | X | | | |
| Utah | X | | | | |
| Vermont | X | | | | |
| Virginia | | | | x ^{b,1} | |
| Washington | | X | | | |
| West Virginia | | x ^b | | | |
| Wisconsin | | | | X | |
| Wyoming | X | | | | |

- a. In a paternity action only.
- b. Payments are to an agency only if public support is involved.
- c. Payments are to an agency unless the court orders otherwise.
- d. Payments are to an official agency only if the state brings the action.
- e. The court may order payment to the family relations office. If the state has an interest, then payment may be ordered to the commissioner of administrative services. In paternity, payment may be ordered to the governmental unit that has furnished support. If an acknowledgment of paternity, payment may be ordered to the family relations office.
- f. In paternity cases, in counties of over 2 million, the court shall direct payments to the department of public aid or to the clerk of court.
- g. Payment to the clerk is mandatory in all counties participating in "the system of child support payment and enforcement."

(table continues)

Table 10 (continued)

h. The statute specifies payments to either the friend of court or the clerk of court.

i. Payments are to a trustee if the custodial parent resides outside the state.

j. On motion of any party, the court shall order payment to the bureau of support. Also, the court may, by rule, require payment to the bureau in all cases.

k. In nonwelfare cases, the payments may be to either the agency or the clerk of court. Also, under a special provision, payment may be made to a bank account with a receipt for deposit mailed to the clerk within ten days.

l. Payment must also be made to the court clerk if supporter is convicted of nonsupport or desertion or is on probation.

Mechanisms for Keeping Track of Obligor

As pointed out above, early action on nonpayment is important to good support enforcement. One factor in quick enforcement is knowing where the obligor parent resides. A significant number of states require that an official agency, usually the one to which the support payments must be made, be notified of any change of address.⁴⁹ Some require a notification of a change in employment.⁵⁰ A few states have other types of provisions that could be seen as mechanisms to keep track of the supporting parent, such as a provision that the court may order the obligor to report periodically on employment and earnings.⁵¹

Enforcement of Support in Nonwelfare Cases

Traditionally, assistance by public authorities in obtaining support from an absent parent has been limited to cases where public support was furnished, and the public authority has become involved in order to recoup funds dispensed as public assistance. This meant that in a significant number of cases a supported family without financial resources to pursue the defaulting

parent became eligible for and sought public assistance. Many states, as well as the federal government, have recognized the need of families not on public assistance for help in enforcing the absent parent's obligation. In 1975, federal child support legislation required states to make help available to nonwelfare parents for collection of child support, thus, it was hoped, forestalling the need for public assistance.⁵² Our survey found that most of the states had responded with some type of specific statutory authorization to provide enforcement assistance in nonwelfare cases.

Location of Absent Parents

One very effective way in which states can aid families who are seeking support is through help in locating an absent parent. Statistics show that in almost 60 percent of all child support cases the absent parent must be located before enforcement proceedings can be begun.⁵³

The federal child support enforcement legislation requires that all states establish a service to locate absent parents.⁵⁴ All states but New Jersey have implemented this requirement by statute. A few states have also provided help in locating absent parents through a requirement that the social security number of the absent parent be included in support proceedings.⁵⁵

Special Access to Particular Sources of Funds

Generally, nonpayment of a child support order is enforceable as contempt of court, which is punishable by confinement in jail until the order of the court is followed.⁵⁶ Although this may be an effective remedy,⁵⁷ it is a drastic one which many courts use rarely or only after the failure of repeated attempts to obtain payment otherwise. In our search of the statutes, we therefore looked for provisions that took a different approach to the problem

by specifying sources of funds that could be tapped for child support payments. We found two groups of statutes which fit into this category. One made child support a priority over other debt; the other dealt with the availability of garnishment and attachment.

Although the general garnishment and attachment statutes apply to the collection of child support,⁵⁸ we found that a substantial number of states had specific child support statutes dealing with garnishment and attachment, i.e., either statutes that specifically mentioned attachment or garnishment as enforcement mechanisms for child support, or statutes that had special provisions to deal with the nature of the child support obligation. Table 11 sets forth the states we found with such provisions.

Table 11
Specific Enforcement Provisions for Child Support

| | Priority Over Creditors | Garnishment | Attachment | Posting Bond | Lien | Trustee |
|-------------------------|-------------------------------|----------------|------------|-----------------|----------------|----------------|
| Alabama | X | X | X | X | X | X |
| Alaska | X ^a | | | | | |
| Arizona | X | X | X | | | |
| Arkansas | | X | X | X | | |
| California | X | X | | X | X | X ^b |
| Colorado | | X | | X | | |
| Connecticut | X | X | | X ^b | | |
| Delaware | X | | X | X | | X |
| District of Columbia | X | X | X | X | | |
| Florida | | X | | | X ^b | |
| Georgia | | X ^c | | X ^b | X ^d | |
| Hawaii | X ^a | X ^d | X | X | | |
| Idaho | X | | | | | X ^b |
| Illinois | X | | | X ^b | | |
| Indiana | X | | | | X | X |
| Iowa | X | | X | | X ^b | X ^b |
| Kansas | | X | X | X ^b | | |

(table continues)

Table 11 (continued)

Specific Enforcement Provisions for Child Support

| | Priority Over Creditors | Garnishment | Attachment | Posting Bond | Lien | Trustee |
|-----------------------------|-------------------------------|-------------|------------|-----------------|----------------|----------------|
| Kentucky | X | | | X ^b | X ^d | |
| Louisiana | X | | | | | |
| Maine | | X | X | | | |
| Maryland ^e | X | | X | | | |
| Massachusetts | X | X | X | X | X | X |
| Michigan | | | | X | X | X |
| Minnesota | X | | X | X ^b | | X |
| Mississippi | | X | | | X ^b | X ^b |
| Missouri | | X | X | | | |
| Montana | X | | | | X | |
| Nebraska | | X | | X | X | |
| Nevada | | | | X | X | |
| New Hampshire | X ^f | X | X | | X | X |
| New Jersey | X | X | X | X ^b | X | X |
| New Mexico | | X | X | | X | X |
| New York | X ^g | | X | | X | |
| North Carolina | | X | X | | X | |
| North Dakota | X ^a | X | X | | | |
| Ohio | X | | X | | | X |
| Oklahoma | | X | X | | | |
| Oregon | X | X | X | | | X |
| Pennsylvania | | X | X | | | |
| Rhode Island | X | X | X | | | |
| South Carolina ^e | | | | X | | |
| South Dakota | | | | X ^b | | X ^b |
| Tennessee | X | | | | | X ^b |
| Texas | | | | | | X |
| Utah | X | X | X | | X | |
| Vermont | | X | | X ^b | X | X |
| Virginia | X | X | X | | X | |
| Washington | X | X | X | | X | |
| West Virginia ^e | | X | | | | |
| Wisconsin | | X | X | X | | X |
| Wyoming | X | X | X | | | X |

a. Wage assignment has priority over other creditors.

b. In paternity cases only.

c. Garnishment may be had only after an administrative determination of support or in public assistance cases.

(table continues)

Table 11 (continued)

d. This applies in public assistance cases only.

e. A default may cause the obligor's income tax refund to be paid to the child support enforcement bureau.

f. Wage assignment for child support is a priority over other voluntary deductions.

g. Child support does not have priority over deductions, such as union dues, made mandatory by law.

Preventing Nonpayment

The enforcement tools discussed in the previous sections all deal with the collection of arrearages, but the best enforcement device is, of course, one that prevents arrearages.

We identified two general types of statutes that we judged to be of this type. One group provided for payment despite default by requiring the furnishing of a bond or other security in a certain amount to cover payment. These kinds of provisions were most prevalent in statutory schemes dealing with the issues of paternity. The states we identified with these provisions are listed in Table 11 in the column headed "Posting Bond."

The other group of statutes which appeared to be calculated to prevent default were those providing for wage assignments by the supporting parent or provisions for employer withholding of support amounts from wages. There seems to be general agreement that this is the most effective support enforcement tool. For most of us, having the money owed deducted from our earnings before we are paid is the best way to ensure payment; witness the success of income tax withholding.

Most states have enacted legislation dealing with wage assignments. In some, the statute provides for the signing of a wage assignment by the

employee that authorizes the employer to deduct the support payment before paying the employee's wages. In other states the deduction is effected by an order directly to the employer to withhold the support payment. In Table 12, we have grouped these two approaches together, but have noted whether the wage assignment or withholding must be ordered at the time the support order is entered or is authorized at the discretion of the court or only after default.

As Table 12 also shows, in a few states the only provision is an authorization for a voluntary assignment by the parent.

Table 12
Statutory Provisions Making
Wage Assignment Available for Support

| | No Statutory Provision | Court Must Order | Court May Order | Voluntary Wage Assignment |
|-------------------------|------------------------------|------------------------|-----------------------|---------------------------------|
| Alabama | X | | | |
| Alaska | | | X | |
| Arizona | | | X ^a | |
| Arkansas | X | | | |
| California | | | X | |
| Colorado | | | X | |
| Connecticut | | X | | X |
| Delaware | | | X | X |
| District of Columbia | | | X | |
| Florida | | | | X |
| Georgia | | | | X |
| Hawaii | | | X | |
| Idaho | | | X | |
| Illinois | | X ^b | | |
| Indiana | | | X | |
| Iowa | | | X | |
| Kansas | X | | | |
| Kentucky | | | X | |
| Louisiana | X | | | |
| Maine | | | X ^c | |
| Maryland | | | X | |
| Massachusetts | | | X | |
| Michigan | | | X | |

(table continues)

Table 12 (continued)

Statutory Provisions Making
Wage Assignment Available for Support

| | No Statutory Provision | Court Must Order | Court May Order | Voluntary Wage Assignment |
|-----------------------|------------------------------|------------------------|-----------------------|---------------------------------|
| Minnesota | | | X | |
| Mississippi | X | | | |
| Missouri | | X | | |
| Montana | | | X | |
| Nebraska | | X | | |
| Nevada | | X ^b | X | |
| New Hampshire | | X ^b | X ^d | |
| New Jersey | X | | | |
| New Mexico | | | X ^e | |
| New York | | | X | |
| North Carolina | | | X | |
| North Dakota | | X ^f | | |
| Ohio | | | X | |
| Oklahoma ^c | | | | |
| Oregon | | | X | |
| Pennsylvania | | | X | |
| Rhode Island | | X ^f | | |
| South Carolina | X | | | |
| South Dakota | | X | | |
| Tennessee | | | X | |
| Texas | X | | | |
| Utah ^d | | | X | |
| Vermont | X | | | |
| Virginia ^d | | | | |
| Washington | | | X | |
| West Virginia | | | X ^c | |
| Wisconsin | | X | | |
| Wyoming | | | X | |

a. If an enforcement action is filed or obligor is two months in arrears, court may order wage assignment. Assignment is mandatory if obligor is more than six months in arrears.

b. Wage assignment goes into effect at the court's discretion or if a payment is missed. In Nevada, the court must order a wage assignment if the supporting parent misses the equivalent of two monthly payments in a 12-month period.

c. In welfare cases, the state may require a wage assignment by the supporter.

(table continues)

Table 12 (continued)

- d. The state can require wage assignment with or without a court order.
- e. The court may order wage assignment only after a hearing at which it finds an arrearage of at least three payments.
- f. Wage assignment goes into effect twenty days after failure to make payment when due.

REIMBURSEMENT FOR PUBLIC ASSISTANCE

"The problem of welfare in the United States is, to a considerable extent, a problem of the nonsupport of children by their absent parents."⁵⁹ There is no doubt that a major factor in the current interest in improvement of the child support laws has been concern about the major public expenditures required because of the failure of absent parents to comply with their support obligations.

Much of the legislation discussed earlier in this summary which was designed to improve child support enforcement also effectively reduces public assistance expenditures. The focus of this section of the report is on a few statutory provisions specifically related to public assistance that we have judged to be important in the reimbursement process.

The statutes we looked at can be divided into two groups: those creating an administrative procedure for the establishment of the duty of support and those authorizing active participation by the public assistance granting agency in the process of support collection from the absent parent. The statutes surveyed in this area are outlined in Table 13.

Administrative Procedures to Establish Support

As Table 13 indicates, a number of states have an administrative procedure to establish support orders within the support enforcement agency.

Administrative process has been tried in other areas of the law to relieve court backlogs and to provide streamlined and less expensive procedures for adjudicating disputes.⁶⁰ As concern about the cost and delay associated with individualized judicial determination of support orders grows, increasing attention is directed toward using an administrative process as an alternative to alleviate delay and court problems.

If support is being provided by a public agency, delays in obtaining support orders may increase the difficulty of collecting from an absent parent. Delay may create equally important problems for children whose custodial parent has not sought public help, but as Table 13 indicates only a few states have established an administrative process for establishing the duty to support.

Active Participation by Agency in Support Collection Process

As the number of public assistance cases for children has grown, the authority of the agency providing that aid to obtain reimbursement from the defaulting absent parent has increased. Basically, of course, the obligation of the absent parent is to the child, and the right to bring an action for support belongs to the child or its custodian. Originally, the public assistance agencies relied on private prosecution by the child's custodian to obtain support owed. This resulted, first of all, in problems of collection for the public agency because the funds were channeled through the child.

Consequently, federal law requires the assignment of supporter rights to the public agency as a condition of granting assistance. As Table 13 illustrates, most states have implemented this requirement by state statute. Many states have gone further and provided by statute that the support rights are assigned by operation of law, thus apparently eliminating the need for specific assignment by the parties.

Relying on private prosecution of the support right also raised concerns about the vigorousness of the quest for support because the incentive -- funds for the recipient -- was lacking. Therefore, a number of statutes have been enacted to provide more active participation by the public assistance agency in the support collection action. In our survey we looked specifically at three types of statutes: those that provide for enforcement by the state in welfare cases; those that authorize the agency to seek modification of a support order; and those that bring the public assistance agency into the process even prior to the setting of the order by requiring service on that agency in any action in which support is sought. States having these types of statutes are listed in Table 13.

STATUTORY COMPILATIONS

This discussion has attempted to present an overview and summary of the statutory provisions in the fifty states and the District of Columbia. Following the notes is a more detailed state-by-state compilation.

Table 13

Collection of Reimbursement for AFDC

| | Duty of Support Determined by Agency | Payments Assigned to Agency | Agency Can Request Support Modification | Notice to Agency If Public Assistance Involved | Enforcement by Agency |
|----------------------|--------------------------------------|-----------------------------|---|--|-----------------------|
| Alabama | | X | | | X |
| Alaska | X | X | X | | X ^a |
| Arizona | | X | X ^b | | X |
| Arkansas | | | | | X |
| California | | X | X | X | X |
| Colorado | | X | X | | X |
| Connecticut | X | X | X | X ^c | X |
| Delaware | | X | | | X |
| District of Columbia | | X | | | X |
| Florida | X | X | X | | X |
| Georgia | X | X | X | | X |
| Hawaii | | X | | | X |
| Idaho | | | X | | X |
| Illinois | X | X | X ^d | | X |
| Indiana | | X | | | X |
| Iowa | | X | X | X | X |
| Kansas | | X | | | X |
| Kentucky | | X | X | | X |
| Louisiana | | X | X | | X |
| Maine | X | X | X | X | X |
| Maryland | X | X | | | X |
| Massachusetts | | X | X | | X |
| Michigan | | X ^e | | | X |
| Minnesota | | X | X ^f | X | X |
| Mississippi | | X | X | | X |
| Missouri | | X | | | X |
| Montana | X | X | X | X | X |
| Nebraska | | X | X | | X |
| Nevada | | X | X | | X |
| New Hampshire | X | X | X | | X |
| New Jersey | X | X | | | X |
| New Mexico | | | | | X |
| New York | | X | X | | X |
| North Carolina | | X | X | | X |
| North Dakota | | X | | X ^c | X |
| Ohio | | X | | | X |
| Oklahoma | X | X | | | X |
| Oregon | X | X | X | X | X |

(table continues)

Table 13 (continued)

Collection of Reimbursement for AFDC

| | Duty of Support Determined by Agency | Payments Assigned to Agency | Agency Can Request Support Modification | Notice to Agency If Public Assistance Involved | Enforcement by Agency |
|----------------|--------------------------------------|-----------------------------|---|--|-----------------------|
| Pennsylvania | | X | | | X |
| Rhode Island | | | X | X | X |
| South Carolina | | X | | | X |
| South Dakota | | X | X | | X |
| Tennessee | | X | | | X |
| Texas | | X | X | | X |
| Utah | X | X | X | X | X |
| Vermont | X | X | X | X | X |
| Virginia | X | X | X | | X |
| Washington | X | X | X | | X |
| West Virginia | | X | X | | X |
| Wisconsin | | X | X | X | X |
| Wyoming | | | | | X |

a. Upon notice, the agency may assert a lien on the real or personal property of the obligor.

b. A statutory provision sets forth the procedure for modification, but who initiates it is unclear.

c. There is no specific statutory provision regarding the agency, but the state must be a party when public assistance is involved or the clerk must notify the agency.

d. The statute applies only to paternity proceedings.

e. If the child is receiving public assistance, the friend of the court is to transmit payments to the department of social services.

f. Agency request for modification is limited to cases where the amount is below that specified in the percentage of income guidelines.

NOTES

1. U.S. Department of Commerce, Bureau of the Census, Characteristics of American Children and Youth: 1980 (Current Population Reports, Series P-23, No. 114, 1982); Estimates of the Population of the United States by Age, Sex and Race: 1980 to 1983.
2. In 1979, only 2% of the children living with their mother had a deceased father. U.S. Department of Commerce, Bureau of the Census, Statistical Abstract of the United States: 1980 (101st ed. Washington, D.C., 1980).
3. The members of that committee were Michael E. Barber, Sacramento, Calif.; Gloria F. DeHart, San Francisco, Calif.; Jack A. Rounick, Morristown, Pa.; Hon. Joseph M. F. Ryan, Jr., Washington, D.C.; Sherwood K. Zink, Madison, Wis., Chair.
4. The statutory search was conducted by students at the University of Wisconsin Law School. The original search was begun by Gene Sydnor. He was assisted by Fred Ojile and Irene Opsahl. Further checking and incorporation of information from the state correspondents was done by Sandra Marcus and Catherine Barnett. The tables were prepared by Ann W. Barr and Janet M. Mueller. Final checking was done by these students, Teresa Meuer, Kristi A. Gullen, Esther E. Koblenz and Catherine F. Conway.
5. The names and addresses of the state contacts are listed with each state compilation. The names were obtained from the regional offices of the Office of Child Support Enforcement, U.S. Department of Health and Human Services.
6. It was replaced in 1950 by the Reciprocal Enforcement of Support Act.

7. See text of the act in Handbook of the National Conference of Commissioners on Uniform State Laws 385 (1922).
8. Commissioners' Prefatory Note to Uniform Reciprocal Enforcement of Support Act (1950), 9A U.L.A. 751 (1979).
9. W. Brockelbank and F. Infausto, Interstate Enforcement of Family Support (2d ed. 1971) 32.
10. Commissioner's Prefatory Note, supra note 8.
11. Twenty-one jurisdictions have the 1950 Act, and twenty-nine have the 1968 version. New York has the Support of Dependents Law, which is similar to URESA.
12. Commissioner's Prefatory Note to Uniform Civil Liability for Support Act, 9 U.L.A. 171 (1979).
13. See the state compilations.
14. C. Kastner and L. Young, In the Best Interest of the Child: A Guide to State Child Support and Paternity Laws (National Conference of State Legislatures 1981) 82.
15. See Report of the Committee on Status and Protection of Illegitimate Children, in Handbook, supra note 7 at 225.
16. H. Clark, Law of Domestic Relations 165 (1968).
17. Kulko v. California Superior Court, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 132 (1978).
18. Minnesota, which is a Uniform Parentage Act state, does not have the jurisdiction provision of the act, but refers in the paternity statute to its general "long-arm" jurisdiction statute which gives jurisdiction over a person who "commits any act in Minnesota causing injury." Minn. Stat. Ann. § 543.19 (1982 cum. supp.).

19. Attempts to bring paternity actions under general language have been unsuccessful. See, for example, State ex rel Larimore v. Snyder, 206 Neb. 64, 291 NW 2d 241 (1980) construing Neb. Stat. § 25-536(c); Anonymous v. Anonymous, 104 Misc. 2d 611, 428 N.Y.S. 2d 608 (1980) construing N.Y. Civ. Prac. Law § 302(a).
20. Handbook, supra note 7.
21. Act Relating to Children Born Out of Wedlock (approved version) § 7, in Handbook, supra note 7 at 386.
22. Note to § 8 (later § 7) of Act in Handbook, supra note 7 at 232.
23. Kastner and Young, supra note 14 at 83.
24. The Uniform Parentage Act reflects this view. See § 6 of the act, 9A U.L.A. 593 (1982 cum. supp.).
25. H. D. Krause, Child Support in America: The Legal Perspective 176 (1981); Havighurst, Settlement of Paternity Claims, 1976 Ariz. St. L.J. 461, 465 (1976).
26. Krause, supra note 25 at 45.
27. Uniform Parentage Act § 13, 9A U.L.A. 604 (1982 cum. supp.).
28. Clark, supra note 16 at 164.
29. R.I. Gen. Laws § 15-8-8 (1983 cum. supp.); W. Va. Code § 48-7-4(c) (1983 cum. supp.); West's Wis. Stat. Ann. § 767.47(8) (1983); N.C. Gen. Stat. § 49-2 (1981 cum. supp.); Va. Code § 20-61-1 (1983 cum. supp.).
30. See, for example, discussion in Chang Ling Lee, Principles of Paternity Testing, in Krause, supra note 25 at 583, 598.
31. An excellent discussion of the problems of using blood-typing tests to prove paternity can be found in Krause, supra note 25 at 219.
32. See, for example, West's Calif. Ann. Penal Code § 270b (1981 cum. supp.); Del. Code Ann. Rev. 1974 Tit. 13, § 522 (1980 cum. supp.); Mich. Comp.

Laws Ann. § 750.165 (West 1968) (1984-85 cum. supp.); Nev. Rev. Stat. § 201.050 (1983); N.J. Stat. Ann. § 2C:62-1.b (West 1982); N.D. Cent. Code §§ 14-07-19, 14-07-20 (1983 supp.); Utah Code Ann. § 76-7-202 (1978); Code of Va. § 20-72 (1981 cum. supp.); Wyo. Stat. Ann. § 20-3-102 (Michie 1977) (1983 cum. supp.).

33. See, for example. Ark. Stat. Ann. 1947 § 41-2405 (1981 cum. supp.); Code of Ga. Ann. Rev. 1933 § 74-9903 (1981 cum. supp.); Mo. Ann. Stat. § 568-040 (Vernon 1982) (1983 cum. supp.); Okla. Stat. Ann. tit. 21 §§ 852, 853 (West 1951) (1981-82 cum. supp.); R.I. Gen. Laws § 11-2-2 (1983 cum. supp.); S.D. Codified Laws Ann. § 25-7-16 (1983 cum. supp.); Tenn. Code Ann. §§ 39-4-112(a), 39-4-113(a), 39-217, 39-219 (1983 cum. supp.); Tex. Penal Code Ann. § 25.05 (Vernon 1974) (1981-82 cum. supp.); Utah Code Ann. 1953 § 76-7-201 (1981 cum. supp.).
34. Our research found forty states with special civil actions to enforce support. See, for example, West's Fla. Stat. Ann. § 61.09 (1982 cum. supp.); N.D. Century Code § 14-07-15 (1981 cum. supp.), West's Wis. Stat. Ann. § 767.08 (1981-82 cum. supp.); Wyo. Stat. Ann. 1977 § 20-2-102 (1981 cum. supp.).
35. Krause, supra note 25 at 84.
36. Senate Finance Committee, Hearing on Child Support and the Work Bonus, 93rd Cong., 1st Sess. (Sept. 1973), at 126, 147.
37. Commissioners' Prefatory Note to Uniform Reciprocal Enforcement of Support Act (1950), 9A U.L.A. 751 (1982 cum. supp.)
38. Krause, supra note 25.
39. Kulko v. California Superior Court, supra note 17.
40. See N. Yee, What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Tenth District Court, 57 Denver L.J. 21 (1979).

41. Kastner and Young, *supra* note 14 at 25.
42. J. Cassette, Child Support and Public Policy (1978).
43. See the cases cited in 4 Am. J. Trial Advocacy 199, 212-213 (1980).
44. Alaska, Arizona, California, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, Washington, and Wisconsin. Ohio and Oregon provide for a change of support.
45. Although this is a study of state laws, it must be noted that those laws and the process of child support enforcement have been significantly affected in recent years by the enactment in 1975 of the federal child support enforcement program (Part D of Title IV of the Social Security Act, 42 U.S.C.A. §§ 651-662 [1975-1980 supp.]). Although the primary focus of the program is to reduce public assistance expenditures by requiring absent parents to contribute to the support of their children who receive AFDC, the program has fostered reforms which will benefit all children entitled to support from absent parents.
46. One model of the proper mechanisms is found in some counties in Michigan, where the office of the friend of the court monitors support payments and notifies defaulters. An excellent discussion of the functioning of that office can be found in D. Chambers, Making Fathers Pay (1979).
47. *Supra* note 45. The regulations are found in 45 C.F.R. §§ 232.1-232.49, 301.0-305.50 (Rev. Oct. 1, 1981).
48. Other states may provide this structure by administrative rule or by practice.
49. Alaska, Arizona, California, Colorado, Connecticut, Illinois, Indiana, Maryland, Missouri, Montana, Nebraska, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Washington, and Wisconsin have statutes which require notice of change of address in all or some cases in which support is being paid.

50. See, for example, New York, New Hampshire, Utah and Wisconsin.
51. See, for example, Delaware and West Virginia.
52. Supra note 45.
53. Kastner and Young, supra note 14 at 8.
54. 42 U.S.C.A. 654(8) & (9)(b); 45 CFR §§ 302.35, 302.36(b); 303.3, 303.20(b)(7) & 305.33.
55. See, for example, New York and Oregon.
56. The contempt of court involved here is civil contempt. The theory underlying it is that the person can purge the contempt by complying with the court order. This is in contrast to criminal contempt, which is intended to punish the wrongdoer for not respecting the authority of the court. Both may be available for failure to pay support. Krause, supra note 25 at 61-74.
57. See data in Chambers, supra note 46. For a discussion of how jailing for contempt may be counterproductive, see Krause, supra note 25 at 72.
58. Clark, supra note 16 at 509. For a compilation of statutes see Staff of Senate Comm. on Finance, 94th Cong., 1st Sess., Provisions of State Laws and Other Data Relating to Wage Garnishment, Attachment and Assignment and Establishment of Paternity (Comm. Print Oct. 1975).
59. S. Rep. No. 93-1356, 93rd Cong., 2d Sess., in 1974 U.S. Code Cong. & Ad. News 8133, 8145.
60. Kastner and Young, supra note 14 at 57, referring to a study by the University of Southern California Center for Health Services Research which found that states with administrative collection mechanisms had lower overall costs per case than court-oriented programs, and had higher collections per case.

7/19/83

ALABAMA

Alabama Code
1975 (1983 Cum. Supp)

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version with numerous variations. Does not include part IV. §§ 30-4-80 - 30-4-98.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence because "Procedures appropriate to civil proceedings shall govern in [paternity] proceedings." § 26-12-2.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. "[I]f said child is or is likely to become a public charge, [complaint may be made] by any representative of the state or county department of pensions and security" § 26-12-1.

"The district attorney or his deputy shall appear and prosecute all paternity proceedings brought under this chapter." § 26-12-3.

Default Judgment Allowed. Apparently not allowed.

"Upon filing of such complaint, the judge of the court shall issue a warrant against the reputed father and cause him to be brought before him and may admit him to bail to appear in said court to answer such charge." § 26-12-2.

Procedure for Blood Tests. "In any illegitimacy case the court, upon application made by the reputed father whose blood is involved, shall order the mother, child and reputed father to submit to one or more blood tests to determine whether or not the accused can be excluded as the father of the child. No such blood test of any child shall be taken before the child reaches the age of six months. Whenever the court orders any such blood test to be taken and the mother shall refuse to submit either herself or the child to the test, such fact shall be disclosed upon the trial unless good cause is shown for not doing so. Any tests shall be made by an expert qualified as an examiner of blood types, and he shall be appointed by the court. The court shall fix the compensation of any expert at a reasonable amount and may direct the same to be paid by the county or any other party to the case or by both, in such proportions and at such times as the court shall prescribe The result of the tests shall be receivable in evidence in the trial of the case, but only in cases where definite exclusion is established. If more than one expert is appointed by the court and if they disagree in their findings or conclusions, neither the findings, conclusions nor results of these tests shall be admissible as evidence of the paternity or non-paternity of the reputed father." § 26-12-5.

Support Without Paternity Determination. No direct statutory provision. However, "[t]he father of a bastard child may legitimate it . . . by making a declaration in writing . . ." § 26-11-22. Therefore, it appears that the father may be required to support the child.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

A civil cause of action is created on behalf of any person who is owed a duty of support by § 38-10-10.

"A man or woman commits a crime of nonsupport if he or she intentionally fails to provide support which that person is able to provide and which that person knows he or she is legally obligated to provide to a . . . child less than 19 years of age." § 13A-13-4(a).

Initiation of Proceedings. Anyone owed a duty of support may initiate proceedings. § 38-10-10.

Support Pending Divorce. The court, "pending the action, may make such orders in respect to the custody of the children as their safety and well-being may require" § 30-3-1. This appears to include an award of support for the child. See also: "Pending an action for divorce, the court may make an allowance for the support of either spouse out of the estate of the other spouse." § 30-2-50.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In a paternity action, "[t]he court may order payments to be made to the mother or other persons or agency designated to administer them under the supervision of the court." § 26-12-4.

If an assignment of support rights has been made to the department of public welfare, the support payments are to be paid to the appropriate court, which transmits them to the state department. § 38-10-8.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. Same authority as in welfare cases. § 38-10-7.

Location of Absent Parents. "The department of pensions and security of the state of Alabama shall operate child support programs, including, but not limited to, locating absent parents" § 38-10-3.

If a court of this state, in an action under URESA, is unable to obtain jurisdiction over a defendant, it "shall on its own initiation use all means at its disposal to trace the defendant or his property" § 30-4-93(c).

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. No statutory provision.

Long-Arm Statute Specifically for Support. Sufficient contacts include "Living in the marital relationship within this state, as to all obligations arising from alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state" Ala. R. Civ. P. 4.2(a)(2)(H).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Whenever anyone owing the obligation to support has failed to provide support to such child, and application is made to the department on behalf of the child to whom support is owed, the department may take appropriate action under this chapter, or any other appropriate state and federal statutes, to assure that the responsible person or persons owing the obligation of support provide support to such child" § 38-10-7.

Support Payments Assigned. "As a condition of eligibility for aid, each recipient of aid to families with dependent children shall be deemed, by accepting aid for or on behalf of a dependent or needy child, to have made an assignment to the department of the right to any child support owed for or to such child up to the amount of aid paid by the department to the recipient." § 38-10-4.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

7/20/83

ALASKA

Alaska Statutes
1962 (1983 Cum. Supp.)

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version including part IV and the 1952 amendments. §§ 25.25.010 - 25.25.270.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Statute provides for "sufficient evidence"-- apparently the civil burden. § 25.20.050.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. "The agency shall appear on behalf of minor children or their mother or legal custodian or the state and initiate efforts to have the paternity of children born out of wedlock determined by the court on voluntary application by the mother or other legal custodian. The agency may not attempt to establish paternity in any case involving incest or forcible rape, when legal proceedings for adoption are pending, or when it would not be in the best interests of the children or the state." § 47.23.040.

Default Judgment Allowed. No statutory provision. However, a representative of this state indicates that civil default provisions would apply.

Procedure for Blood Tests. No statutory provision.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. No statutory provision. However, a representative of this state indicates that § 47.23.060 applies here even though it refers specifically to a divorce action.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"Each parent is bound to maintain his child when poor and unable to work to maintain themselves." § 25.20.030.

'A person commits the crime of criminal nonsupport if, being a person legally charged with the support of a child under 18 years of age, he fails without lawful excuse to provide support for the child."
§ 11.51.120(a).

Initiation of Proceedings. No statutory provision.

Support Pending Divorce. "During the pendency of the action, the court may provide by order . . . for the care, custody, and maintenance of the minor children of the marriage during the pendency of the action. . . ." § 09.55.200.

Effect on Support of Denial of Visitation. The determination or enforcement of a duty of support is unaffected by any interference by the custodian of the child with rights of custody or visitation granted by the court. § 47.23.080(c).

Factors Considered in Setting Support. In setting child support, the court shall carefully consider "the need for support, the ability of both parents to meet such support obligations, the extent to which the parents supported the child before divorce, and the economic ability of the parents to pay after separation and divorce. The court shall also consider the effect on the support obligation of a change in custodian." § 47.23.060.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In any action where payment of money for purposes of child support is ordered, payment shall be made to the child support enforcement agency unless another payment method is ordered by the court for cause. Alaska Rules of Court Procedure and Administration, Civil R. 67(b)

Mechanism for Keeping Track of Obligors. When payment is to be made to the child support enforcement agency, an order shall be entered containing the following: the names of the parties and the children; the home and mailing addresses of the parties; and the name and address of the employer of the party ordered to make child support payments. The order shall contain a provision directing each party to inform the agency, in writing, of any change in residence or mailing address within five days after any such change. Alaska Rules of Court Procedure and Administration, Civil R. 67(b)(1), (2).

Enforcement of Support by State in Nonwelfare Cases. "The [child support enforcement] agency shall provide aid to any person due child support under the laws of this state" § 47.23.100.

Location of Absent Parents. The child support enforcement agency is designated as the state information and locator agency for all matters concerning the enforcement of support obligations. § 25.25.150. See also § 25.25.160. The agency is authorized to use all sources of records and information available in the state. § 25.25.150(3).

Under URESA, the child support enforcement agency is designated the parent locator, authorized to utilize all sources of records and information available within the state and within other states as appropriate. § 25.25.150. The agency may take any action authorized by state law to locate the obligor. § 25.25.160.

Child Support Priority over Other Creditors. No statutory provision for general priority. However, a wage assignment for child support has priority over other creditors. § 47.23.070(c).

Wage Assignment Specifically Available for Support. The court may on its own motion or motion of a party or the agency on behalf of a party, after notice and an opportunity for hearing, order a parent to assign to the custodian of the child that portion of salary or wages to pay the amount ordered by the court for support. § 47.23.070(a).

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. No statutory provision.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. If no support order has been entered, the child support enforcement agency may establish a duty of support and determine the amount of support through administrative procedures set out in §§ 47.23.160 - 47.23.220. § 47.23.140.

Enforcement of Support by State in Welfare Cases. If the obligor is liable to the state, the state is subrogated to the rights of the obligee to either seek a support order in court or through the administrative procedure or recover on any support order already entered. § 47.23.130.

Thirty days after service of notice and finding of financial responsibility or of notice and liability under an existing support order, the agency may assert a lien upon the real or personal property of the obligor (including earnings) (§ 47.23.230), and it may order any person, political subdivision, or department of the state to withhold and deliver all real or personal property (including earnings) that is due, owing, or belonging to the obligor. § 47.23.250.

Support Payments Assigned. See § 47.23.130 above.

Agency Can Request Modification of Support. The agency may appear in an action seeking modification of a support order, decree, or judgment already entered. § 47.23.045.

Service on Agency If Public Assistance Involved. No statutory provision.

7/20/83

ARIZONA

Arizona Revised Statutes Annotated
1956 (1983 Cum. Supp.)

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version
including part IV. §§ 12-1651 - 12-1691.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence.
All maternity and paternity actions are civil. § 12-841.

Long-Arm Statute Specifically for Paternity. No statutory
provision.

Paternity Action Brought by State. Proceedings to establish
maternity or paternity of a child and to compel support may
be commenced by the mother, father, guardian, or best friend
of a child born out of wedlock, or a public welfare
agency. § 12-843.

In any action where the state is not the plaintiff, the
state may intervene and be named as coplaintiff. § 12-
846(B).

Default Judgment Allowed. Paternity proceedings are civil so a default judgment is available. § 12-841.

Procedure for Blood Tests. The court, on its own motion, or on a motion of the parties, shall order the parties and the child to submit to one or more blood grouping tests. The results of the tests shall be received in evidence if requested by any party to the proceedings. § 12-847(C).

If the paternity action was commenced before the birth of the child, a delay will be granted until the birth for the taking of blood tests if any party requests it.
§ 12-847(B).

Support Without Paternity Determination. Section 12-849(G) states that the paternity action can be terminated by an agreement or compromise if the court approves the terms. Therefore, a court could approve an agreement or compromise that does not include an acknowledgement of paternity.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.
"Every man and woman shall have the duty to provide all reasonable support for his or her natural and adopted minor, unemancipated children." § 12-2451(A).

Arizona also provides criminal sanctions for failure to provide for children. "Any parent of a minor child who knowingly fails, without lawful excuse, to furnish reasonable support for his or her child is guilty of a class 6 felony." § 12-2458(A).

Initiation of Proceedings. Under the civil proceeding, "[p]roceedings to establish or enforce the duties of support . . . may be commenced by any person, agency or entity providing support for a child or having physical custody of such child filing a verified petition alleging that a child is entitled to support from the named

respondent. Only a natural person may petition to establish a duty of support except as provided in title 8 [adoption] and title 12, chapter 7, article 3 [paternity]" § 12-2452(B).

Support Pending Divorce. Either party may move for temporary support of a child. The court may issue an order for support in amounts and terms just and proper in the circumstances. § 25-315(E).

Effect on Support of Denial of Visitation. "If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support . . . is not suspended, but he may move the court to grant an appropriate order." § 25-326.

Factors Considered in Setting Support. Section 25-320 lists the following factors: the financial resources and needs of the child; the financial resources and needs of the custodial parent; the standard of living the child would have enjoyed had the marriage not been dissolved; the physical and emotional condition of the child and his or her educational needs; the financial resources and needs of the noncustodial parent; extraordinary use of common property by either of the parents.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Section 12-2457(A) states:
"The clerk of the superior court shall receive and disburse all monies applicable to support and maintenance."

Mechanism for Keeping Track of Obligors. The clerk of court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. Those parties shall inform the clerk of court of any change of address. § 25-322(B), (C).

Under URESA, if the state information agency does not know the whereabouts of the obligor, "it shall use all means at its disposal to obtain this information." § 12-1666(B). The prosecuting attorney shall also use all means at his or her disposal to locate the obligor. § 12-1668.

Enforcement of Support by State in Nonwelfare Cases. "The county attorney may represent any party seeking to establish or enforce a duty of child support, regardless of the welfare or nonwelfare status of the person." § 12-2456(A). However, "[t]he county attorney shall not represent any party . . . on any ancillary matters raised in such proceedings including a petition for modification of child support." § 12-2456(B).

A representative of this state indicates that the attorney general's office also can bring these actions if an application is received for these services as required by federal law.

Location of Absent Parents. To assist in locating parents who have deserted their children, the state department of economic security is designated as the service for location of deserting parents. § 46-291(C).

The department may request and shall receive information from the records of all departments of the state. § 46-291(C).

Under URESA, the attorney general is designated as the state information agency, with the authority to use all means at its disposal to obtain information on the whereabouts of the obligor. § 12-1666(B). The prosecuting attorney has the same authority to locate the obligor. § 12-1668.

Child Support Priority over Other Creditors. In probate: "When a parent obligated to pay support dies, the amount of future support may be . . . commuted to a lump sum payment . . . and shall have priority equal to the right for family allowance." § 25-327(C). The family allowance has priority over all claims except administration expenses and allowance in lieu of homestead. § 14-2403(A).

Also, "[i]n determining the ability to pay child support and the amount of such payments, the obligation to pay child support shall be primary and other financial obligations shall be secondary."

"An assignment issued pursuant to this section (re wage assignment) has priority over all other attachments, executions, garnishments or assignments." § 12-2454.01(L).

Wage Assignment Specifically Available for Support. If any obligor is in arrears, the court may order the obligor to make an assignment of a portion of his or her periodic earnings. § 25-323.

"If a person obligated to pay child support . . . is in arrears, at the time of filing of a petition [to establish or enforce support], for an amount equal to at least one months child support . . . the court shall order such person to make an assignment of a portion of such person's periodic earnings"

Garnishment Specifically Available for Support. "Any judgment, order or decree, whether arising from a dissolution, divorce, separation, annulment, custody determination, paternity or maternity determination or from Uniform Reciprocal Enforcement of Support Act proceeding and any interlocutory support award in any such proceeding or in any other proceeding regarding support which provides for alimony, spousal maintenance or child support may be enforced as a matter of right by execution, attachment, garnishment, levy, appointment of a receiver, provisional remedies or any other such form of relief provided by law as an enforcement remedy for civil judgments." § 12-2455.

Attachment Specifically Available for Support. See above.

Other Special Enforcement Tools. No statutory provision. However, in paternity actions, any parent who has not paid the child support he or she owes and is found in contempt, is guilty of a class 3 misdemeanor and can be given a jail sentence under § 12-863.01.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Proceedings to establish or enforce the duties of support . . . may be commenced by any person, agency or entity providing support for a child or having physical custody of such child filing a verified petition alleging the child is entitled to support from a named respondent." § 12-2452(B).

"Commencing with the payment of public assistance by the department [of economic security], the director [of that department] may take action . . . to collect child support." § 46-403.

Support Payments Assigned. Language of federal statutes and regulations are incorporated by reference in the statute that sets out the duties and powers of the department of economic security. § 41-1954(A)(1)(b).

Agency Can Request Modification of Support. Unclear. The county attorney may represent any party in the establishment or enforcement of child support duty but cannot represent the party in actions to modify support. § 12-2456. Yet § 46-403 gives the department of economic security the general power to take action to collect child support whenever the department has paid public assistance, and § 12-2453(B), which sets out the child support modification procedure, does not specify who may or may not bring the action.

Service on Agency If Public Assistance Involved. No statutory provision.

7/20/83

ARKANSAS

Arkansas Statutes Annotated
1947 (1983 Cum. Supp.)

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version
including part IV. §§ 34-2401 - 34-2442.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence.
"[I]f the accused denies being the father of such child, the
court or judge shall hear the evidence and decide the case
as other issues at law." § 34-705.

Long-Arm Statute Specifically for Paternity. No statutory
provision.

Paternity Action Brought by State. The welfare legal assistants
shall process and handle all bastardy proceedings when such
cases have been referred to them by the prosecuting
attorney's office or the division of social services.
§ 83-108.3.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. "Whenever it shall be relevant to the prosecution or the defense in an illegitimacy action, the trial court may direct that the husband, wife and child submit to one (1) or more blood tests or other scientific examinations or tests, to determine whether or not the defendant can be excluded as being the father of the child, and to establish the probability of paternity if the test does not exclude the father. The results of the tests shall be receivable in evidence. The tests shall be made by a duly qualified physician, or physicians, or by another duly qualified person, or persons, not to exceed three (3), to be appointed by the court. The costs of the test shall be taxed as other costs in the case or, in the court's discretion, may be taxed against the county. Such experts shall be subject to cross-examination Whenever the court orders such blood tests to be taken and one (1) of the parties shall refuse to submit to such test, such fact shall be disclosed" § 34-705.1.

Without calling him as a witness, a report of blood tests by the state medical examiner may be introduced as evidence. § 34-705.2. Blood tests excluding third parties as the father of the child may be admissible. § 34-705.3.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.
There does not appear to be a statute on civil liability.
But see next section.

Nonsupport is a class A misdemeanor except that if (a) the person leaves or remains without the state of Arkansas with purpose to avoid a legal duty to provide support to another person or (b) the person has previously been convicted of nonsupport, it is a class D felony. § 41-2405.

Initiation of Proceedings. Sections 83-150 to 83-153 authorize the district director of public welfare to certify to the prosecuting attorney that an applicant for assistance was put in needy circumstances because the responsible parent refused or neglected to provide support. The prosecuting attorney or other appropriate official shall then institute the necessary civil or criminal proceedings against the parent.

Support Pending Divorce. The court may allow maintenance of the spouse, including child support, pending divorce. § 34-1210.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. Broad discretion by the court is authorized by § 34-1211.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "(a) Whenever a child support case comes to the attention of the Division of Social Services, and an attorney from said division is assigned to represent the person to whom child support payments are owed, the court shall order that all child support payments be paid into the registry of the court. (b) In those cases where the Division of Social Services is seeking to enforce a previous order for child support and said order does not direct that payments to be made [paid] into the registry of the court, the court shall modify the order to conform to paragraph (a) above." § 83-155.1.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. "To assist in locating parents who have deserted their children and other persons liable for support of dependents, the Department . . . or any prosecuting attorney may request and shall receive information from the records of all departments, boards, bureaus or other agencies of this state and the same are authorized and directed to provide such information as is necessary for the purpose."
§ 83-161.

Under URESA, if the state information agency does not know the whereabouts of the obligor, it is to use all means at its disposal to obtain such information, including the examination of all official state records and other sources.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. Court may enforce order for maintenance by equitable garnishment.
§ 34-1212.

Attachment Specifically Available for Support. Court may enforce order for maintenance by sequestration of the property of either party. § 34-1212.

"If the owner of real or personal property situated in this State shall fail or refuse to support any natural or adopted child or children of such owner in this State as required by the laws of this State, the court may cause the property, real or personal, to be sold and the proceeds thereof or so much thereof as necessary, used to provide for the support of such child or children. Personal jurisdiction of the owner of such property shall not be necessary in order to subject such property to sale for support of the dependent children of the owner." § 34-2448.

Other Special Enforcement Tools. Section 34-706 makes provision for a bond requirement, and § 34-707 provides for commitment to the county jail for failure to enter into the bond in paternity actions.

Long-Arm Statute Specifically for Support. Any person who establishes or acquires a marital domicile in this state or who contracts marriage in this state or becomes a resident of this state while legally married, and subsequently absents himself or herself from the state leaving a dependent child and fails to support such child, is hereby deemed to have consented to and submitted to the jurisdiction of the courts of Arkansas as to any cause of action brought against such person for the support of such children. § 34-2446.

See also § 83-155: "In the event the spouse or parent has left the State, the Secretary of the State of Arkansas shall be the lawful attorney or agent for such spouse or parent, service of process shall be made by serving a copy of the process [on] said Secretary of State and such service shall be sufficient notice upon said spouse or parent providing that notice of such service and a copy of the process are forthwith sent by registered mail by the attorney for the Welfare Department . . . to last known out-of-state address of the . . . parent."

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. All payments made by the division of social services to a dependent child shall be recoverable against the obligor by the state as a debt due. § 83-155.

Support Payments Assigned. No statutory provision.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

7/20/83

CALIFORNIA

West's Annotated California Code
(1983 Cum. Supp.)

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UNIFORM ACTS

Uniform Parentage Act. Civ. Code §§ 7000 - 7021.

Uniform Blood Test Act. Evid. Code §§ 890 - 897

Uniform Desertion and Nonsupport Act. Only two of the act's provisions. Penal Code §§ 270e and 273h.

Uniform Civil Liability for Support Act. Civ. Code §§ 241 - 254.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. Civ. Proc. Code §§ 1650 - 1699.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Although California does not have the Uniform Parentage Act provision indicating that the paternity proceedings are civil, California has placed the act within its Civil Code. Therefore, the burden of proof appears to be the civil burden, preponderance of the evidence. See Civ. Code §§ 7000 - 7021.

Long-Arm Statute Specifically for Paternity. Under the Uniform Parentage Act, a person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action with respect to a child who may have been conceived by that act. Civ. Code § 7007(b).

Paternity Action Brought by State. Under the Uniform Parentage Act, any interested party may bring the action. Civ. Code § 7015. The district attorney may bring the action if he or she believes it will serve the interests of justice. Also the state department of social services may bring the action if there is no presumed father or the presumed father is dead. Civ. Code § 7006.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. Under the Uniform Blood Test Act, the court in a civil or criminal action, upon its own initiative or upon suggestion of any party, may order the mother, child, or alleged father to submit to blood tests. The court may resolve the question of paternity against any party who refuses to submit to the tests. Evid. Code §§ 892 and 896.

These tests shall be made by experts (Evid. Code § 893), and if the court determines that the conclusion of all the experts shows that the alleged father is not the father of the child, judgment shall be resolved accordingly. If the experts disagree or the tests show a probability that the alleged father is the father of the child, the question of paternity shall be submitted upon all the evidence, including the blood tests. Evid. Code § 895. The court may exclude such evidence if its admission will necessitate undue consumption of time or create a substantial danger of undue prejudice, of confusing the issue, or of misleading the jury. Evid. Code § 352.

Under the Uniform Parentage Act, the court may order the blood test costs paid by the parties and at the times it determines. Civ. Code § 7011. The Uniform Blood Test Act apportions the costs similarly, but also allows the court to order that the costs be paid by the county. Evid. Code § 894.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. Civ. Code § 7010(d) provides "a court enforcing the obligation of support shall consider all relevant facts."

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. Every parent must support his or her child under the Uniform Civil Liability for Support Act. Civ. Code § 242.

"The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents." Civ. Code § 196.

"It is the duty of the father, mother, and the children of any person in need who is unable to maintain himself by work, to maintain such person to the extent of their ability." Civ. Code § 206.

"If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent." Civ. Code § 207.

"A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause." Civ. Code § 208.

"[T]he community property interest of a natural or adoptive parent in the income of his or her spouse shall be considered unconditionally available for the care and support of any child who resides with the child's natural or adoptive parent who is married to such spouse. The amount arising from such duty to care for and support shall be reduced by the amount of any existing previously court ordered child support obligations of such spouse." Civ. Code § 5127.6.

Whenever a parent becomes separated from or deserts a child and aid is given to the child, the parent is obligated to the county. Welf. & Inst. Code § 11350.

"If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1000) or by imprisonment in the county jail not exceeding one year [or both]." Penal Code § 270.

Whenever a criminal nonsupport action is brought under Penal Code § 270, proof of abandonment of the child or failure to provide necessary food, clothing, shelter, or medical attention is prima facie evidence that the failure to support is willful and without lawful excuse. The defendant may be subject to fine, imprisonment, or both. Penal Code § 270.

However, before or after conviction, the court may order child support and require sureties from the defendant in lieu of punishment. Penal Code § 270b.

If a defendant is convicted under Penal Code § 270 and a fine is imposed, the fine will be paid in part or in whole to the spouse or child, unless the children are receiving public assistance. If so, the fine is to be paid to the county department. Penal Code § 270d.

Desertion of a child under fourteen years of age with intent to abandon is punishable by imprisonment in the state prison or county jail not exceeding one year or by fine not exceeding \$500 or both. Penal Code § 271.

An act or omission causing or tending to cause a child under eighteen years of age to become a "dependent child" is a misdemeanor punishable by a fine not exceeding \$2500, or imprisonment in the county jail not exceeding one year, or both, or probation not to exceed five years. Penal Code § 272.

Initiation of Proceedings. "When a parent has the duty to provide for the support, maintenance, or education of his child and willfully fails to so provide, either parent, or the child by his guardian ad litem, may bring an action in the superior court against the errant parent for the support, maintenance, or education of the child." Civ. Code § 4703.

"The obligee may enforce his right of support against the obligor and the county may proceed on behalf of the obligee to enforce his right of support against the obligor. Whenever the county furnishes support to an obligee, it has the same right as the obligee to whom support was furnished, for the purpose of securing reimbursement and of obtaining continuing support." Civ. Code § 248. This is a Uniform Civil Liability for Support Act provision.

"The father as well as the mother of a child must give him support and education suitable to his circumstances. A civil suit to enforce such obligations may be maintained on behalf of a minor child, and in such action the court shall have the power to order and enforce performance thereof, the same as in a suit for dissolution of marriage." Civ. Code § 196a.

If a child support action is brought pursuant to Welf. & Inst. Code § 11350, the district attorney shall bring the

action in the county's name or on behalf of the child. The mother is not a necessary party. Welf. & Inst. Code § 11350.1.

Support Pending Divorce. During the pendency of a divorce proceeding, the superior court may order the husband or wife to pay any amount that is necessary for the support, maintenance, and education of the children. The same provision applies to proceedings involving the custody of children or an action where support of a minor child is at issue. Civ. Code § 4357.

Effect on Support of Denial of Visitation. "The existence or enforcement of a duty of support owed by a noncustodial parent for the support of a minor child shall not be affected by a failure or refusal by the custodial parent to implement any rights as to custody or visitation granted by a court to the noncustodial parent." Civ. Code § 4382.

Factors Considered in Setting Support. When determining the amount of support under the Uniform Civil Liability for Support Act, the court shall consider the following circumstances of the parties:

- (1) the earning capacity and needs of each party,
- (2) the obligations and assets, including the separate property of each,
- (3) the duration of the marriage,
- (4) the ability of the obligee to engage in gainful employment without interfering with the interests of the dependent children in custody of the obligee,
- (5) the time required for the obligee to acquire appropriate education, training, and employment,
- (6) the age and health of the parties,
- (7) the standard of living of the parties, and
- (8) any other factors it deems just and equitable.

Civ. Code § 246. See also Civ. Code § 196 which states that both parents have an equal responsibility to support and educate their child "in the manner suitable to the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents."

Information on Assets of Parties. Civ. Code § 4001 states that the judicial council may provide by rule for practice and procedure in proceedings dealing with marriage. Court rule 1243, promulgated pursuant to that statute, requires the

filing of a financial declaration by either party to a divorce when relevant. The declaration should contain an income and expense statement and a property statement. However, Civ. Code § 4364 provides that a financial declaration is not required when the divorce decree is entered by default and the petition makes no demands for money, property, costs, or attorney's fees.

When aid has been applied for on the child's behalf and the county department knows a divorce or separate maintenance action has been filed, it is the department's duty to give the court "such information as is available to the county department as to the financial resources of the parents which might be applied to child support." Welf. & Inst. Code § 11485.

Any parent whose absence is the basis for an AFDC application must give the county "a written statement of his current monthly income, his total income over the past 12 months, a description of all real and personal property owned by him, together with an estimate of its value . . . and such other information as is pertinent to determining his ability to support his children." Welf. & Inst. Code § 11353.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Under the Uniform Parentage Act, the court may order the payments made to the clerk of court or the agency designated to administer the support for the child's benefit. Civ. Code § 7012(b).

In other cases, unless welfare money is involved, the court may, but is not required to, "direct that payments thereof be made to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose, and may direct the district attorney to appear on behalf of such minor children in any action to enforce such order." Civ. Code § 4702(b).

"[I]n any proceeding where a court makes or has made an order requiring payment of child support to a parent receiving welfare moneys for the maintenance of minor children, the court shall direct that payments of support be made to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose, and shall direct the district

attorney to appear on behalf of such welfare recipient in any proceeding to enforce such order." Civ. Code § 4702(a).

Mechanism for Keeping Track of Obligors. No statutory provision. However, if a wage assignment has been made, notice of change of the recipient's address must be given to the court and the employer of the parent ordered to pay support. Civ. Code § 4701(b)(3).

Enforcement of Support by State in Nonwelfare Cases. If the family has been receiving AFDC and no longer receives it, the district attorney continues to enforce support payments for the next three months; and at the end of that time, the attorney will continue to enforce the payments if requested to do so by the individual on whose behalf the payments are made. Welf. & Inst. Code § 11476.

"All state, county, and local agencies cooperate in the enforcement of any child support obligation and the location of parents who have abandoned, deserted, or abducted children, irrespective of whether such children are or are not receiving aid to families with dependent children, and shall on request supply the county department, any county probation officer, or the district attorney of any county in this state with all information on hand relative to the location, income, or property of such absent parents" Welf. & Inst. Code § 11478. See also Welf. & Inst. Code § 11475.1.

Also, if a parent files a report with the district attorney averring that the other parent has failed to provide support and that the child is in need of but not receiving public assistance, the attorney shall investigate, determine the whereabouts and ability to pay of the parent, and if he or she finds the report is true, shall take all steps necessary to obtain support for the child. Penal Code § 270f. These reports are to be reviewed at ninety-day intervals. Penal Code § 270g.

"Nothing in this [assignment of wages] section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys." Civ. Code § 4701(h).

Location of Absent Parents. See Welf. & Inst. Code § 11478 in Enforcement of Support by State in Nonwelfare Cases.

"To effectuate the purposes of this section, the Attorney General shall, to the extent necessary, utilize the parent locator service in the Department of Health, Education, and Welfare, and may request and shall receive from departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and the same are authorized to provide, such assistance and data as will enable the Justice Department and local public agencies to carry out their powers and duties to locate such parents and to enforce their liability for the support of their children." Welf. & Inst. Code § 11478.5.

In an action under URESA, the prosecuting attorney on his or her own initiative shall use all means at his or her disposal to locate the obligor or his or her property. Civ. Proc. Code § 1681. If the state information agency (the attorney general) does not know the location of the obligor or his or her property and no state locator service is available, it shall use all means at its disposal to obtain this information, including examination of official state records and other sources. Civ. Proc. Code § 1679.

Child Support Priority over Other Creditors. "All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors." Civ. Code § 4700(a).

"A withholding order for support has priority over any other earnings withholding order." Civ. Proc. Code § 723.030.

"An order made pursuant to Section 4701 of the Civil Code [assignment of wages] shall be given priority over any earnings withholding order as provided in that section." Civ. Proc. Code § 706.030(2).

A wage assignment made pursuant to court order for child support shall have priority over any attachment, execution, or other assignment unless otherwise ordered by the court. Civ. Code § 4701(c). Wage assignments for support also have priority over any earnings withholding order. Civ. Proc. Code § 706.031(b).

Wage Assignment Specifically Available for Support. "In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the county clerk, probation officer, or other officer of the court or county officer . . . that portion of salary or wages . . . due or to be due in the future as will be

sufficient to pay the amount ordered . . . for the support, maintenance and education of the minor child." Civ. Code § 4701.

The court may order a withholding allowance from the separate property of the noncustodial parent. Civ. Code § 4806.

According to Civ. Proc. Code § 706.031(b), an order for wage assignment for support may be made simultaneous with an earnings withholding order.

"After judgment in any court action brought to enforce the support obligation of an absent parent pursuant to this [AFDC] chapter, the court may enter an assignment of wages pursuant to Section 4701 of the Civil Code." Welf. & Inst. Code § 11489.

"In any case where there is a conviction under . . . Section 270 [failure to provide support for child] and there is an order granting probation which includes an order for support, the court may: . . . Require assignment of wages pursuant to Section 4701 of the Civil Code as a condition of probation [if no other assignment has been ordered upon an existing child support order]." Penal Code § 270h.

Garnishment Specifically Available for Support. There is a provision for a "withholding order for support" (an earnings withholding order on a writ of execution issued to collect delinquent amounts payable under a judgment for child or spousal support of the judgment debtor). Civ. Proc. Code § 706.030.

Attachment Specifically Available for Support. No statutory provision. See Code Civ. Proc. § 487.020(c).

Other Special Enforcement Tools. "Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor." Civ. Code § 4700.

"A certified copy of any judgment or order of the superior court of this state for spousal or child support, when recorded with the recorder of any county, shall from such recording become a lien upon all real property of the judgment debtor, not exempt from execution, . . . for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable)" Civ. Proc. Code § 674.5.

In a paternity case, "[t]he court may order support payments to be made to . . . a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court." Civ. Code § 7012(b). In enforcing a support obligation in a paternity proceeding, "[a]ll remedies for the enforcement of judgments apply." Civ. Code § 7012.

"Any judgment, order, or decree of the court made or entered pursuant to this [dissolution of marriage] part may be enforced by execution, the appointment of a receiver, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary." Civ. Code § 4380.

If there is a conviction for failure to support a child and probation, including child support, is ordered, the court may issue "an execution on such order for the support payments that accrue during the time such probation order is in effect, in the same manner as on a judgment in a civil action for support payments. This remedy shall apply only when there is no existing civil order of this state or a foreign court order that has been reduced to a judgment of this state for support of the same person or persons included in the probation support order." Penal Code § 270h.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Each county shall maintain a single organizational unit located in the office of the district attorney which shall have responsibility for promptly and effectively enforcing the obligations of parents to support their children and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to enforce this obligation when the child is receiving public assistance and when requested to do so by the individual on whose behalf the enforcement orders will be made when the child is not receiving public assistance." Welf. & Inst. Code § 11475.1.

If separation of a parent from a child results in AFDC aid being given, the noncustodial parent is obligated to the county for an amount equal to that specified by a court order or, in the absence of such order, the amount paid by the county during the period of separation (to the extent of the parent's reasonable ability to pay). "The district attorney shall take appropriate action pursuant to this section in the superior court of the county which provided aid under this chapter." Welf. & Inst. Code § 11350.

For related provisions, see Welf. & Inst. Code §§ 11350.1, 11475.1, 11476, and 11484; Civ. Code §§ 248, 4701, 4702(a), and 7012(a); and Civ. Proc. Code § 674.5.

Support Payments Assigned. As a condition of eligibility for aid, each applicant or recipient shall assign to the county any rights to support from any other person. Receipt of public assistance shall operate as an assignment by operation of law. Welf. & Inst. Code § 11477(a).

"Money from noncustodial parents for the support of a needy child with respect to whom an assignment under section 11477 has been made shall be paid directly to the district attorney or his designee and shall not be paid directly to the family." Such payments are then transmitted to the county department providing aid. Welf. & Inst. Code § 11457.

Agency Can Request Modification of Support. Indirectly through the district attorney. "If aid has been applied for or granted to a child of parents who are divorced or legally separated, or who are engaged in a divorce or separate maintenance action which is pending, the district attorney may apply to the superior court in such action for an order directing either parent or both to show cause:

- (1) Why an order of support for the child should not be entered, or
- (2) Why the amount of support previously ordered should not be increased, or
- (3) Why the parent should not be held in contempt for his failure to comply with an order of support previously entered." Welf. & Inst. Code § 11484.

Service on Agency If Public Assistance Involved. "If, to the knowledge of the court, aid has been applied for or granted to a child of parents who are engaged in a divorce or separate maintenance action which is pending, or if the court at

any stage of the litigation believes that within the near future there is a likelihood that aid will be applied for on behalf of the child, the court shall direct the clerk to notify the district attorney and the county department of the pending action.

"In any case in which aid has been applied for on behalf of the child, and the county department has knowledge that an action for divorce or separate maintenance has been filed, it shall be the duty of the county director to notify the court that aid is being paid or has been applied for, and to furnish to it such information as is available to the county department as to the financial resources of the parents which might be applied to child support." Welf. & Inst. Code § 11485.

7/21/83

COLORADO

Colorado Revised Statutes
(1983 Cum. Supp)

State Contact
James O. Galeotti, Deputy Director
Child Support Enforcement Director
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203

UNIFORM ACTS

Uniform Parentage Act. §§ 19-6-101 - 19-6-129.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968
version including part IV. §§ 14-5-101. - 14-5-143.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Under the Uniform Parentage Act, the paternity action is civil, governed by the rules of civil procedure. § 19-6-115. Therefore, the burden of proof is preponderance of the evidence.

Long-Arm Statute Specifically for Paternity. Under the Uniform Parentage Act, a person who has sexual intercourse in this state thereby submits to the jurisdiction of its courts as to an action with respect to a child who has been conceived by that act. § 19-6-109.

Paternity Actions Brought by State. Under the Uniform Parentage Act, any interested party may bring a paternity action if there exist certain presumptions of paternity. § 19-6-107. Also the county department of social services may bring a paternity action if there is no presumed father and the mother or child is a public charge. § 19-6-107(3).

Default Judgment Allowed. Under the Uniform Parentage Act, the rules of civil procedure apply, so a default judgment should be available. § 19-6-115.

Procedure for Blood Tests. Blood grouping tests shall be ordered and received into evidence, as provided in § 13-25-126, upon the court's motion or that of any interested party. § 19-6-112. Under § 13-25-126, the court shall order that the mother, child, or alleged father submit to one or more blood grouping tests, and if any party refuses, the court may resolve the issue against the party or enforce its order.

Evidence relating to paternity may include blood test results weighed with statistical probability of paternity. § 19-6-113. If a pretrial hearing has been held and the judge's recommendations are not accepted by all parties, the court shall require the parties to submit to blood tests if practicable. § 19-6-114. The court shall order the blood test costs to be paid by the parties in the proportions and at the times it determines. § 19-6-117.

Support Without Paternity Determination. Under § 19-6-114, the court can approve a support agreement with no acknowledgment of paternity if the alleged father assumes a defined economic obligation to the child and all parties approve. The judge must look to the factors for setting child support and the likelihood that paternity can be determined.

Support Considered in Setting Support. Under the Uniform Parentage Act, the court shall consider all relevant facts including:

- 1) child's needs,
- 2) parents' standard of living and circumstances,
- 3) parents' relative financial means,
- 4) parents' earning ability,
- 5) child's need and capacity for education, including higher education,
- 6) child's age,
- 7) child's financial resources and earning ability,
- 8) parents' responsibility for the support of others; and
- 9) value of custodial parent's services. § 19-6-116(5).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"Any person who willfully neglects, fails, or refuses to provide reasonable support and maintenance . . . for his children under sixteen years of age, whether natural, adopted, or whose parentage has been judicially determined . . . is guilty of a class 5 felony." § 14-6-101. A class 5 felony may be punished by one to two years imprisonment plus one year of parole. § 18-1-105.

"The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately." § 14-6-110.

Initiation of Proceedings. "Proceedings to compel parents, including fathers of illegitimate children or other legally responsible persons, to support a child or children may be commenced by any person filing a verified petition in the court of the county where the child resides or is physically present." § 19-7-101(1).

A probation officer or district attorney may file a complaint. "When the complaint is filed before such court, it is the duty of the judge to issue a warrant for the arrest of any person charged with such offense; whereupon, such person shall be brought before the judge, who shall proceed to have a preliminary investigation of said charge, and, if in the opinion of the judge there is sufficient evidence to sustain such charge, the defendant shall be bound over to the district court of the county as in other cases." The county court may retain jurisdiction and continue the case prior to binding over the case to ensure compliance with conditions of bond. § 14-6-104.

Under the civil statutes, any person may commence the action by filing the petition, and "the courts shall issue a summons stating the substance of the petition and requiring the respondent to appear." §§ 19-7-101 and 19-7-102.

Support Pending Divorce. "In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct" § 14-10-115.

Effect on Support of Denial of Visitation. If a party fails to comply with a provision of a decree, temporary order, or injunction, the obligation of the other party to pay support or to permit visitation is not suspended but he or she may move the court to grant an appropriate order. § 14-10-121. Also the creation and enforcement of the child support debt owed to the county department of social services shall be unaffected by any interference by a parent with rights of custody or visitation granted by a court. § 14-7-105(4).

Factors Considered in Setting Support. The court may consider all relevant factors including:

- 1) child's financial resources,
- 2) custodial parent's financial resources,
- 3) the standard of living the child would have enjoyed had the marriage not been dissolved,
- 4) the child's physical and emotional condition and his or her educational needs, and
- 5) noncustodial parent's financial resources. § 14-10-115.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Under the Uniform Parentage Act, the court may order the payments made to the clerk of court or the agency designated to administer the support for the child's benefit. § 19-6-118(2). In other cases, "on its own motion or upon motion of either party, the court may at any time order that maintenance or support payments be made to the clerk of the court, as trustee, for remittance to the person entitled to receive the payments." § 14-10-117(1).

Mechanism for Keeping Track of Obligors. There is no provision for this in paternity actions. In other actions, the "parties affected by the order shall inform the clerk of the court of any change of address or of other conditions that may affect the administration of the order." § 14-10-117(2).

Enforcement of Support by State in Nonwelfare Cases. "The district attorney shall assist the court on behalf of a person entitled to receive maintenance or support in all

proceedings initiated under this section [14-10-117] to enforce compliance with the order. If the person obligated to pay support has left or is beyond the jurisdiction of the court, the district attorney may institute any other proceeding available under the laws of this state for the enforcement of duties of support and maintenance."
§ 14-10-117(5), (6).

"Child support establishment and enforcement services shall be provided to any resident of Colorado upon application."
§ 26-13-106(2).

Location of Absent Parents. A state parent locator service is established to assist county departments or their authorized agents and other states in the location of parents who have or appear to have abandoned children who are recipients of public assistance. § 26-13-107.

"[T]he executive director may request and shall receive from departments, boards, bureaus, or other agencies of the state or any of its political subdivisions, and the same are authorized to provide, such assistance and data as will enable the state department and county departments or their authorized agents properly to carry out their powers and duties to locate such parents and to enforce their liability for the support of their children. . . .

"All departments and agencies of the state and local governments shall cooperate in the location of parents who have abandoned or deserted children, irrespective of whether such children are or are not receiving aid to families with dependent children; and, on request of a county department or its authorized agent, the state department, or the district attorney of any judicial district in this state, they shall supply any information on hand, notwithstanding any other provision of law making such information confidential, concerning the location, employment, income, and property of such absent parents and any other information on hand relative to the enforcement of support. The department of revenue shall furnish, at no cost to inquiring departments and agencies, such information as may be necessary to effectuate the purpose of this article." § 26-13-107(3)(a).

Under URESA, the department of social services is the designated URESA information agency. If no other information agency is available, it shall use all means at its disposal to determine the location of the obligor or his or her property. This includes examination of state records and requesting federal and state tax forms and social security records. § 14-5-118.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. "The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments." § 14-10-118.

Garnishment Specifically Available for Support. Section 13-54-104(3) provides that the wages of an obligor may be garnished. Prior to initiation of garnishment, however, judgment on support arrearages must be obtained as prescribed in Colorado Civil Procedure Rule 54.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. Under the uniform Parentage Act, in paternity proceedings the court may require the obligor to furnish a cash deposit or bond to ensure payment of the child support due. § 14-4-127(a).

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Child support enforcement services shall be provided to those recipients of aid to families with dependent children who, as a condition of eligibility pursuant to federal law, must assign their rights to support to, and cooperate with, the state department in the establishment and enforcement of support obligations owed by absent parents to their children" §26-13-106(1).

Payment of public assistance becomes a debt to the state owed by the responsible parents that may be recovered by the county. If there is no court order directed to the responsible parent, "the county department of social services through its delegate child support enforcement unit may, upon notice to the parent, establish, as a part of any appropriate child support court action, the amount of child support debt accrued and accruing; and the court, after hearing or upon stipulation and after taking into consideration all relevant factors . . . may enter an order less than, equal to, or more than the amount of public assistance paid." § 14-7-105.

"[T]he county department of social services through its delegate child support enforcement unit may petition for modification of the order on the same grounds as a party to the cause." § 14-7-105.

Support Payments Assigned. The county department of social services shall be subrogated to the right of dependent children to prosecute any support action to obtain reimbursement of money thus expended. If the court orders a parent of such a child to make support payments, the department shall be subrogated to the debt created by that order. § 14-7-105(2).

Agency Can Request Modification of Support. [T]he county department of social services through its delegate child support enforcement unit may petition for modification of the order on the same grounds as a party to the cause." § 14-7-105.

Service on Agency If Public Assistance Involved. No statutory provision.

7/21/83

CONNECTICUT

General Statutes of Connecticut
(1983 Cum. Supp.)

State Contact
No reply.

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version with the 1952 amendments, but not part IV. §§ 46b-180 - 46b-211.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision on the burden of proof, but the proceedings appear to be civil. §§ 46b-160 and 46b-164. Therefore, the burden of proof is preponderance of the evidence.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. The state or a town interested in the support of a child born out of wedlock may, if the mother neglects to bring such petition, institute paternity proceedings against the person accused of begetting the child. Such petition may be made by the commissioner of human resources or the town welfare administrator. § 46b-162.

Default Judgment Allowed. If the putative father fails to appear in court as summoned in the order to show cause, the court may hear the petitioner and enter such judgment and order as the facts may warrant. § 46b-160.

Procedure for Blood Tests. In any proceeding in which a question of paternity is an issue, the court, on motion of any party, may order the mother, her child, and the putative father or the husband of the mother to submit to one or more blood grouping tests, to be made by a qualified physician or other qualified person designated by the court, to determine whether the putative father or the husband of the mother can be excluded as being the father of the child. The results of such tests shall be admissible in evidence only in cases where such results establish definite exclusion of the putative father or husband as such father. The costs of making such tests shall be chargeable against the party making the motion provided if the court finds that such party is indigent and unable to pay such costs, such costs shall be paid by the state. If the costs of making such tests are paid by the state and the party making the motion is subsequently adjudicated to be the father of the child, such party shall be liable to the state for the amount of such costs. § 46b-168.

Support Without Paternity Determination. Any agreement of settlement, before or after a paternity petition has been brought, other than the acknowledgement of paternity and agreement to support, between the mother and putative father shall take effect only upon approval of the terms thereof by a superior court judge; and in cases of children supported by the state or a town, on the approval of the commissioner of human resources or the attorney general. § 46b-170.

Upon written acknowledgement of paternity by the father and affirmation by the mother, an agreement to support the child by payment of a weekly sum until the child reaches eighteen, when filed with and approved by a superior court judge, shall have the same force and effect as an order of support entered by the court. Payments under such agreements shall be made through the family relations office of the superior court. § 46b-172.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

It shall be the joint duty of each spouse to support his or her family. § 46b-37. Also any person who neglects or refuses to furnish reasonable support to his or her spouse or minor child shall be deemed guilty of nonsupport and shall be imprisoned not more than one year unless he or she is unable to furnish support for good cause. § 53-304(a).

Initiation of Proceedings. Petition may be made by the husband or wife, child or any relative, conservator, guardian or any family relations officer, town or state, or any selectman or the public official charged with administration of the town's public assistance. The superior court has the authority to make and enforce orders for payment of support against any person who neglects or refuses to furnish necessary support to his or her spouse or a child under eighteen. Proceedings to obtain such support orders shall be instituted by a verified petition. Upon the filing of this petition, the judge shall cause a summons to be issued requiring the liable person to appear in court for a hearing upon such petition. § 46b-215.

Under the criminal provisions, in addition to or in lieu of other penalties, the court may order a person convicted of nonsupport to make support payments. § 53-304(a).

Support Pending Divorce. At any time after the return day of a complaint for dissolution of marriage, and after hearing, alimony and support pendente lite may be awarded to either of the parties. The court may also award exclusive use of the family house pendente lite to either of the parties. § 46b-83.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In determining whether a child is in need of maintenance, and the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate, and needs of the child. § 46b-84(b).

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In paternity actions the court order shall direct the father to make payments to the complainant or town or state if such governmental unit has furnished support expenses. § 46b-171. However, under an acknowledgement of paternity and agreement to support, payments shall be made through the family relations office. § 46b-172.

In other actions, if certain circumstances exist, the court may direct all orders of support to be made through the family relations office of the superior court and, where the State of Connecticut has an interest, direct payments to the commissioner of administrative services, with authority residing in the family relations office to enforce all orders directed for its supervision. § 46b-215(c).

Mechanism for Keeping Track of Obligor. Any person legally liable for support of another person that is paid to the family relations office of the superior court, who fails to notify that office of a change of address within ten days of that change, shall be fined not more than \$25 or imprisoned not more than 30 days. § 46b-218.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. To assist in locating parents who have deserted their children, the commissioner of administrative services, the commissioner of public safety, the commissioner of human resources, or the commissioner of income maintenance may request and shall receive information from the records of all departments, boards, bureaus, or other agencies of this state, provided only information directly bearing on the identity and whereabouts of a support obligor shall be provided. § 4-68i.

Section 46b-195 of URESA provides that when Connecticut is the responding state and is unable to obtain jurisdiction over the obligor, the court "shall use all means at its disposal to trace" the obligor or his or her property. This statute authorizes the state and local police to aid the court in locating said obligor.

Child Support Priority over Other Creditors. An execution on wages or voluntary wage deduction for support has precedence over any other execution on wages after judgment. §§ 52-361 and 52-362b.

Wage Assignment Specifically Available for Support. Whenever a support order of the superior court is in effect, and the person against whom such order was issued fails to obey such order, the court shall issue an order directing that execution issue against wages due and owing such person for payment of amounts due and to become due. § 52-362. See § 46b-215 and 1980 Conn. Pub. Acts 80-149 for similar provisions. In § 46b-178, wage executions in accordance with § 52-362 are extended to paternity proceedings.

Avoluntary wage deduction authorization for payments of amounts due for support shall have the same force and effect as a wage execution ordered by the court if properly executed. § 52-362c.

However, an assignment of wages by an employee shall be void except for support payments of amounts due in public welfare cases, deductions for union dues, and initiation fees and withholdings for income tax of foreign jurisdictions. § 52-361(g).

Garnishment Specifically Available for Support. See first paragraph under Wage Assignment Specifically Available for Support, above.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In addition to contempt proceedings and garnishment of wages, the court may order executions against any real, personal, or other property of such person for payment of accrued and unpaid amounts due under such support order. § 46b-215.

If the defendant is found in a paternity action to be the father, the court may require him to be bound with sufficient surety to perform the support order. If he fails to comply with such order, he can be committed to jail until he complies. § 46b-171. See § 46b-215 for a similar provision in civil nonsupport actions.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. Any finding or written agreement of support, or modification thereof, made with the commissioner of income maintenance by the liable relative, which is filed with the clerk of the appropriate superior court, has the same effect as a support order by that court and shall be enforceable by the same means as a support order by that court. However, any court called upon to enforce such an agreement shall fully review the determination of ability to pay and may modify that determination retroactively, prospectively, or both. § 17-82e.

Enforcement of Support by State in Welfare Cases. The attorney general of Connecticut and the attorney representing a town shall become a party for the interest of the State of Connecticut and such town in any proceedings for support that concerns any person who is receiving or has received public assistance or care from the state or a town. § 46b-215(b).

Support Payments Assigned. The supervising relative shall assign to the commissioner the right of support--present, past, and future--due all persons seeking assistance by such application. § 17-82b.

Agency Can Request Modification of Support. Upon a showing of a substantial change in circumstances of either parent (the statute does not say by whom), the court may modify its support order. § 46b-86. Also the commissioner of income maintenance can make an agreement to modify support with the parent and have it enforced as if it were a court order under § 17-82e.

Service on Agency If Public Assistance Involved. No statutory provision, but § 46b-215(b) requires the state must be a party if a party receives public assistance.

7/21/83

DELAWARE

Delaware Code Annotated
Revised 1974
(1983 Cum. Supp.)

State Contact
Robert D. Thompson
Chief Judge
Family Court of Delaware
Post Office Box 2359
Wilmington, Delaware 19899

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version including the 1952 amendments and part IV. Tit. 13, §§ 601 - 639.

ESTABLISHMENT OF PATERNITY

Burden of Proof of paternity. Paternity can be determined within a nonsupport action. In the civil nonsupport action (tit. 13, § 511), the burden is preponderance of the evidence. In the criminal nonsupport action (tit. 13, § 521), the burden is beyond a reasonable doubt.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Actions Brought by State. No statutory provision.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. No statutory provision.

Support Without Paternity Determination. "If the intake interviews bring about a recommendation of settlement of the case by adjustment, by voluntary agreement, by referral or otherwise, the complaint or the petition for civil relief may (1) be withdrawn, (2) be dismissed or (3) a written voluntary consent order be entered into and executed by the parties. The recommended disposition shall be submitted to a Judge of the Court for approval." Del. Fam. Ct. Rule 90.

Factors Considered in Setting Support. In determining the amount of child support, the court shall consider, among other things:

- "1) the health, relative economic condition, financial circumstances, income, including the wages and earning capacities, of the parties, including the children,
- "2) the manner of living to which the parties have been accustomed when they were living under the same roof,
- "3) the general equities inherent in the situation."

Tit. 13, § 514

Information on Assets of Father. No statutory provision. However, once the child support duty has been determined to exist, the court may restrain the obligor from "transferring, encumbering, concealing or in any way disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify any person to whom he or she has an obligation of support, or such person's guardian, custodian or trustee, or any proposed extraordinary expenditure and to account to the court for all extraordinary expenditures made after the order is issued." Tit. 13, § 513(9).

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. The duty to support a child under the age of eighteen years, born in or out of wedlock, rests primarily on his or her parents equally. Tit. 13, § 501.

"Both parents have a duty to support their child over 18 years of age if such child is a student in high school and is likely to graduate. This duty ends when the child receives a high school diploma or attains age 19, whichever event first occurs." Tit. 13, § 501(d).

Delaware also has a priority provision: "(a) The duties of support specified in § 501 [duty to support child] and § 504 [duty to support woman with child conceived out of wedlock] of this title shall be performed according to the following order of priority:

- "(1) Duty to support one's own minor child;
- "(2) Duty to support a spouse;
- "(3) Duty to support a woman pregnant with child conceived out of wedlock;
- "(4) Duty to support a stepchild or the child of a person with whom the obligor cohabits in the relationship of husband and wife;
- "(5) Duty to support poor person.

"(b) Where a support obligor is unable to provide support adequate to the needs of 2 or more dependents of the same order of priority, he shall apportion the amount available for support as equally as possible between or among said dependents according to their respective needs." Tit. 13, § 505.

Any person who, without just cause, deserts or willfully neglects or refuses to provide for the support of a spouse or child under the age of eighteen, born in or out of wedlock, shall be fined not more than \$500 or imprisoned for not more than six months. Tit. 13, § 521.

In lieu of the above penalties, the court may place the defendant on probation and order child support to be paid. Tit. 13, § 522.

Initiation of Proceedings. Under the civil enforcement proceeding, action may be commenced by any person who alleges a duty of support owed by the defendant. "Proceedings may be instituted in accordance with rules adopted by the Court or upon a petition in which the petitioner alleges that defendant owes petitioner a duty of support and has refused or failed to provide such support." Tit. 13, § 511.

Under the criminal enforcement proceeding, action "may be instituted upon complaint made . . . by the spouse, child or by any other person against any person where there is probable cause to believe such person has committed an offense" The court may grant probation and impose orders for support as a condition of probation. Tit. 13, § 522.

Support Pending Divorce. Either party to a divorce action may move for an interim order for temporary alimony for himself or herself or support of a child or both. Tit. 13, § 1509.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In determining the amount of child support, the court shall consider, "among other things:

- "1) the health, relative economic condition, financial circumstances, income including wages and earning capacities, of the parties, including the children,
- "2) the manner of living to which the parties have been accustomed when they were living under the same roof,
- "3) the general equities inherent in the situation."
Tit. 13, § 514.

Information on Assets of Parties. No statutory provision. However, once the child support duty has been determined to exist, the court may restrain the obligor from "transferring, encumbering, concealing or in any way disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify any person to whom he or she has an obligation of support, or such person's guardian, custodian or trustee, of any proposed extraordinary expenditure and to account to the court for all extraordinary expenditures made after the order is issued." Tit. 13, § 513(9).

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. When enforcing a superior court child support order, the family court may order, after a hearing, the obligor to "make payments at specified intervals to the family court and to report personally to the family court at such times as may be deemed necessary." Tit. 13, § 508(4)(h). The court may order the defendant to pay a certain sum periodically into the court or directly to a dependent or to his or her guardian, custodian, or trustee, for his or her support for so long as the obligation of support shall exist. Tit. 13, § 513(1).

"In any civil action within the jurisdiction of this [Family] Court . . . the Court may . . . order a person under a duty to do so to pay through the Court or the Bureau of Child Support Enforcement . . . reasonable support for the child" Tit. 10, § 950(4). The family court has jurisdiction over all divorce actions. Tit. 13, § 1504(a).

Mechanism for Keeping Track of Obligor. When enforcing a superior court child support order, the family court may order, after a hearing, the obligor to "report personally to the family court at such times as may be deemed necessary." Tit. 13, § 508(4)(h).

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. In a URESA action, under Del. Code Ann. titl. 13, § 629(a), when a court of this state is unable to obtain jurisdiction over an obligor, at the request of another state, the court "shall use all means at its disposal" to trace the obligor or his or her property.

Child Support Priority over Other Creditors. Title 13, § 516(b) provides that an attachment of an obligor's wages, after the child support order has been violated, is not subject to the limitations set up in tit. 10, § 4913. That statute provides: (1) 85 percent of the wages are exempt from attachment; (2) only one attachment may be made at one time on any amount of wages; and (3) wages will not include payments made for services rendered by a person who is master of his or her own time and effort.

Wage Assignment Specifically Available for Support. If the court finds that a person has violated a support order, it may attach the supporter's wages or accept a voluntary assignment of wages. "Upon receipt of a voluntary wage assignment or a certified copy of a wage attachment from the Court, the defendant's employer shall deduct the specified sum from the 'net' or 'take home' wages or salary due the defendant-employee . . . and shall continue to do so for so long as the defendant remains in his employ or until the Court orders otherwise." Tit. 13, § 516.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. Where the duty of support has been determined to exist, the court may enforce its order by attachment of the defendant or by sequestration of property. Tit. 13, § 513(5).

Other Special Enforcement Tools. Title 13, § 513(1) allows for the payment of child support to the child's trustee. When it is enforcing a superior court child support order, the family court may order the obligor "to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the family court may deem proper to assure payment" Tit. 13, § 508(4)(g).

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. As a requirement for eligibility for public assistance, the mother, guardian, or persons standing in loco parentis to a dependent child must have instituted suit for nonsupport in the family court or must have designated the Department of Health and Social Services to act as the attorney-in-fact for the purpose of instituting such proceeding. Tit. 31, § 503(d).

The attorney general's office provides legal advice, counsel, and services to agencies and departments of the state government. Tit. 29, § 2504(2).

Also, "The father of an illegitimate child shall be bound to pay the State Department of Health and Social Services all charges it incurs, for maintenance or otherwise, of such child while under 18 years of age." Tit. 13, § 1305.

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Delaware

Support Payments Assigned. The application or receipt of public assistance under title 31, § 503(d), shall act as an automatic and immediate assignment of all rights of support for the applicant or recipient and any dependent child. Tit. 31, § 504.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

7/21/83

DISTRICT OF COLUMBIA

District of Columbia Code Encyclopedia
(West) 1970 Supplement (1983 Cum. Supp.)

State Contact
No reply.

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version as amended in 1952 and 1958 with many variations. Does not include part IV. §§ 30-301 - 30-324.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of evidence.
§§ 16-2341 and 16-909(a).

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. If a public support burden has been incurred or is threatened, the corporation counsel or any of his or her assistants shall bring a civil action in the Family Division on behalf of any spouse or child to enforce support of such spouse or child. § 16-2341.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. If relevant, the court may direct that the child, respondent, and other parent if available submit to one or more blood tests to determine whether the respondent can be excluded as being the father or mother, as

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District of Columbia

the case may be, of the child, but the results of the test may be admitted as evidence only in cases where the respondent does not object to its admissibility. § 16-2343.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. The only statutory provision is that the payments shall be "commensurate with defendant's ability to pay." § 16-2349(a).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"Whenever any father or mother shall fail to maintain his or her minor child or children, the court may decree that he or she shall pay . . . sums . . . for the support and maintenance of his or her child or children" § 16-916(c).

"Any person within the District of Columbia, of sufficient financial ability, who shall refuse or neglect to provide for any child under the age of fourteen years, of which he or she shall be the parent or guardian, such food, clothing and shelter as will prevent the suffering and secure the safety of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment by a fine of not more than one hundred dollars, or by imprisonment in the workhouse . . . for not more than three months, or both" § 22-902.

Initiation of Proceedings. The needy or custodial spouse may initiate proceedings. § 16-916.

Support Pending Divorce. During the pendency of an action for divorce, the court may require the husband or wife to pay alimony to the other spouse for the maintenance of himself or herself and their minor children committed to such other spouse's care. § 16-911.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In paternity cases, "[t]he court may order payments to be made by the defendant at a precinct of the Metropolitan Police Department of the District of Columbia. Payments shall continue until the child reaches the age of 16 years, unless, prior thereto, the child is legally adopted." § 16-2349(a).

Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the court for remittance to the person entitled to receive the payments. § 16-911(c).

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. Each applicant for or recipient of assistance shall be required, as a condition of eligibility, to cooperate with the District of Columbia in identifying and locating the parent of a child for whom aid is claimed. 1977 D.C. Law 1-92 § 3, 23 D.C. Reg. 3051 (1977) (see 1978-1979 cum. supp., annot. to § 3-203).

Child Support Priority over Other Creditors. Attachment and garnishment for support and maintenance of spouse, former spouse or children "shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this subchapter." § 16-577.

Wage Assignment Specifically Available for Support. If a party under court order to make support payments is in arrears, the court may order the party to make an assignment of part of his or her salary, wages, earnings, or other income to the person entitled to receive the payments. §§ 16-911(a) 16-912, 16-916(d).

Garnishment Specifically Available for Support. The court may, by garnishment, enforce any order relating to support. §§ 16-911(a), 16-912, 16-916(d).

Attachment Specifically Available for Support. The court may enforce by attachment any order relating to support. §§ 16-911(a), 16-912, 16-916(d).

Other Special Enforcement Tools. In a paternity action, "[t]he court may require a defendant, against whom a judgment is rendered pursuant to this [parentage proceedings] subchapter, to give security not to exceed \$2,500 guaranteeing payments ordered by the court, or may suspend the requirement of security and place the defendant on probation to the court on condition that payments be made as ordered. In default of a payment as ordered, the Court may revoke probation and commit defendant to jail for a period of not more than one year at any one time." § 16-2350.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases.

Commissioners may bring action against responsible parent for support and for the amount of public assistance granted. § 3-218. See also § 16-2341.

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District of Columbia

Support Payments Assigned. As a condition of eligibility, each applicant for or recipient of aid shall be required to assign to the District of Columbia any support rights, including accrued support rights, from any other person that such applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for aid. 1977 D.C. Law 1-92 §2, 23 D.C. Reg. 3051 (1977) (see 1978-1979 cum. supp., annot. to § 3-203.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

7/21/83

FLORIDA

Florida Statutes Annotated (West)
(1983 Cum. Supp.)

State Contact
Chriss Walker, Staff Attorney
Office of Child Support Enforcement
Department of Health and
Rehabilitative Services
1317 Winewood Boulevard
Tallahassee, Florida 32301

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968
version including part IV. §§ 88.011 - 88.371.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision.

Long-Arm Statute Specifically for Paternity. No statutory
provision.

Paternity Action Brought by State. If public assistance is
accepted on behalf of a child, the department of health and
rehabilitative services may execute a complaint for a
paternity action. § 409.2561(3)(d).

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. No statutory provision.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. The court shall order the defendant to pay monthly for the child's care and support the following amounts: (1) birth to 6th birthday, \$40 a month; (2) 6th to 12th birthday, \$60 a month; (3) 12th to 15th birthday, \$90 a month; and (4) 15th to 18th birthday, \$110 a month. § 742.041. If a court order for support has not been entered and public assistance money is involved, the court is to establish the liability of the responsible parent for repayment of public assistance money paid; and in setting the amount to be paid it shall consider "the income, earning capacity, resources, and needs of the responsible parent and the needs of the independent child for whom support is sought." § 409.2561.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"If a person having the ability to contribute to . . . the support of his or her minor children fails to do so, the spouse who is not receiving support or who has custody of the children may petition the court . . . for support of minor children without petitioning for dissolution of the marriage, and the court shall enter such order as it deems just and proper." § 61.09.

"Any man who shall in this state desert his wife and children . . . or who shall willfully withhold from them the means of support, shall be guilty of a felony of the third degree. § 865.04. This is punishable by imprisonment not to exceed five years or a fine not to exceed \$5000 or both. If the offense is repeated, the offender may be subject to punishment under the habitual criminal statute, which carries a ten-year maximum penalty. §§ 775.082 - 775.084.

"Any person who after notice, fails to provide support which he is able to provide to his children or spouse whom he knows he is legally obligated to support, and over whom no court has jurisdiction in any proceedings for child support or dissolution of marriage, shall be guilty of a misdemeanor of the first degree" § 826.06. This is punishable by imprisonment not to exceed one year, a fine of \$1000, or both and up to an additional three years if the offender is a habitual offender. §§ 775.082 - 775.084.

Initiation of Proceedings. The civil action is begun by the spouse who is not receiving support or who has custody of the children. § 61.09.

Support Pending Divorce. "In every proceedings for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum" § 61.071. Under this section the court may award money pendente lite.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In a proceeding for dissolution of marriage, the court may, at any time, order either or both parents to pay such child support as from the circumstances of the parties and the nature of the case is equitable. § 61.13(1).

If a court order for support has not been entered and public assistance money is involved, the court is to establish the liability of the responsible parent for repayment of public assistance money paid; and in setting the amount to be paid it shall consider "the income, earning capacity, resources, and needs of the responsible parent and the needs of the dependent child for whom support is sought." § 409.2561.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "The chief judge of the circuit may by administrative order authorize the creation of a central or governmental depository for the circuit or county within the circuit to receive, record and disburse all support, alimony, or maintenance payments." § 61.181(1).

Mechanisms for Keeping Track of Obligors. "The chief judge of the circuit, with the approval of the governing body of the appropriate county, may, by administrative order authorize the creation of a central governmental enforcement system for the circuit or a county within the circuit for the enforcement of support, alimony, or maintenance payments

ordered by the court. . . ." Also, "The administrator of the enforcement system shall have the duty [among others] . . . to investigate and enforce all payments ordered by the Circuit Court in domestic relations cases" § 61.181(3)(4).

Enforcement of Support by State in Nonwelfare Cases. "All child support collection and paternity determination services provided by the department shall be made available to any individual not otherwise eligible for such services, upon proper application filed with the department. The department shall recover to the extent possible any costs incurred in the collection of child support under this section." § 409.2567.

Location of Absent Parents. "The department shall establish a parent locator service to assist in locating parents who have deserted their children and other persons liable for support of dependent children." § 409.2577. "The department shall use all sources of information available including the Federal Parent Locator Service, and may request, and shall receive, information from the records of any state board, commission, or department or officer or agency thereof, and the same are authorized to provide such information as is necessary for the purpose" § 409.2577. In a URESA action when a court of this state (acting as responding state) is unable to obtain jurisdiction over the defendant, the court shall use all means at its disposal to trace the defendant or his or her property. § 88.191.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. "Any person, public body, or department of the state employing a person owing a child support debt shall honor, according to its terms, an assignment of earnings executed by the responsible parent and presented by the department as a plan to satisfy or retire a child support debt. This requirement to honor the assignment of earnings, and the assignment of earnings itself, shall be applicable whether the earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the department" § 409.2574.

Garnishment Specifically Available for Support. Under the marriage dissolution statutes, the court may subject to garnishment any amount due for the personal labor or service of an individual. The court may also issue a continuing writ of garnishment to enforce the order for payment of child support. Such writ shall continue for as long as the court may determine or until otherwise ordered by a court of competent jurisdiction. § 61.12.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In a paternity situation, "[u]pon default in payment of any moneys ordered by the court to be paid, the court may enter a judgment for the amount in default which shall be a lien upon all property of the defendant both real and personal." § 742.08.

Long-Arm Statute Specifically Available for Support. "Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following: . . .

"With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not." § 48.193(1)(e).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. "Whenever the department has undertaken an action for enforcement of support, the department may enter into an agreement with the responsible parent for the entry of a judgment determining paternity, if applicable, and for periodic child support payments based on the responsible parent's reasonable ability to pay. The clerk of court shall file the agreement without payment of any fees or charges and the court, upon

entry of judgment, shall forward a copy of it to the parties. The parent will be informed before entering into the agreement, that a judgment will be entered based on the agreement. In making a determination of the responsible parent's reasonable ability to pay, the following criteria shall be considered:

- "(a) All earnings, income and resources of the responsible parent.
- "(b) The ability of the responsible parent to earn.
- "(c) The reasonable necessities of the responsible parent.
- "(d) The needs of the dependent child for whom support is sought." § 409.2564.

Enforcement of Support by State in Welfare Cases. No application for AFDC will be approved unless the applicant has instituted civil proceedings to obtain support from the persons liable to support the children. "The department [of health and rehabilitative services] shall assist applicants in bringing proceedings to enforce support by such persons who may be liable for the support under the laws of this state Such assistance shall be by consultation and arrangements with legal aid societies and bureaus established by local bar associations, if there be such legal aid societies able and willing to act; otherwise, the state attorney of the circuit in which such county is located shall institute and prosecute such action" § 409.245.

"In each case in which regular child support payments are not being made to the department . . . the department shall institute, within 30 days after determination of the responsible parent's reasonable ability to pay, an action for support against any person liable for the support of the child" § 409.2564.

Support Payments Assigned. "By accepting public assistance for, or on behalf of, a dependent child, the recipient is deemed to have made an assignment to the department of any right, title, and interest in any child support obligation owed to or for said child" § 409.2561(3).

Agency Can Request Modification of Support. "The department may petition the appropriate court for modification of a court order on the same grounds as either party to the cause" § 409.2561(1).

Service on Agency If Public Assistance Involved. No statutory provision.

7/25/83

GEORGIA

Code of Georgia Annotated
Revised 1933
(1983 Cum. Supp.)

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version including the 1952 amendments and part IV. §§ 99-901a - 99-939a. Some elements of the 1968 version are also included.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No specific statute, but paternity proceedings are civil. § 74-308. Therefore, the burden of proof is preponderance of the evidence.

Long-Arm Statute Specifically for Paternity. In a paternity proceeding the court "may order service upon a person outside the State upon a finding that there is a constitutionally permissible basis for jurisdiction over such person arising out of the fact that the child was conceived as a result of an act of sexual intercourse within this State while either parent was a resident of this State and the person on whom service is required is the alleged father of the child." § 74-302.

Paternity Actions Brought by State. "Whenever the department [of human resources] receives an application for services under this Chapter on behalf of a child born out of wedlock and the child's mother identifies in writing the putative father of such a child, the department . . . may request that the putative father acknowledge paternity under oath. If the department is unable to secure such an acknowledgment, the department may initiate legal proceedings to establish the paternity of such child" § 99-903b.1. District attorneys are authorized to assist the Department of Human Resources in the enforcement of the child support recovery chapter. § 99-918b.1.

"A petition to establish the paternity of a child may be brought by . . . [t]he Department of Human Resources . . . for the benefit of a child for whom public assistance is received or in the name of and for the benefit of a child not the recipient of public services whose custodian has applied for services for the child." § 74-304(a)(4).

One of the duties of a district attorney may be to handle a criminal action for abandonment, and the state may be required to prove paternity within such an action. §§ 2-4002 and 24-2908 (general duties of district attorney). In practice, a solicitor general may handle the action in larger counties. § 24-2904.

Default Judgment Allowed. No specific statutory provision, but there is a default provision in the Civil Practice Act that could possibly be used. § 81A-155.

Procedure for Blood Tests. On the motion of the plaintiff, defendant, or any other interested party, the court may order the mother, alleged father, and child to submit to blood tests developed or established to prove or disprove paternity. § 74-306. "Evidence of a refusal to submit to a blood test . . . is admissible to show that the alleged father is not precluded from being the father of the child." § 74-307(b). If the results of the blood tests and comparisons are consistent in excluding the alleged parent as the natural parent of the child, the jury shall be instructed to so find. § 74-310(c).

Support Without Paternity Determination. No direct statutory provision. "The child must be a party to a settlement agreement with the alleged father. The court must approve any settlement agreement, dismissal, or nonsuit." § 74-309. The use of the term "alleged father" may indicate that this provision applies to an agreement to support without an acknowledgment of paternity.

Factors Considered in Setting Support. No statutory provision.

Information on Assets on Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"Until majority, it is the joint and several duty of each parent to provide for the maintenance, protection, and education of the child, except to the extent that the duty of one parent is otherwise or further defined by court order." § 74-105.

Abandonment, which is defined in the statute as failing to furnish sufficient food, clothing, or shelter for the needs of the child, is a misdemeanor, but upon three convictions or if the parent leaves the state, the offense becomes a felony punishable by one to three years in the penitentiary. § 74-9902.

Abandonment of one's wife while she is pregnant is a misdemeanor unless the husband leaves Georgia, in which case it is a felony carrying a sentence of imprisonment for between one and three years, which shall be reducible to a misdemeanor. § 74-9903.

Initiation of Proceedings. No statutory provision other than above.

Support Pending Divorce. "In suits for divorce, the judge presiding may grant . . . a sum sufficient for the support of the children." This provision contemplates a divorce suit that is pending. § 30-206.

Effect of Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In a paternity action, the court may order support payments made to the child support receiver, district attorney, probation officer, or the clerk of court. If the Department of Human Resources brought the action, the payments are made to the department or the child support receiver if the department requests it. § 74-313(a).

One of the child support receiver's duties is to collect child support payments under orders or agreements that specify that support payments are to be paid through the receiver. § 24-2702a.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The Department of Human Resources "may accept applications for child support enforcement services from a custodian of a minor child who is not a recipient of public assistance and may take appropriate action under this Act, the child support statutes or other State and federal statutes to assure that the responsible parent supports said child." § 99-907b(b).

Location of Absent Parents. The Department of Human Resources shall attempt to locate absent parents. § 99-908b. If the Department of Human Resources has assignment of child support rights, "the department may request from any governmental department, board, commission, bureau or agency information and assistance." § 99-908b(c). In a URESA action, Ga. Code Ann. § 99-918a requires that, when a state court is acting as a responding court and is unable to obtain jurisdiction over the defendant, the court shall use all means at its disposal to trace the defendant or his or her property.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. "A parent responsible for child support payments may make an assignment of a portion of his wages to the department, . . . and if employers recognize and comply with such wage assignments . . . then such wage assignments shall become enforceable." § 99-915b.2(a).

Garnishment Specifically Available for Support. If the child is a recipient of AFDC benefits, the department may garnishee an obligor's wages pursuant to correct procedures and due notice to the obligor. §§ 99-915b.1 and 99-912(c)(1). Garnishment is allowable only after the duty to support has been determined administratively, not where there has been a voluntary agreement to support the child.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. If the putative father refuses or fails to give security for the support of the child, he shall be guilty of a misdemeanor. § 74-9901.

In an AFDC situation, if the department determines that a parent shall provide support, "the final order shall inform the parent . . . that failure to support may result in the foreclosure of liens on his personal or real property" § 99-912b(c)(1). The lien referred to above is authorized by the following provision: "A child support lien in favor of the department shall attach to all personal and real property of the responsible parent if he has failed to make any child support payment within 30 days after it is due" § 99-915b(a).

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. If the Department of Human Resources is unable to secure a voluntary support agreement from the parent, the department or

its designated hearing officer may conduct an administrative hearing to finally determine the ability to support and the amount of support. § 99-912b(a)

This administrative determination is limited to AFDC situations and also limited to cases where the parent has not voluntarily agreed to support the child. Upon failure of the parent to meet the support obligation, the department is authorized to bring an action for garnishment or can order to withhold and deliver the obligor's earnings. § 99-915b.1.

Enforcement of Support by State in Welfare Cases. Whenever the department receives an application for public assistance on behalf of a child and the responsible parent has failed to provide support, it is the department's responsibility to take appropriate action to ensure that the responsible parent supports the child. § 99-907b(a).

"The same remedies and procedure shall apply for enforcement and modification of visitation and support orders as apply to enforcement and modification of such orders arising from divorce proceedings." § 74-313(b). The argument used here is that assignment of rights pursuant to § 99-905b includes the right to request a modification of a support order.

Support Payments Assigned. By accepting public assistance on behalf of a child, the recipient shall be deemed to have made an assignment to the Department of the right to any child support owed for the child. § 99-905b. "The Department shall be subrogated to the right of the child or children or the person having custody to initiate any support action . . . and to recover any payments ordered" § 99-905b(a).

"The payment of public assistance to or on behalf of a child creates a debt due and owing the State by the parent or parents responsible for the support of the child." § 99-904b.

"Child support ordered by a court pursuant to a divorce decree or in any other proceeding in which the responsible parent is required to pay support for his child or children, whether such proceeding is civil or criminal, shall be paid by the responsible parent, the clerk of court, probation officer, child support receiver, or similar official collecting support to the Department upon the Department's certification that the child is a recipient of public

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Georgia

assistance or upon the Department's certification that an application has been filed with the Department for enforcement of support in accordance with the provisions of the Federal Social Security Act." § 99-916b.

Agency Can Request Modification of Support. The department may conduct periodic redetermination and reinvestigations of the ability of the parent to furnish support. § 99-913b.

Service on Agency If Public Assistance Involved. No statutory provision.

7/25/83

HAWAII

Hawaii Revised Statutes
(1982 Cum. Supp.)

State Contact
No reply.

UNIFORM ACTS

Uniform Parentage Act. §§ 584-1 to 584-26.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Adopted but repealed.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version with the 1952 and 1958 amendments, but not part IV. §§ 576-1 - 576-41.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence. Under the Uniform Parentage Act, the paternity action is civil, governed by the rules of civil procedure. § 584-14(a).

Long-Arm Statute Specifically for Paternity. Under the Uniform Parentage Act, a person who has sexual intercourse in this state thereby submits to the jurisdiction of its courts as to an action with respect to a child who may have been conceived by that act. § 584-8(b).

Paternity Actions Brought by State. No statutory provision.

Default Judgment Allowed. Section 584-6(b) provides that if the alleged father fails to appear, the proceedings shall continue as though he were present, and the court shall make all orders as it deems proper as though he were in court. See also § 584-14(a) providing that paternity actions are civil, so a default judgment is available.

Procedure for Blood Tests. The court may, and on a party's request shall, require the mother, child, or alleged father to submit to blood tests performed by court-appointed experts. The court, on a party's reasonable request, will order independent tests by other experts. The court determines the number and qualifications of the experts. § 584-11.

Also evidence relating to paternity may include blood test results weighed with the statistical probability of paternity. If a pretrial hearing has been held and the judge's recommendations are not accepted by all parties, the court shall require blood tests if practicable. § 584-12.

The defendant can offer evidence only about a man who had sexual intercourse with the mother near the conception time if the defendant has undergone and made available blood tests that do not exclude him as the father. § 584-14(c). The court may order the blood test costs to be paid by the parties in proportions and at times it determines and may order the state or other person to pay the portion of an indigent party. § 584.16.

Support Without Paternity Determination. Under § 584-13, the court can approve a support agreement without an acknowledgment of paternity if the alleged father assumed a defined economic obligation to the child. The judge must look to the factors for setting child support and the likelihood that paternity can be determined. However, any party to the action, including the guardian ad litem for the child, may refuse to accept the agreement.

Factors Considered in Setting Support. Under the Uniform Parentage Act, the court shall consider all relevant facts including:

- 1) child's needs,
- 2) parents' standards of living and circumstances,
- 3) parents' relative financial means,
- 4) parents' earning ability,
- 5) child's need and capacity for education, including higher education,
- 6) child's age,
- 7) child's financial resources and earning ability,
- 8) parents' responsibility for the support of others, and
- 9) value of custodial parent's services. § 584-15(e).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

All parents and guardians, to the best of their abilities, shall provide for the discipline, support, and education of their children. § 577-7.

A person commits the offense of persistent nonsupport by knowingly and persistently failing to provide support that he or she is able and legally obligated to provide for a spouse, child, or other dependent. Persistent nonsupport is a misdemeanor, punishable by a fine not to exceed \$1,000 or imprisonment not to exceed one year, or both. § 709-903.

Initiation of Proceedings. Whenever the court is informed by any person of facts concerning any child living or found within the circuit who is neglected as to proper or necessary support, or as to medical or other care necessary for his or her well-being, or who is abandoned by his or her parent or other custodian, the court shall make a preliminary investigation to determine whether the interests of the public or of the minor require that further action be taken. If so, the court may authorize the filing of a petition or may make whatever informal adjustment is practicable without a petition. § 571-21.

Support Pending Divorce. No statutory provision.

Effect on Support of Denial of Visitation. No statutory provision.

Factors considered in Setting Support. The court shall take into consideration "the respective merits of the parties, the relative abilities of the parties, the conditions in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case." § 580-47(a).

Information on Assets of Parties. "By special order of the judge or by rule of court a social study may be required in support cases covering financial ability and other matters pertinent to making an order of support." § 571-45. The court may also refer to the court trustee for an investigation the problem of making or modifying a child support order. § 571-52.1.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Under the Uniform Parentage Act, the court may order that payments be made to the clerk of court or the agency designated to administer the support for the child's benefit. § 584-17(b). There is no statutory provision in other actions.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The attorney general shall, at the request of and on behalf of the department of social services and housing, be granted the authority to pursue all nonsupport claims that come to the department's attention. § 346-37.5. It appears that nonwelfare cases could be referred by the department since it has the authority to create programs for or aid neglected children regardless of the involvement of public assistance. § 346.14.

Location of Absent Parents. The director of social services shall appoint and commission one or more investigators who shall have and may exercise all the powers and authority of a police officer except without firearms. Information necessary to locate absent parents, to establish paternity, and to obtain and enforce court orders of support, and contained within the records of an agency, board, commission, authority, or committee of the state or its political subdivisions, shall be made available to any commissioned investigator of the department of social services and housing, notwithstanding any provision for confidentiality. § 346-4.5.

Under URESA, if a state court acting as the responding court is unable to obtain jurisdiction over the defendant or his or her property, the court shall on its own initiative use all means at its disposal to trace the defendant or property. § 576-32.

Child Support Priority over Other Creditors. "Any assignment [of future wages for future support] made pursuant to an assignment order may have priority as against any garnishment, attachment, execution, or other assignment or order unless otherwise ordered by the court." § 571-52.

Wage Assignment Specifically Available for Support. Whenever a person has been adjudged guilty of contempt of court for failure to obey a support order, or delinquent in payments due in the previous 24 months and equal to three months' support, the court may make an order that shall operate as an assignment by the person to the clerk of court, for the benefit of the minor child or spouse, of such amounts at such times as may be specified, from the salary, wages, or other income due or to become due to such person until further order of the court. § 571-52.

Garnishment Specifically Available for Support. Under § 346-37.3 the department of social services and housing may issue a notice of support debt to the debtor based on payment of public assistance. If the debtor has failed to comply with the notice of support debt within twenty days, "the debt will be subject to collection action, and the earnings of the debtor will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, in accordance with state laws governing such proceedings." § 346-37.4.

In paternity proceedings, the court may sequester the father's personal estate, including salaries, wages, and commissions, and the rents and profits of his real estate to be applied to meeting the terms of the judgment. § 584-15C.

Attachment Specifically Available for Support. In paternity proceedings, the court may sequester the father's personal estate, including salaries, wages, and commissions, and the rents and profits of his real estate to be applied to meeting the terms of the judgment. § 584-15.

Other Special Enforcement Tools. In paternity proceedings if the father defaults on the support order, the court may sequester his personal estate and rents and profits from his real estate and may appoint a receiver thereof. § 84-15(c). Also after the pretrial hearing, the court may require a bond. If the putative father fails to give the bond, the court may commit him to the police chief's custody until he pays the bond or is discharged by due process of law. § 584-6(b).

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. In paternity actions, the public agency administering support, any private agency, or any person has authority to enforce the support obligation. § 584-17.

The "attorney general shall, at the request of and on behalf of the department of social services and housing, be granted the authority to pursue all nonsupport claims that come to the department's attention . . ." § 346-37.5.

Also the department of social services and housing issues notices of support debt accrued based on the payment of public assistance. § 346-37.3.

Support Payments Assigned. Any payment of public assistance made for a child's benefit creates a debt due to the department of social services and housing by the natural or adoptive parent[s]. § 346-37.1. Also the department may prosecute or maintain any support action or execute any administrative remedy to obtain reimbursement of those payments. § 347-37.2.

If the child support debtor has not arranged with the department to resolve the debt within 21 days of receiving notice of the debt, "the debt will be subject to collection action, and the earnings of the debtor will be subject to lien and the personal and real property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver." § 346-37.4.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

7/25/83

IDAHO

Idaho Code
Revised 1947
(1983 Cum Supp.)

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version
without part IV. §§ 7-1048 - 7-1089.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision, but the
proceedings are civil. § 7-1114. Therefore, the burden of
proof is preponderance of the evidence.

Long-Arm Statute Specifically for Support. No statutory
provision.

Paternity Actions Brought by State. Proceedings may be commenced
by the state on behalf of a child for whom aid has been
given. § 7-1110.

Default Judgment Allowed. No statutory provision, but the
proceedings are civil. So a default judgment should be
available. § 7-1114.

Procedure for Blood Tests. The court may, and on motion of either party shall, order blood tests. Upon reasonable request of a party, it shall order independent tests to be performed by other experts. Test results shall be conclusive evidence of non paternity, and are admissible to prove the statistical probability of the alleged fathers paternity 7-1115, 7-1116.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. No statutory provision. Section 7-1121 merely provides that a "fair and reasonable sum" shall be paid.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"It is the duty of the father, the mother and the child or children of any poor person who is unable to maintain himself or herself by work, to maintain such poor person to the extent of his or her ability." § 32-1002.

"If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent." § 32-1003.

Also nonsupport is a felony punishable by imprisonment up to fourteen years or a fine of not more than \$500 or both. § 18-401.

Initiation of Proceedings. "Whenever any person shall apply for aid to any county within this state under its indigent laws, and it shall at any time appear to the county commissioners that said poor person has a father, mother, child or children who is able to maintain him or her, but fails so to do, it shall be the duty of the said commissioners to furnish all necessary aid and to bring a civil suit against such father, mother, child or children to recover the amount so expended, in the name of the county." § 32-1002.

Support Pending Divorce. While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children. § 32-704.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In a proceeding for divorce or child support, the court may order either or both parents to pay an amount reasonable or necessary for the child's support, after considering all relevant factors which may include:

- 1) the financial resources of the child,
- 2) the financial resources, needs, and obligations of both parents,
- 3) the standard of living the child enjoyed during the marriage,
- 4) the child's physical and emotional needs, and educational needs. § 32-706.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "All payments for child support ordered pursuant to any decree of divorce shall be paid to the clerk of court, unless otherwise ordered by the court." § 32-710A.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The prosecuting attorney has authority to institute an enforcement action. § 32-710A.

"The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take action as it deems appropriate to establish or enforce support obligations against persons owing a duty of support." It may set standards deemed necessary to limit applications, taking into account income, property, and other resources available to the support obligee. The department may also charge a fee for its services. § 56-203A.

Location of Absent Parents. To assist in locating parents who have deserted their children, the department of health and welfare and county prosecuting attorneys may request and shall receive information from the records of all departments, boards, bureaus, or other agencies of this state, and the same are authorized to provide such information as is necessary for this purpose. § 56 - 231.

In a URESA action, if the state information service (designated as the commissioner of public assistance) does not know the location of the obligor or his or her property in this state, it shall use all means at its disposal to locate the obligor or property. § 7-1064(b). Section 7-1066(a) requires that the prosecuting attorney in a URESA action use all means at his or her disposal to locate the obligor or property.

Child Support Priority over Other Creditors. "In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign such sum as the court may determine to be equitable to the county clerk, probation officer, or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of either parent due in the future to apply on the amount ordered by the court for the support and maintenance of the minor child Any such assignment made pursuant to court order shall have priority as against any attachment, execution or other assignment, unless otherwise ordered by the court." § 8-704.

Wage Assignment Specifically Available for Support. See § 8-704. above.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In paternity actions, the court may require payment be made to a trustee. § 7-1122.

Long-Arm Statute Specifically for Support. Section 5-514(e) permits personal jurisdiction for any cause of action arising from the maintenance within the state of a matrimonial domicile at the time of the commission of an act giving rise to a cause of action for divorce or separate maintenance.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The department of social services is authorized to take appropriate action to enforce an obligor's duty of support. § 56-203A. See § 56-203C(1) for a similar provision. The department may bring an action against the obligor to show cause why the amount of support previously ordered should not be increased. § 56-203C(4)(b).

Powers of the department include authority to "[a]ppear on behalf of the custodial parent of a dependent child or children on whose behalf public assistance is being provided, when so requested by such parent, for the purpose of assisting such parent in securing a modification of a divorce or separate maintenance decree wherein no support, or inadequate support, was given for such child or children: and "[i]f public assistance has been applied for or granted on behalf of a child of parents who are divorced or legally separated, the attorney general or prosecuting attorney may apply to the district court in such action for an order directing either parent or both to show cause . . . [w]hy the amount of support previously ordered should not be increased" § 56-203(3) and (4)(b).

Support Payments Assigned. No, but any payment of public assistance to a child creates a debt due by the obligor. § 56-203B.

Agency Can Request Modification of Support. See § 56-203C(3) and (4)(b) under Enforcement of Support by State in Welfare Cases.

Service on Agency If Public Assistance Involved. No statutory provision. However, the department is authorized to appear as a friend of the court in divorce suits when either party is a recipient of public assistance, for the purpose of advising the court of the state's interest. § 56-203C(2).

2/20/84

ILLINOIS

Smith-Hurd Illinois Annotated Statutes
(1981-82 Cum. Supp.) 1983 Session Laws

State Contact
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Department of Public Aid
Bureau of Child Support
316 South Second Street
Springfield, Illinois 62762

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Ch. 40, §§ 1401 - 1407.

Uniform Desertion and Nonsupport Act. Ch. 40, §§ 1101-1113.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. Ch. 40, §§ 1201 - 1242.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Defendant must be proved guilty by a preponderance of the evidence. Ch. 40, § 1355.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Actions Brought by State. A complaint may be filed "by the Illinois Department of Public Aid in behalf of a minor child who is receiving financial aid." A woman may request that the state's attorney in the appropriate county prosecute the action in her behalf. "If the woman is an applicant for or recipient of assistance . . . or services from the state, . . . she may request the Department of Public Aid to file a complaint in her behalf." If she fails

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to request them to do so, the department may file such claim anyway in behalf of the child. The department shall refer the complaint to the Public Aid Claims Enforcement Division of the attorney general's office. Ch. 40, 1354.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. Illinois has adopted the Uniform Blood Test Act. Ch. 40, §§ 1401-1407. The court, upon its own initiative, or upon the motion of any party to the action, may order the mother, child, or alleged father to submit to blood tests. If the defendant refuses to submit to the tests, such fact shall not be disclosed at trial. These tests may include the human leucocyte antigen test. Ch. 40, § 1401. The blood tests shall be conducted by experts who may be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Ch. 40 § 1402. If the tests show that the alleged father is not the father, the question of paternity shall be resolved accordingly. If the experts disagree in their findings, the tests are not admissible, and the question of paternity shall be submitted upon all the evidence. Ch. 40 § 1404(a). The tests may be admitted when they constitute clear and convincing evidence that the man is the father of the child, but they may not be the only grounds for determining paternity. Ch. 40 § 1404(b).

Support Without Paternity Determination. "In cases where the putative father has not acknowledged paternity and where the parties have requested a settlement, the court shall review the proposed settlement If the court is satisfied the best interests of the child and of the parties will be served by entry of an order incorporating the settlement, and it is satisfied that the financial security of the child is adequately provided for and that the child and its mother are not likely to become public charges, it may enter an order to that effect. The order may be directed to the defendant, or the mother, or both." Ch. 40, § 1358. A representative of this state indicates that this statute may not be used when public assistance is involved.

Factors Considered in Setting Support. The court must consider the support, maintenance, education, and welfare needs of the child and must take into consideration the financial

conditions and circumstances of the father and the income and resources of the mother that are available for the support of the child. Ch. 40, § 1359.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Every person who neglects or refuses to support his or her child under the age of eighteen years, without lawful excuse, shall be deemed guilty of a class A misdemeanor and liable in a civil action for the amount of assistance provided. Ch. 40, § 1101.

Ch. 23, § 10-2 also creates a civil nonsupport action against parents of a child under twenty-one years who has applied for or is receiving public assistance unless it is shown that the child is eighteen years or older and has established a consistent pattern of independent living prior to application for public assistance. Ch. 23, § 10-10 extends this action to children who have not applied for or are not receiving public assistance.

Any person who shall, without lawful excuse, desert, neglect, or refuse to provide for the support or maintenance of his or her child or children under the age of eighteen years, in need of such support or maintenance, shall be deemed guilty of a class A misdemeanor. ch. 68, § 24. A class A misdemeanor may be punished by a fine not to exceed \$1,000 or imprisonment of less than one year or both. Ch. 40, § 1011.

Initiation of Proceedings. A nonsupport action pursuant to ch. 40, § 1101 may be initiated by the state's attorney or by the attorney general if the case is referred by the department of public aid because public assistance is involved. Ch. 40, § 1103. The court may, in lieu of or in addition to punishment, order the defendant to pay support for a term not to exceed three years to the other parent or to a public official if public assistance is involved. Ch. 40, § 1107.

A nonsupport action involving public assistance pursuant to ch. 23, §§ 10-1 and 10-10, may be brought by the department of public aid if it has an agreement to do so with the local

government unit, the local unit's proper legal representative, or the state's attorney. If public assistance is not involved, the state's attorney may bring the action, or if support services are provided, the department of public aid may do so. The court may enter any support order that is just and equitable, ordering payments for such time periods as the circumstances require. Ch. 23, § 10-10.

In those counties participating in the system of child support enforcement for public assistance recipients and for nonrecipients who receive services under ch. 23, § 10-1, when it is found that the payor is in default for two months without good cause, the court shall order the obligor to pay a sum equal to two percent of the arrearage as a penalty in addition to the arrearage. Ch. 40, § 710(e).

Support Pending Divorce. "Either party may move for: (1) temporary maintenance, or temporary support of a child of the marriage entitled to support, accompanied by an affidavit as to the factual basis for the relief requested" Ch. 40, § 501.

Effect on Support of Denial of Visitation. If a party to a divorce fails to comply with a provision of the judgement, "the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order." Ch. 40, § 509.

Whenever a child support order has been entered and visitation is provided within it, "whoever willfully refuses to comply with such visitation order or willfully interferes with its enforcement may be declared in contempt of court and punished therefor." Ch. 23, § 10-10.

Factors Considered in Setting Support. "[T]he court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for his support, without regard to marital misconduct, after considering all relevant factors, including:

- "(1) the financial resources of the child;
- "(2) the financial resources and needs of the custodial parent;
- "(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

- "(4) the physical and emotional condition of the child, and his educational needs; and
"(5) the financial resources and needs of the noncustodial parent or parents." Ch. 40, § 505(a).

The court may also award support for nonminor children who are mentally or physically disabled and may also provide for the education and maintenance of such child or children. In making these awards the court may consider "all relevant factors . . . including: (a) The financial resources of both parents. (b) The standard of living the child would have enjoyed had the marriage not been dissolved. (c) The financial resources of the child." Ch. 40, § 513.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "[T]he court may order at any time that maintenance or support payments be made to the clerk of court as trustee for remittance to the person entitled to receive the payments." Ch. 40, § 507(a).

In those counties participating in the system of child support payment and enforcement, child support payments pursuant to a divorce, legal separation, or annulment must be made to the clerk of court if the the support recipient is receiving public assistance. Ch. 40 § 709(b).

There is also a provision for paternity actions. In counties of less than 3 million population, the court shall direct that support payments be made to the clerk of court unless exceptional circumstances warrant otherwise. In counties with more than 3 million population, the court shall direct support payments to be made either to the clerk of court or to the Illinois Department of Public Aid unless exceptional circumstances warrant otherwise. Ch. 40, § 1362(1) and (2).

Mechanism for Keeping Track of Obligors. Parties ordered to pay child support to the clerk of court under ch. 40, § 507(a) shall inform the clerk of any address change or of any other condition that may affect the administration of the order. Ch. 40, § 507(c).

Parties ordered to pay child support to the clerk of court pursuant to a divorce or legal separation under ch. 40, § 709(b) shall notify the clerk of any address change or change in other conditions that may affect the administration of the order, including that a party has become a public assistance recipient. Ch. 40, § 709(b).

Enforcement of Support by State in Nonwelfare Cases. The Child and Spouse Support Unit may, in its discretion, furnish child support services to individuals who are not applicants for, or recipients of, financial aid. Ch. 23, § 10-1. These services include the establishment and enforcement of child support. The state can limit eligibility to receive these services to persons in designated income classes. It also can establish a schedule of reasonable fees and may deduct costs in excess of the fee from the amount collected. Ch. 23, §§ 10-1 - 10-19.

In those counties participating in the system of child support enforcement for public assistance recipients and for nonrecipients who receive services under ch. 23, § 10-1, upon delinquency of payment both the obligor and obligee are notified. If the amount owed is not paid within the time required by circuit court rules, it is referred to the state's attorney for enforcement proceedings. If the state's attorney does not begin these proceedings within thirty days, the clerk shall inform the court, which shall appoint counsel, at the county's expense, for the enforcement of child support. Ch. 40, § 710(a), (b), and (c).

Location of Absent Parents. "The Illinois Department shall establish . . . a Child and Spouse Support Unit to search for and locate absent parents" Ch. 23, § 10-3.1.

Under URESA, the department of public aid is the URESA information agency. If no state location service is available, it shall use all means at its disposal to locate the obligor or his or her property, including the examination of state records. It may also request state and federal income tax forms and social security information. Ch. 40, § 1217.

Child Support Priority over Other Creditors. "Claims for support of a spouse or dependent children shall be superior to all other claims for garnishment of property." Ch. 62, § 42(c).

Wage Assignment Specifically Available for Support. Upon entry of an order for support, the court shall enter a separate order for withholding a portion of the payor's income equal to the amount ordered. The order will take effect only when the obligor becomes delinquent in making payments, or if the court specifically orders immediate withholding. Ch. 40 § 706.1; ch. 23 § 10-16.2.

The court must also order withholding under the NonSupport of Spouse and Children Act and the Paternity Act. Ch. 40 § 1107 and Ch. 40 § 136B.

Under the Juvenile Court Act, the court also has authority to order assignment of wages to secure an obligation of support. Ch. 37, § 707-4.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision, but in paternity proceedings, when there is a default in payment of an amount due for child support, the state's attorney to attorney general may institute a proceeding "for the issuance of a citation to the principals and sureties, if any, on the bond." The principals and sureties are then asked to show cause why the execution should not issue against them, and if they fail to do so, "execution shall issue thereon against the property of such principal and sureties." Ch. 40, § 1361.

Other Special Enforcement Tools. No statutory provision.

Long-Arm Statute Specifically for Support. "Any person, whether or not a citizen or resident of this state who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts

"(e) With respect to actions of divorce or separate maintenance, the maintenance in this state of a matrimonial domicile at the time the cause of action arose or the commission in this state of any action giving rise to the cause of action." Ch. 110, § 17(1).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. The child support unit may issue an administrative order requiring the responsible parent to comply with the unit's determination and notice of the support due. If the parent fails to petition for release from a modification of the administrative order, it shall become final, and there will be no further administrative or judicial remedy. Ch. 23, § 10-11. If the parent petitions for release from, or modification of, the administrative order within thirty days, the department of public aid will hold a de novo hearing to determine liability. Ch. 23, §§ 10-12 and 10-13.

Enforcement of Support by State in Welfare Cases. "The Public Aid Claims Enforcement Division in the Office of the Attorney General . . . shall institute in behalf of the state all court actions referred to it by the Illinois Department under this Code and other laws for the recovery of financial aid provided under the public aid programs, the enforcement of obligations of support, and the enforcement of other claims, penalties and obligations." Ch. 23, § 12-16.

"The Child and Spouse Support Unit . . . may institute on behalf of the Illinois Department any actions under this Section for judicial enforcement of the support liability when the dependents are (a) applicants or recipients" Ch. 23, § 10-10. A representative of the state indicates that this is done only with the attorney general's consent.

Ch. 23, § 4-1.7 provides that, if the child is on AFDC, the person with custody must request the appropriate law enforcement officer to file an enforcement action, but ch. 23, § 10-1 provides that the AFDC recipient's support rights are assigned to the state or local government unit by operation of law. Thus, the former statute is not used, according to a representative of this state.

Support Payments Assigned. "By accepting financial aid under this code . . . a person having custody of a child shall be deemed to have made assignment to the Illinois Department for Aid . . . or to a local governmental unit for aid . . . of any and all rights, title and interest in any support obligation up to the amount of financial aid provided." Ch. 23, § 10-1.

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Agency Can Request Modification of Support. The agency may request modification of support orders issued in paternity proceedings. Ch. 40, § 1359. A representative of this state indicates that as assignee of the support rights the state may request a modification under any support action.

Service on Agency If Public Assistance Involved. No statutory provision.

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INDIANA

Burns Indiana Statutes Annotated
Code Edition
(1983 Cum. Supp.)

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 act including part IV and the 1958 amendments. §§ 31-2-1-1 - 31-2-1-39.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of evidence. "The Indiana rules of civil procedure shall apply in paternity actions." § 31-6-6.1-19.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Actions Brought by State. "Upon the request of the child, the mother or expectant mother, a man alleging to be the father or expectant father, or the state or county department of public welfare, the prosecuting attorney shall file a paternity action and represent the child in that action." § 31-6-6.1-3.

Default Judgment Allowed. The rules of civil procedure apply so a default judgment is available. § 31-6-6.19-19.

Procedure for Blood Tests. "Upon the motion of any party, the court shall order all of the parties to the action to undergo blood antigen testing. The tests shall be performed by a qualified expert approved by the court. The results of the tests, together with the finding of the expert, constitute conclusive evidence if the results and finding exclude a party as the biological father of the child. The results and finding are admissible in all paternity proceedings, unless the court excludes the results or finding for good cause." § 31 - 6-6.1 - 8.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. The court may order either or both parents to pay any reasonable amount for child support after considering all relevant factors, including the following:

- "(1) the financial resources of the custodial parent;
- "(2) the standard of living the child would have enjoyed had the parents been married and remained married to each other;
- "(3) the physical and mental condition of the child and his educational needs; and
- "(4) the financial resources and needs of the noncustodial parent."

Also, "[w]here appropriate, the support order may include:

- "(1) Funds for the child's education beyond the twelfth grade, after the court has considered the child's aptitude and ability and the ability of the parents to meet these expenses; and
- "(2) Special medical, hospital, or dental expenses necessary to serve the best interests of the child." § 31-6-6.1-13.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"A dependent spouse may obtain provision from the other spouse for his or her support and for the support of the dependent children in his or her custody in any of the following cases:

- "(1) Where the other spouse shall have deserted his or her dependent spouse, or dependent children, without cause, not leaving that dependent spouse or dependent children sufficient provision for support.
- "(2) When the other spouse shall have been convicted of a felony and imprisoned, not leaving a dependent spouse and any dependent children sufficient provision for his, her, or their support.
- "(3) When the other spouse is an habitual drunkard, and by reason thereof, becomes incapacitated or neglects to provide for the support of the family.
- "(4) When the other spouse renounces the marriage covenant, or refuses to live with his or her spouse in the conjugal relation, by joining a sect or denominates the rules and doctrine of which require a renunciation of the marriage covenant or forbid a man and woman to dwell and cohabit together in the conjugal relation according to the true intent and meaning of the institution of marriage.
- "(5) When the other spouse is adjudged insane." § 31-1-9-10.

The court examines evidence of the marriage, property of the defendant spouse, circumstances and mode of life of the husband and wife, and the sum necessary for the support of the children and makes such orders and allowances in the nature of alimony out of the defendant spouse's estate as just and equitable for the best interest of the children.
§§ 31-1-9-11 and 31-1-9-12.

Indiana also has a criminal nonsupport action. "A person who knowingly fails to provide support to his dependent child commits nonsupport of a child, a class D felony."
§ 35-46-1-5(a).

Initiation of Proceedings. Proceedings may be initiated by a dependent spouse or by any person entitled to receive child support. §§ 31-1-9-11 and 31-1-11.5-4(b).

Support Pending Divorce. Either party may move for temporary support or custody of the child. § 31-1-11.5-7.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. The court shall consider all relevant factors including: "[f]inancial resources of the custodial parent; . . . [s]tandard of living the child would have enjoyed had the marriage not been dissolved; . . . [p]hysical or mental condition of the child and his educational needs; and . . . [f]inancial resources and needs of the noncustodial parent.

"Such child support order may also include, where appropriate: . . . [s]ums for the child's education in schools and at institutions of higher learning, taking into account the child's aptitude and ability and the ability of the parent or parents to meet these expenses; . . . [s]pecial medical, hospital or dental expenses necessary to serve the best interests of the child." § 31-1-11.5-12(a), (b).

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "The court may require that support payments be made to the clerk as trustee for remittance to the person entitled to receive them." § 31-6-6.1-16.
"The court may order that support payments be made to any appropriate person or agency." § 31-6.6-1-15.

When the court orders a person to pay support for a dependent child and the child receives public funds or the parent has sought the services of the IV-D agency, the court shall order payment of support money made to the circuit court clerk or to the state IV-D agency. § 31-2-2-1.

Mechanism for Keeping Track of Obligors. The parties affected by the order shall inform the clerk of the court of any change of address or other conditions that may affect the administration of the order." § 31-1-11.5-13(c).

Enforcement of Support by State in Nonwelfare Cases. The services of the child support division "shall be available to individuals other than recipients or applicants for aid to families with dependent children upon application for such services accompanied by the payment of an application fee" § 12-1-6.1-13.

Location of Absent Parents. "The division [of child support] shall administer the state's parent locator service. It shall make all necessary requests and responses to the federal parent locator service and to the parent locator services of the other states." § 12-1-6.1-8.

In a URESA action, the prosecuting attorney or contracting attorney shall use all means at his or her disposal to trace the obligor or his or her property. § 31-2-1-18(a).

Child Support Priority over Other Creditors. Court-ordered assignments of wages to ensure payment of support in marriage dissolution proceedings are to be withheld prior to other assignments, orders of garnishment, and attachment. § 31-1-11.5-13(e)(2). See § 31-6-6.1-16(e)(2) for a similar provision.

Wage Assignment Specifically Available for Support. In a proceeding related to dissolution of marriage, the court may "order the person obligated to pay support to make an assignment of his or her wages or salary to the person entitled to receive the payments." § 31-1-11.5-13.

The court has the same authority in paternity proceedings. § 31-6-6.1-16. Under both statutes, the court may order assignment upon application for enforcement of an order for support.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. A court may create a lien on real estate for failure to pay support only if a judgment has been rendered determining the amount of delinquent support; or . . . [a] judicial finding or order determining the

amount of delinquent support has been made and a certified copy of this finding or order has been placed in the lis pendens docket of the court before which the question of delinquent support is pending." § 31-1-11.5-13(f).

The court may order payment to a trustee, the guardian of the child's estate, or any third person. § 31-1-11.5-14.

Long-Arm Statute Specifically for Support. Long-arm jurisdiction reaches those who lived "in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations for alimony, custody, child support or property settlement, if the other party to the marital relationship continues to reside in the state." Indiana Rule TR. 4.4(A).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "The division shall be responsible for the collection of support payments when those payments have been assigned to the State of Indiana by the application for assistance under the state's aid to families with dependent children program. The division shall further be responsible for assisting in obtaining a support order where there is no such order and assistance is sought. The division shall be responsible for assisting mothers of children born out of wedlock in establishing paternity and obtaining a support order when the mother has applied for assistance." § 12-1-6.1-12.

Support Payments Assigned. "In the case where one or both parents of the dependent child has been ordered by a court having jurisdiction to make support payments for the child, the person to whom the payment is to be made on behalf of the child shall, in order to be eligible for assistance, and in compliance with the federal rules and regulations, assign the right to the payment to the agency of the state government responsible for administering Title IV-D of the federal Social Security Act." § 12-1-7-1.1(a).

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When anyone is ordered by a court to make payments to support a dependent, and the dependent is receiving public funds, the court shall order payment of support money to the clerk of court of the county where the decree is entered or, in some cases, to the IV-D agency. § 31-2-2-1.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

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IOWA

Iowa Code Annotated (West)
(1983 Supp.)

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UNIFORM ACT

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version with the 1952 amendments and numerous variations, but without part IV. It could also be called the Uniform Support of Dependents Act with numerous variations. §§ 252A.1 - 252A.12.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision, but the proceedings are civil. §§ 675.15 and 675.18. Therefore, the burden of proof is preponderance of the evidence.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Actions Brought by State. "The proceedings may be brought by the mother, or other interested person, or if the child is or is likely to be a public charge, by the authorities charged with its support." § 675.8.

"The county attorney . . . shall prosecute the matter in behalf of the complainant." § 675.19.

"The Attorney General shall have the power to file and prosecute: . . . any other lawful action which will assure collection of support for minor children." § 252B.7.

Default Judgment Allowed. "The trial . . . shall be conducted as in other civil cases." § 675.18. The civil default judgment provision, Iowa R. Civ. P. § 232, is applicable in paternity cases.

Procedure for Blood Tests. "In any proceeding to establish paternity . . . the court may on its own motion, and upon request of a party shall, require the child, mother, and and alleged father to submit to blood tests. If a blood test is required, the court shall direct that inherited characteristics, including but not limited to blood types, be determined by appropriate testing procedures, and shall appoint an expert . . . to analyze and interpret the results and to report to the court. Blood test results which show a statistical probability of paternity are admissible and shall be weighed along with other evidence of the alleged father's paternity. If the results of blood tests or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that an additional test be made . . . at the expense of the party requesting additional testing. . . . A verified expert's report shall be admitted at trial unless a challenge to the testing procedures or the results of blood analysis has been made before trial. All costs shall be paid by the parties in proportions and at times determined by the court." § 675.41.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Dissolution. It is unlawful for a parent to willfully fail to support a child under eighteen years of age. § 233.1. Such an act is

punishable by a fine not to exceed \$100 or imprisonment in the county jail not to exceed 30 days or both. § 233.2. Nonsupport is also a felony, punishable by a fine not to exceed \$1000 or imprisonment not to exceed five years or both. § 902.9.

"The reasonable and necessary expense of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately." § 597.14.

Initiation of Proceedings. Under § 233.1, nonsupport is contributing to the delinquency of a minor, and the court "may order the issuance of a warrant for the arrest of such suspected person, and on the appearance of such person . . . may . . . hold a preliminary examination" § 233.4. The procedure for an action under § 726.5 is not provided by statute.

Under § 597.14, there is no specific procedure for civil establishment of the support duty. However, either spouse may sue for family support if the other spouse abandons the family or is placed in jail for one year without providing such support. The petitioner requests from the court the authority to manage, control, sell, or encumber the property of the guilty party for the purpose of supporting the family and paying debts. § 597.10.

Support Pending Divorce. "The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the other party and the children" § 589.11.

The parties must file financial statements. In making the temporary support order the court must consider the age and sex of the applicant, the physical and pecuniary condition of the parties, and such other matters as are pertinent. §§ 598.13 and 598.14.

Effects of Denial of Visitation on Support. No statutory provision.

Factors Considered in Setting Support. Section 598.21.4 states the factors to be considered in granting child support:

- 1) the financial resources of the child;
- 2) the financial resources of both parents;

- 3) the standard of living the child would have enjoyed had there not been an annulment, dissolution, or separate maintenance;
- 4) the desirability that the custodian remain in the home as a full-time parent;
- 5) the cost of day care if the custodian works outside the home or the value of custodial services performed by the custodian if the custodian remains in the home;
- 6) the physical and emotional health needs of the child;
- 7) the child's educational needs;
- 8) the tax consequences to each party; and
- 9) other factors the court may determine to be relevant in an individual case.

Information on Assets of Parties. Section 598.13 provides:

"Both parties shall disclose their financial status. A showing of special circumstances shall not be required before the disclosure is ordered. A statement of net worth set forth by affidavit on a form prescribed by the supreme court and furnished without charge by the clerk of the district court shall be filed by each party prior to the dissolution hearing, unless waived by both parties. Failure to comply with the requirements of this section constitutes failure to make discovery"

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Section 598.22 (dissolution of marriage section) states that "[a]ll orders or judgments providing for temporary or permanent support payments shall direct the payment of such sums to the clerk of court for the use of the person for whom the same have been awarded."

Also there is a paternity provision that states that "[t]he court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee." § 675.27.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. Services for child support and paternity determination are available to those on public assistance upon application. However, an application fee and a fee to cover the costs incurred may be charged. § 252B.4.

Location of Absent Parents. "The child support recovery unit shall provide the following services: . . . assistance in the location of an absent parent or any other person who has any obligation to support the child of the resident parent." § 252B.5.

"The department shall establish within the unit an information and administration coordinating center which shall serve as a registry for the receipt of information and for answering interstate inquiries concerning absent parents and shall coordinate and supervise unit activities. The information and administration coordinating center shall promote cooperation between the unit and law enforcement agencies to facilitate the effective operation of the unit." § 252B.8.

"The commissioner may request from state, county, and local agencies, information and assistance deemed necessary to carry out the provisions of this chapter. State, county, and local agencies, officers and employees shall cooperate with the unit in locating absent parents . . . and shall on request supply the department with available information relative to the location, income, and property holdings of the absent parent notwithstanding any provisions of law making such information confidential." § 252B.9.

In a URESA action, if the court acting as a responding state is unable to obtain jurisdiction over the defendant, it may use all means at its disposal to trace the defendant or his or her property. § 252A.6.

Child Support Priority over Other Creditors. The exemptions are restricted in a child support order situation: "the personal earnings of the debtor shall not be exempt from any order, judgment or decree for the support of his minor child or children . . . nor any installment of any such order, judgment or decree . . . which, by the provisions thereof, may hereafter become due." § 627.12.

Wage Assignment Specifically Available for Support. As an alternative to jail, a parent who fails to comply with a support order in a dissolution of marriage proceeding may be required by the court to assign his or her wages or trust income to the clerk of court for payment of the support obligation. The assignment may be ordered for amounts in default as well as payments to be made in the future. § 598.23.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. Attachment may be ordered in a paternity action. § 675.17. It is also available to ensure compliance with support decrees ordered in divorce actions. § 598.15.

Other Special Enforcement Tools. "The court may require payment to be made to the mother, or to some other person or corporation designated by the court as trustee. The payments shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court." § 675.27.

Once a paternity complaint is filed, "a lien shall be created upon the real property of the accused in the county where the action is pending for the payment of any money and the performance of any order adjudged by the proper court." § 675.16.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision. However, a representative of the state indicated that, as a practical matter, the Iowa Child Support Recovery Unit does this with a consent stipulation reduced to an order by the court.

Enforcement of Support by State in Welfare Cases. When the department of human services has received an application for public assistance on behalf of a child and determined the child has been abandoned or not given proper support, the department shall take appropriate action "to insure that the parent or other persons responsible for the support of the child fulfills the support obligation." § 252B.3. The agency may aid in obtaining a court order for support or in enforcing an existing order. It may also bring an action to have specified amount's withheld from a parent's unemployment compensation. The attorney general may provide the necessary legal services. §§ 252B.5 to 252B.7.

The child support recovery unit may "appear on behalf of the resident parent of a child for whom public assistance is being provided, upon request by the parent, for the purpose of assisting the parent in securing the modification of a dissolution or separate maintenance decree which provided no support or inadequate support for the child . . . [and] apply to the district court for an order directing either or both parents to show cause why the amount of support previously ordered should not be increased" § 252B.6.

Support Payments Assigned. Public assistance recipients are deemed to assign their rights to support payments to the department of human services. §§ 252A.13, 598.34, 675.38.

Agency Can Request Modification of Support. If public assistance has been applied for or granted, the child support recovery unit may apply to the court for an order directing either or both parents to show cause why the previously ordered child support should not be increased. § 252B.6(4).

Also, if the custodial parent brings an action for modification, the unit may appear on the parent's behalf. § 252B.6(2)(3).

Service on agency If Public Assistance Involved. No statutory provision, but the clerk shall furnish the department of human services with copies of all orders or decrees awarding support to parties having custody of minor children when such parties are receiving public assistance. § 598.34.

KANSAS

Kansas Statutes Annotated
1963 (1980 Cum. Supp.)
1983 Session Laws

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted. But see
§ 21-3605, which is a similar statute.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version
including part IV. §§ 23-451 - 23-4,100.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence.
The burden of proof is the same as that under civil code
actions. § 38-1101. If paternity is determined as part of
a criminal proceeding for nonsupport of a child, the burden
of proof is "[a] preponderance of the evidence."
§ 21-3605(1)(f).

Long-Arm Statute Specifically for Paternity. Section
60-308(b)(10) provides for jurisdiction over a person
"Performing an act of sexual intercourse within the state as
to an action against a person seeking to adjudge the person
to be a parent of a child and as to an action to require the
person to provide support for a child as provided by law, if
(A) the conception of the child results from the act and (B)
the other party to the act or the child continues to reside
in the state."

Paternity Actions Brought by State. The state may bring a civil action to support rights of a recipient of public assistance and, when necessary, to establish the paternity of a child. § 39-755(a). Also, "[i]f the complaining witness is not represented by counsel, the county attorney . . . shall represent the plaintiff in an action to determine paternity." § 38-1103.

Default Judgment Allowed. Section 38-1101 provides that paternity proceedings are governed by the code of civil procedure. The code of civil procedure has a default judgment provision. § 61-1721.

Procedure for Blood Tests. The court upon its own motion, or that of any other party, may order the mother, child, and alleged father to submit to blood tests. The court may resolve the question of paternity against any party who refuses to submit to the tests. The experts shall be called by the court as witnesses to testify as to the findings. § 23-131.

Support Without Paternity Determination. At any time before final judgment, the mother of the child may move for dismissal of the action. If the court determines that adequate support will be provided by the defendant, the court shall dismiss the action. Apparently, the court may approve although the alleged father denies paternity. § 38-1105.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. A parent's failure, neglect, or unlawful refusal to provide for the support of his or her child in necessitous circumstances is nonsupport, a class E felony. § 21-3605.

Initiation of Proceedings. No statutory provision.

Support Pending Divorce. Section 60-1607 provides that pending divorce the court may make and enforce an order for temporary support of either party and of the minor children.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. § 16.10.

Information on Assets of Parties. "After a petition for divorce, annulment, or separate maintenance has been filed, the judge . . . may . . . require an investigation by court service officers into any issue arising in the action." § 60-1607(a)(5).

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. If an assignment of support rights has been made, support payments shall be made to the department of social and rehabilitation services. § 39-754.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. Section 39-755(d) states that the provision of § 39-755 relating to actions by the secretary to enforce support rights of recipients of public assistance "shall also apply to cases brought in accordance with the provisions of this act involving persons who are not . . . recipients of aid to families with dependent children."

"The secretary of social and rehabilitation services shall make services required under part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.), . . . relating to the . . . enforcement of child support obligations available to persons not receiving aid to families

with dependent children upon application by such persons."
A fee is charged. § 39-756.

Location of Absent Parents. The secretary of social services is responsible for administration of a parent locator service. § 39-753. This service is made available to parties other than families with dependent children upon payment of a fee. § 39-756. The secretary shall develop guidelines for coordinating activities of any government department in providing information necessary for the location of absent parents. § 39-753(c). "State, county and local units of government, their officers and employees, shall cooperate with the secretary of social and rehabilitation services in locating absent parents and shall on request supply the secretary of social and rehabilitation services with available information about the location, employment status, income, date of birth and social security number of an absent parent including any information concerning medical or health insurance coverage for dependents." § 39-758(a).

Under URESA, if the state information agency (designated as the secretary of social and rehabilitation services) does not know the location of the obligor or his or her property within the state, it shall use all means at its disposal to obtain such information. § 23-467. Furthermore, the prosecutor on his or her own initiative shall use all means at his or her disposal to locate the obligor or property. § 23-469.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. There is a specific provision for garnishment to enforce an interlocutory order for support in a divorce case. § 60-1607(c).

Also, "[if] such party seeks to attach earnings of the judgment debtor for the purpose of enforcing (1) an order of any court for the support of any person . . . , his or her written direction shall so indicate." § 60-716. "[T]he garnishment [to enforce a child support order] shall not exceed 50% of an individual's disposable earnings unless the person

seeking the garnishment specifies to the garnishee a greater percent to be withheld" § 60-717(a)(2). "When judgment is entered in garnishment proceedings for the purpose of enforcing an order of any court for the support of any person and the court finds that a continuing order of garnishment is necessary to insure payment of a court order of support, the court may issue a continuing order of garnishment No order may be made pursuant to this subsection . . . unless the court finds that the defendant is in arrearage of a court order for support in an amount equal to or greater than one year of support as ordered and the defendant receives compensation from his or her employer on a regular basis in substantially equal periodic payments. § 60-721(b).

Attachment Specifically Available for Support. After a petition for divorce has been filed, the judge may make and enforce, by attachment, orders for the temporary support of children during the pendency of the action. § 60-1607(a)(3).

Other Special Enforcement Tools. Once the defendant is adjudged the father of a child whose paternity is in issue, the court may order that he pay for the child's support. "The judgment shall specify the terms of payment and may require the defendant to provide a bond with sureties to secure such payment. If the defendant fails or refuses to make the payment or to supply the bond required by the judgment he may be adjudged in contempt of court and punished accordingly." § 38-1106. This would be an indirect contempt (§ 20-1202) and "[if] the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment." § 20-1204.

Long-Arm Statute Specifically for Support. Section 60-308(b)(8) provides that a person submits to personal jurisdiction by living in the marital relationship within the state, as to all obligations arising for child support if the other party to the marital relationship continues to reside in the state.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. Section 39-755 authorizes the state to bring a civil action to enforce support rights of a recipient of public assistance and, when necessary, to establish the paternity of a child. "In any case where assistance is given to dependent children . . . [an] absent parent shall be liable to repay to the secretary of social and rehabilitation services the value of such assistance. The secretary shall have the power and authority to collect such sums by civil action brought in the name of the secretary." § 39-718a.

Expenses of the care and custody of a "deprived child" may be paid by the state social welfare fund. § 38-827. When this happens, the secretary of social and rehabilitation services may commence an action against the responsible parent or person or may "compromise and settle any claim due." § 38-828(d).

Support Payments Assigned. Each recipient is required to assign to the state any rights to support from any other person. § 39-709.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

8/17/83

KENTUCKY

Kentucky Revised Statutes Annotated
(Bobbs-Merrill) 1970
(1983 Cum. Supp.)

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted, but has adopted the Uniform Act on Paternity which has substantially similar blood test provisions.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 407.010 - 407.480.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence. The trial is to be in accordance with the rules of civil procedure. § 406.061.

Long-Arm Statute Specifically for Paternity. A court may exercise personal jurisdiction over a person who committed sexual intercourse in Kentucky resulting in the birth of a child when: (1) the father or mother or both are domiciled in Kentucky; (2) there is a repeated pattern of intercourse by the parents in Kentucky; or (3) the intercourse is a tort or crime in Kentucky. § 454.210(2)(a)(8).

Paternity Action Brought by State. Paternity may be determined upon the complaint of the mother, child, person, or agency substantially contributing to the support of the child. Such action shall be brought by the county attorney upon the request of a complainant. § 406.021.

Default Judgment Allowed. Paternity proceedings are civil in nature and, therefore, a default judgment is available. § 406.061.

Procedure for Blood Tests. The court, upon motion of the defendant, shall order the mother, child, and alleged father to submit to blood tests. If the mother refuses or refuses on behalf of the child, judgment may be resolved against her. § 406.081. If the results of the blood test show that the alleged father is not the father of the child, then judgment shall be awarded accordingly. If the experts disagree in their findings or conclusions, the question may be submitted upon all the evidence. If the experts conclude that the blood tests show the possibility of the alleged father's paternity, admission . . . is within the discretion of the court, depending upon the infrequency of the blood type. § 406.111. These provisions are part of the Uniform Act on Paternity.

Support Without Paternity Determination. "An agreement of settlement with the alleged father is binding only when approved by the court." § 406.141. It appears that the court may approve such a settlement even if the alleged father denies paternity.

Factors Considered in Setting Support. No statutory opinion.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Dissolution. "The father and mother shall have the joint custody, nurture and education of their children who are under the age of eighteen." § 405.020. "A person is guilty of nonsupport when he persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide to a minor" (Nonsupport is a class A misdemeanor under this Kentucky Penal Code provision.) § 530.050. A person is guilty of flagrant nonsupport (a class D felony) if he or she persistently fails to provide for support. § 530.050(2).

Initiation of Proceedings. A complaint under § 407.180 may be brought by a person having legal custody of the minor child without appointment as guardian ad litem. § 407.200. Whenever the state or its political subdivision furnishes support to the child, it has the same right to invoke these provisions. § 407.160.

The secretary for human resources or his or her authorized representative also has the right to initiate any action against a parent owing child support if the child is receiving public assistance benefits. §§ 205.277, 205.725, 205.760, and 205.765. If the action is for nonsupport under § 530.050, this is a criminal action and can be initiated by the state.

Support Pending Divorce. "In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for . . . temporary support of a child of the marriage entitled to support." § 403.160.

Effect on Support of Denial of Visitation. "If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support . . . or to permit visitation is not suspended, but he may move the court to grant an appropriate order." § 403.240.

"Whenever a child is receiving public assistance and the department has taken action . . . to obtain support on behalf of the child, matters concerning . . . visitation rights of the parents shall not be used by either parent as a reason not to pay child support to the department."
§ 205.770.

Factors Considered in Setting Support. For the determination of child support, § 403.210 provides that "[i]n a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

- "(1) The financial resources of the child;
- "(2) The financial resources of the custodial parent;
- "(3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- "(4) The physical and emotional condition of the child, and his educational needs; and
- "(5) The financial resources and needs of the non-custodial parent."

Information on Assets of Parents. In any action for divorce where the parties have minor children, the friend of the court, if requested by the trial judge, shall investigate all aspects of the children's and parents' lives necessary to make the best decision for the welfare of the children. § 403.090(3).

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In a divorce action, the court may order child support payments made to the friend of the court or to the juvenile court of the county. § 403.090(2). When a child receives public assistance and the parent and court are so notified, the child support payments shall be made to the department for human resources. § 205.750(1).

Mechanisms for Keeping Track of Obligors. In a divorce action the friend of the court is authorized to secure the issuance by the court of any rule, order, or citation necessary for the proper enforcement of the child support order or judgment. § 402.090(4).

Enforcement of Support by State in Nonwelfare Cases. The department may appear in any judicial proceeding on behalf of the child to secure support. § 205.765. "Child" in this section "includes a child of an individual who is not receiving public assistance and who has applied for child support services in accordance with Title IV-D of the Social Security Act." § 205.725.

Location of Absent Parents. The department serves as a registry for the receipt of information that directly relates to the identity or location of absent parents. §205.730(2). Also, if the court is acting as the responding state in a URESA

action and is unable to obtain jurisdiction over the defendant or his or her property, the court shall use all means at its disposal to trace the defendant or property. § 407.260.

Child Support Priority over Other Creditors. Any assignment of wages ordered by the court for child support shall have priority as against any attachment, execution, or other assignment, unless the court orders otherwise. § 405.035. See § 205.740 for a similar provision pertaining only to wage assignment to the department of human resources. The department can also get a lien against the obligor's personal and real property which has the same priority if filed with the appropriate clerk of courts within three months. § 205.745.

Wage Assignment Specifically Available for Support. "In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the domestic relations clerk of the county or other officer designated by the court for the support, maintenance and education of the minor child. Such order shall be binding upon the employer upon the service by certified mail of a copy of such order upon such employer and until further order of the court." § 405.035.

"When the parent's support obligation has been determined by court order and the dependent child is receiving public assistance from the department, and the parent is not providing support in the amount due, the department may petition the circuit court to order, and the circuit court may order, the parent to assign to the department that portion of salary or wages of the parent due and to be due in the future as will be sufficient to pay the amount ordered by a court for the support of a child. Such order shall be binding upon an employer upon the service by certified mail of a copy of the order upon such employer and until further order of the court." § 205.740.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. A child support lien in favor of the department automatically attaches to the real or personal property of any obligor who fails to make full child support payment within thirty days after it is due. § 205.745(1).

In a paternity action, and if a father does not make the child support payments in performance of the judgment, the court may place him in jail for not more than thirty days without the intervention of a jury. § 406.121. If a father does not make a court-ordered bond to secure payment of child support, the court may place him in jail for up to thirty days but at that time he shall be released if he makes a written oath that he is unable to obtain the bond's execution. § 406.131.

Long-Arm Statute Specifically for Support. "A court may exercise personal jurisdiction over a person whose marital domicile is Kentucky, and who, for the purpose of avoiding support and maintenance of his minor children, removes himself from the jurisdiction of the court." § 454.275.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. Whenever a parent has failed to provide support for a dependent child who is receiving public assistance, the department may take appropriate action to ensure that the responsible parent provides support to the child. § 205.725(1). For similar provisions, see §§ 205.227, 205.760, and 205.765.

Support Payments Assigned. By accepting public assistance on behalf of a dependent child, the recipient is deemed to have made an assignment to the department of the right to any child support owed to the child. § 205.720.

Agency Can Request Modification of Support. The department may appear in any judicial proceeding on behalf of the dependent child in order to secure support for the child from his or her parents. § 205.765.

Service on Agency If Public Assistance Involved. No statutory provided.

8/17/83

LOUISIANA

West's Louisiana Revised Statutes Annotated
West's Louisiana Civil Code Annotated
West's Louisiana Code of Criminal Procedure
(1983 Cum. Supp.)

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Rev. Stat. Ann. §§ 9:396 - 9:398.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968
version including part IV. Rev. Stat. Ann. §§ 13:1641 -
13:1698.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Paternity proceedings are civil.
Civ. Code Ann arts. 208, 209. If a child tries to establish
filiation, it must be by a preponderance of the evidence.
Civ. Code Ann. art. 209(4).

Long-Arm Statute Specifically for Paternity. The court has
jurisdiction over a nonresident as to a cause of action
arising from the nonresident's "[p]arentage and support of a
child who was conceived by the nonresident while he resided
in or was in this state." Rev. Stat. Ann. § 13:3201(g).

Paternity Action Brought by State. The department of health and human resources may initiate a paternity action when the child is a recipient of public assistance. Rev. Stat. Ann. § 46:236.1(F).

Default Judgment Allowed. Paternity proceedings are civil and, therefore, judgment by default should be available. Civ. Code Ann. arts. 208, 209.

Procedure for Blood Tests. The court on its own initiative, or upon request of any party involved, shall order the mother, child, and alleged father to submit to blood tests. Failure to submit to such order may resolve the question of paternity against that party. Rev. Stat. Ann. § 9:396. The results of the blood tests shall be submitted if they show that the alleged father is not the father of the child, and judgment shall be awarded accordingly. . . . "If the experts disagree in their findings . . . the question shall be submitted upon all the evidence. If the experts conclude that the tests show the possibility of the alleged father's paternity, admission of this evidence is within the discretion of the court, depending upon the infrequency of the blood type." Rev. Stat. Ann. § 9:397.2

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. "Fathers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children." Civ. Code Ann. art. 227. Criminal neglect of family or intentional nonsupport is punishable by a fine of \$500 or six months imprisonment or both. Rev. Stat. Ann. § 14:74.

Initiation of Proceedings. Civ. Code Ann. art. 227 is the only statutory direction on civil nonsupport action. A criminal nonsupport action is begun by the district attorney on the basis of an affidavit or information. Code Crim. Proc. Ann. art. 382. If AFDC is involved and the parent or relative caretaker of the child refuses to take action, the department of health and human resources may initiate such prosecution. Rev. Stat. Ann. § 46:236.1.

Support Pending Divorce. No statutory provision.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In civil actions, child support is granted in proportion to the wants of the person requiring it and the circumstances of those who are to pay it. Civ. Code Ann. art. 231. In criminal actions, the court sets support "with regard to the circumstances and financial ability of the defendant." Rev. Stat. Ann. § 14:75

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. For purposes of facilitating child support collections in nonwelfare cases, the department of health and human resources may cause all support orders in such non-welfare cases to be made payable to the department. The department may deduct its fees from the amounts collected. Rev. Stat. Ann. § 46:236.1(J).

"The department may, by a written motion together with a written assignment of support rights from the individual or caretaker of any individual receiving AFDC, . . . obtain an order to require any person under an order to support such individual or caretaker to make such support payments payable to the department." Rev. Stat. Ann. § 46:236.2(A).

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. "In providing support services . . . to non-recipients of AFDC, the department may provide for an application fee to be charged each individual who applies to the department for services." Rev. Stat. Ann. § 46:236.1(J).

Location of Absent Parents. The department of health and human resources is designated as the agency to locate absent parents. Rev. Stat. Ann. § 46:236.1(B)(2).

Under URESA, "[i]f the initiating state does not know the location of the obligor or his property in this state, the initiating state shall refer the matter to their state parent location unit." Rev. Stat. Ann. § 13:1671. "The prosecuting attorney, on his own initiative, shall use all means at his disposal to locate the obligor or his property" Rev. Stat. Ann. § 13:1673(A).

The secretary of the department shall have the authority to secure information from criminal records and records of the department of public safety, department of revenue, and the department of employment security of the state that may be necessary to carry out the department's task of enforcement of support obligations. Rev. Stat. Ann. § 46:236.1(D).

Child Support Priority over Other Creditors. Rev. Stat. Ann. § 13:3928 provides that current or past due child support shall take precedence over any "prior or subsequent judgment, . . . or assignment of earnings, and shall be satisfied out of the nonexempt portion of disposable earnings."

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. No statutory provision.

Long-Arm Statute Specifically for Support. A court has jurisdiction over a nonresident as to a cause of action arising from the nonresident's nonsupport of a child in this state to whom an obligation of support is owed and with whom the nonresident formerly resided in this state. Rev. Stat. Ann. § 13:3201(f). Also a court has jurisdiction over a nonresident as to a cause of action arising from the nonresident's parentage and support of a child who was conceived by the nonresident while he resided in or was in this State. Rev. Stat. Ann. § 13:3201(g).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The department may take direct civil action in any court of competent jurisdiction to obtain child support from the person primarily legally responsible for the support of a minor child who is receiving aid to families with dependent children when that person has failed to support such child. A separate and distinct cause of action in favor of the department is hereby created. Rev. Stat. Ann. § 46:236.1(F).

Support Payments Assigned. By accepting public assistance, the recipient shall be deemed to have made an assignment to the department of any right to any support obligation up to the amount of public assistance paid by the department. Rev. Stat. Ann. § 46:236.1(E).

Agency Can Request Modification of Support. Rev. Stat. Ann. § 46:236.1(F) creates a distinct cause of action in favor of the department for the purpose of obtaining child support from the obligor.

Service on Agency If Public Assistance Involved. No statutory provision.

8/17/83

MAINE

Maine Revised Statutes Annotated
(1981-82 Cum. Supp.) 1982 Session Laws

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted, but has adopted the Uniform Act on Paternity which has substantially similar blood test provisions. Tit. 19, §§ 271 - 287.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Tit. 19, §§ 441 - 453.

Uniform Reciprocal Enforcement of Support Act. The 1968 version with part IV. Tit. 18, §§ 331 - 420.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision, but the paternity proceedings are civil, and the rules of civil procedure are applicable. Tit. 19, § 286. Therefore, the burden of proof is preponderance of the evidence.

Long-Arm Statute Specifically for Paternity. Conception resulting in paternity under the paternity provision (tit. 19, §§ 271 to 287) gives the court personal jurisdiction over the parties. Tit. 14, § 704-A(2)(E).

Paternity Actions Brought by State. "Paternity may be determined upon the complaint of the . . . public authority chargeable by law with the support of the child." Tit. 19, § 272.

Default Judgment Allowed. No statutory provision. A representative of this state says that default is handled as in any other civil proceeding.

Procedure for Blood Tests. The Uniform Act on Paternity provides that the court, on its own initiative or the initiative of any party involved, shall order the mother, child, or alleged father to submit to blood tests. The court may resolve the issue of paternity against any party who fails to submit to such tests. Tit. 19, § 277. If the results show that the alleged father is not the father of the child, judgment shall be rendered accordingly. If the experts disagree, all the evidence shall be submitted. If the results show the probability that the alleged father is the father, admission of this evidence is within the court's discretion, depending on the infrequency of the blood type. Tit. 19, § 280.

Support Without Paternity Determination. "An agreement of settlement with the alleged father is binding only when approved by the court." Tit. 19, § 283. The use of the word "alleged" seems to indicate it is possible to agree to support a child without acknowledgment or determination of paternity.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. Under the Uniform Civil Liability for Support Act, every man and every woman shall support his or her child when in need. Tit. 19, §§ 442 and 443. Also an obligor present in or a resident of this state has the duty of support regardless of the obligee's presence or residence. Tit. 19, § 444.

There are two criminal nonsupport actions. If the parent fails to provide for the necessary support and maintenance of his or her child without legal excuse, he or she is guilty of failure to support and may be fined up to \$300 or imprisoned up to 11 months or both. Tit. 19, § 481. When this offense is of an aggravated nature, the parent can be fined up to \$500 or imprisoned up to two years or both. Tit. 19, § 481. Parents can also be found guilty of nonsupport of a child if they knowingly fail to provide support that they are able to provide by means of property or capacity for labor and that they know they are legally obligated to provide to a child. This crime is punishable by six months imprisonment or a maximum fine of \$500 or both. Tit. 17-A, § 552.

Initiation of Proceedings. The civil action is commenced by petition of the parent, guardian, or municipality providing maintenance to the child. The action may be brought in the county where the parent or child reside, or in which the nonsupporting parent is found. Tit. 19, § 301. The department of human services may also bring proceedings against any parent of a child receiving public assistance. Tit. 22, § 3754.

Support Pending Divorce. Pending a divorce action, the court may order either spouse to pay to the other spouse a reasonable provision for that spouse's separate maintenance and support of the minor children. Tit. 19, § 693.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. When determining child support under the Uniform Civil Liability for Support Act, the court shall consider all relevant factors, including but not limited to: (1) standard of living and situation of the parties, (2) relative wealth and income of the parties, (3) ability of obligor to earn, (4) ability of obligee to earn; (5) need of obligee, (6) age of parties, and (7) responsibility of obligor for support of others. Tit. 19, § 446.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The department of human services may enforce support obligations for non-recipients of public assistance by actions under any appropriate statute for a fee. Tit. 19 § 448-A.

Location of Absent Parents. The department of human services locates parents for both recipients (for a fee) and non-recipients of public assistance. Tit. 19, §§ 448 and 448-A. Under URESA, problems with location of absent parents will be referred to the state parent locator service. Tit. 19, § 330. The district attorney shall use all means available to locate the obligor or his or her property. Tit. 19, § 402.

To assist in locating these parents, the department may request and shall receive information from the records of all departments, boards, bureaus, and other agencies of this state. The department may make available the information gained only to public officials and agencies of this state, other states, and the political subdivisions of this state that are seeking to locate the parents for enforcement of support obligations. Tit. 22, § 3755.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. In divorce cases where there has been a motion to enforce the support decree, the court may order the employer or other payor of earnings to make direct payments. Tit. 19, § 774.

In AFDC cases, the commissioner may serve on any person an order to withhold and deliver any property, including wages, that is due or belongs to the responsible parent. Tit. 19, § 504(1). "Any person employing a person owing a support debt shall honor a duly executed assignment of earnings presented by the commissioner." Tit. 19, § 511.

Garnishment Specifically Available for Support. On a motion to enforce a decree for support, after notice and an opportunity for hearing, the court may make a finding of money due, render judgment for that amount, and order the employer or payor of the earnings to make direct payments in accordance with the court-ordered installment payments. Tit. 19, § 774.

Attachment Specifically Available for Support. The court may order attachment to enforce an order of support arising out of a divorce action (Tit. 19, § 774) or out of a paternity action (Tit. 19, § 272). In addition to any court orders, Maine has developed an administrative mechanism to attach the obligor's real or personal property to enforce all orders to support a dependent child, whether or not that child is receiving public assistance. Tit. 19, §§ 503 and 504(1).

Twenty-one days after receipt of the debt notice (determined by the administrative or judicial process), the amount in the debt notice becomes a lien against all nonexempt property of the obligor in favor of the department. Tit. 19, § 503.

Other Special Enforcement Tools. No statutory provision.

Long-Arm Statute Specifically for Support. A person submits to the jurisdiction of this state as to any cause of action arising from "[m]aintaining a domicile in this State while subject to a marital or family relationship out of which arising a claim for divorce, alimony, separate maintenance, property settlement, child support or child custody; or the commission in this State of any act giving rise to such a claim" Tit. 14, § 704-A(2) (G).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. If no court order of support exists, the department of human services may, by hearing and other specified procedure, establish a periodic payment to satisfy the responsible parent's support obligation. Tit. 19, § 498.

Enforcement of Support by State in Welfare Cases. "The obligee may enforce his right of support against the obligor and the State or any political subdivision thereof may proceed on behalf of the obligee Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right as the obligee . . . for the purpose of securing reimbursement and of obtaining continuing support." Tit. 19, § 448. (This statute is part of the Uniform Civil Liability for Support Act.) See Tit. 22, § 3754 for a similar provision.

If no court order of support exists, the department of human services has the right to enforce the support duty in a civil action. Tit. 19, § 497. If a court order for support exists, the department is subrogated to the right of any dependent child or person having custody of the child to pursue any support action or administrative remedy to secure payment and enforce the order. Tit. 19, § 499.

Support Payments Assigned. By operation of law, the receipt of public assistance for a child constitutes an assignment as long as public assistance is paid. Tit. 19, § 512.

Agency Can Request Modification of Support. The department of human services may request modification of support orders made in divorce proceedings. Tit. 19, § 752. Also the department may move for review of any action under the administrative enforcement process. Tit. 19, § 515. Any person aggrieved by the commissioner's decision has the right to judicial review. Tit. 19, § 516.

Service on Agency If Public Assistance Involved. The agency is served with the motion or petition only if the action is to enforce a support order or to collect support arrearages and relates to a period when the child has received or will receive public assistance. Also, in an action for support, support enforcement, or collection of support arrearages, if the child is receiving public assistance, the party bringing the action shall affirmatively plead that fact. Tit. 19, §§ 776(2) and 776(3).

9/19/83

MARYLAND

Annotated Code of Maryland.
(1957) (1981 Cum. Supp.)
1982 Session Laws

State Contact
Nelson D. Stubbs
Clerk of Circuit Court
108 Court House
Elkton, Maryland 21921

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version including part IV and the 1958 amendments. Md. Ann. Code art. 89C, §§ 1 - 39.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. The burden is the weight of the evidence required in other civil cases. Md. Ann. Code art. 16, § 66F(b).

Long-Arm Statute Specifically for Paternity. The court may exercise personal jurisdiction over a nonresident defendant in a paternity action if (1) the mother resides in this state at the time the suit is filed, (2) the putative father has been personally served with process under the Maryland rules, and (3) the conception is alleged to have occurred in Maryland. Md. Cts. & Jud. Proc. Code Ann. § 6-103.1

Paternity Actions Brought by State. The support enforcement bureau's duties include the bringing of paternity proceedings in all cases where an assignment of support has been made. Md. Ann. Code art. 88A, § 59(b)(2)(iv). The bureau shall be represented by the attorney general, a legal officer of the Social Services Administration, or the state's attorney. Md. Ann. Code art. 16, § 66C, and art. 88A, § 59(c).

Default Judgment Allowed. If the defendant fails to appear after having been duly summoned or after having posted bond, the hearing may proceed in his absence and orders may be made, in the court's discretion. The orders made shall be binding and enforceable against the defendant as if he had been present. Md. Ann. Code art. 16, § 66E(e).

Procedure for Blood Tests. The state's attorney has the right to request that the persons involved submit to a blood test. Upon the refusal of any such person to submit to the test, the state's attorney may apply to the court for an order directing such person to submit to the test. Md. Ann. Code art. 16, § 66D(b).

In addition, the court, upon motion of the defendant, or upon its own motion, shall order the mother and the child, as well as the defendant, to submit to such blood tests as may be deemed necessary to determine whether the defendant can be excluded as being the father of the child. The result of such tests may be received in evidence only in cases where definite exclusion is established. The court chooses one of the Maryland laboratories on a list provided by the bureau of support enforcement. The laboratory's written report will be provided to the parties and will be accepted as prima facie evidence of the test results when they are deemed admissible. If any person fails to submit to the tests when ordered to do so, this will be disclosed to the court and jury and may be commented upon. The tests will be paid for by the county or city unless the court orders one or more of the parties to pay all or part of the costs. Md. Ann. Code art. 16, § 66G.

Support Without Paternity Determination. "Either before or after filing a bill or petition to establish paternity and charge the putative father of an illegitimate child or children with his or their support and maintenance, the person alleged to be the father of the child, whether he admits or denies paternity, may propose to make a settlement

with respect to his or their support and maintenance. If the complainant or petitioner agrees to accept the settlement and the State's attorney is satisfied that the amount and terms are fair and reasonable, . . . an agreement shall be prepared, duly executed, and submitted to the court for approval. In the event the court approves the agreement, the terms thereof shall be incorporated in an order to be passed by the court, which order shall be enforceable in all respects and to the same extent as any other order passed after a hearing." Md. Ann. Code art. 16, § 66L.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Civilly, both parents are the joint natural guardians of their child under age 18 and are jointly and severally charged with the child's support. Md. Ann. Code art. 72A, § 1.

"Any parent who deserts or wilfully neglects to provide for the support and maintenance of his or her child under age 18 is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding three years or both." Md. Ann. Code art. 27, § 88(b). Deserting or abandoning a child without making provisions for its support and maintenance for at least three years is punishable by a fine not to exceed \$100 or imprisonment in jail, the house of correction, or the Maryland Reformatory for Women for a period not exceeding one year. Md. Ann. Code art. 27, § 96.

Initiation of Proceedings. There appears to be no statutory procedure for establishing a civil obligation for child support within a marriage other than Md. Ann. Code art. 72A, § 1.

The state's attorney of Baltimore may make inquiries and examine witnesses if he or she has reason to believe a parent has criminally deserted his or her child. Md. Ann. Code art. 27, § 89. After that, the state's attorney can file an information in the criminal courts of Baltimore charging the parent with desertion and failure to support a child. Md. Ann. Code art. 27, § 90(a). The court has the

power to order the payment of child support before the trial with the defendant's consent or after conviction in lieu of punishment. See Md. Ann. Code art. 27 §§ 88(b)(3) and 90(c).

Support Pending Divorce. The court shall have the power to direct who shall be charged with the child's support or maintenance in all cases in which the care and custody of the child is part of the relief requested even when the divorce is later denied. Md. Ann. Code art. 16 § 25. See Md. Cts. & Jud. Proc. Code Ann. § 3-602 (a)(3), for a similar provision.

The parties to the divorce can provide for temporary family support by agreement. However, whenever the agreement affects the child's care, custody, education, or maintenance, the court has the right to modify the agreement as it deems proper with respect to the child's best interests. Md. Ann. Code art. 16, § 28.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision on factors, but Md. Cts. & Jud. Proc. Code Ann. § 3-6A-06 grants the court authority to issue orders "to permit the children of the family to live in the environment and community which is familiar to them . . ." They may live with the parent with custody in the family home until that parent remarries.

Also, the court may order either or both of the parties to pay all or part of the rent or mortgage, insurance, maintenance or any other costs connected with the property.

"In exercising its authority under this section, the court shall consider each of the following factors:

- (1) The best interests of any minor child;
- (2) The respective interests of each spouse in continuing to use the family . . . home or any portion of it as a dwelling place;
- (3) The respective interests of each spouse in continuing to use the family . . . home or any part of it for the production of income;
- (4) Any hardship imposed upon the spouse whose interest in the family home . . . is infringed upon by an order issued under this section."

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In paternity actions, the court may direct that support be made to such person as the court deems proper, but if the child is or is likely to become a public charge, the court may direct that support be paid to the bureau of support enforcement. Md. Ann. Code art. 16 § 66-1.

"Any subdivision or circuit court having responsibility for collection and/or support enforcement may request that responsibility be transferred to the bureau of support enforcement." Md. Ann. Code art. 88A, § 59(b)(5)(i).

Mechanism for Keeping Track of Obligor. In divorce cases, the parties affected by the support order shall inform the court's designee receiving the payments of any change of address or other fact that might affect the administration of the order. Md. Ann. Code art. 16, § 2(c). If the obligor is in arrears and the court has ordered a lien placed on his or her earnings, the obligor must also inform the designee of any change of address. Md. Ann. Code art. 16, § 5B(c).

In paternity actions there is no statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The bureau of support enforcement's duties include: collection of support payments, including but not limited to child support payments owed to the state; enforcement of support orders; and collection of fees, as appropriate, to defray the costs of providing services. Md. Ann. Code art. 88A, § 59(b)(2)(v).

Location of Absent Parents. The duties of the bureau of support enforcement include "location of absent parents and maintenance of a central registry." Md. Ann. Code art. 88A, § 59(b)(2)(ii). The state administration may request and shall receive from departments, boards, bureaus, commissions, and other agencies of the state or any of its political subdivisions the information, assistance, and data that will enable the state administration or the state's attorney to locate deserting or absent parents and to enforce their

liability for the support of their children. Md. Ann. Code art. 88A § 5A.

Under URESA, the state's attorney on his or her own initiative shall use all means at his or her disposal to trace the obligor or his or her property. Md. Ann. Code art. 89C, § 19.

Child Support Priority over Other Creditors. A lien put on the obligor's earnings after a support order is made, "unless the court orders otherwise, shall have priority as against any attachment, execution, or assignment." Md. Ann. Code art. 16, § 5B(b)(6).

Wage Assignment Specifically Available for Support. In divorce cases, the court may order a lien on the obligor's earnings if he or she defaults on the child support order. Md. Ann. Code art. 16 § 5B. In a criminal nonsupport action, any support and probation order shall constitute a lien on the defendant's earnings, and the employer must deduct the amount ordered as soon as notified by the probation department. Md. Ann. Code art. 27, § 88(b)(3). In paternity cases the court may provide for a lien on the respondent's earnings if he is found to be the father. Md. Ann. Code art. 16, § 66H(a)(2).

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. Under Md. Cts. & Jud. Proc. Code Ann. § 3-6A-07, any order, award, or decree made under the family law statutes may be enforced in accordance with the Maryland Rules of Procedure. Rule 685 provides for enforcement of an order by attachment, sequestration, fieri facias, and injunction, as well as provides that orders may be enforced in the same manner as judgments.

Other Special Enforcement Tools. Md. Ann. Code art. 88A, § 59(e) allows the obligor's income tax refund to be paid to the bureau of support enforcement if the obligor has support arrearages.

If the defendant in a paternity action is arrested pursuant to a warrant, the court may require the posting of securities to ensure his appearance in court. If the defendant

fails to appear, the amount posted may be applied to the subsequent order of support arising out of the paternity action. Md. Ann. Code art. 16 § 66E.

Long-Arm Statute Specifically for Support. The court has jurisdiction over a nonresident defendant in any civil proceeding arising out of a marital relationship or involving a demand for child support if: the plaintiff resides in Maryland when the suit is filed; the defendant has been personally served in accordance with the Maryland rules; and Maryland was the matrimonial domicile immediately before the separation or the child support obligation arose under Maryland's laws or pursuant to an agreement executed by one of the parties in Maryland. Md. Cts. & Jud. Proc. Code Ann. § 6-103.1.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. The bureau of support enforcement's duties include determination of the ability of absent parents to contribute toward child support. Md. Ann. Code art. 88A, § 59(b)(2)(iii). The bureau may enter into "[c]ooperative agreements with private and public agencies, circuit courts, and law enforcement officials, with respect to establishing liability for support . . ." Md. Ann. Code art. 88A, § 59(b)(4)(i).

Enforcement of Support by State in Welfare Cases. Included in the bureau of support enforcement's duties is collection of support payments, including those owed to the state because of assignment, and enforcement of support orders. Md. Ann. Code art. 88A, § 59(b)(2)(v) and (vi). The bureau may delegate its responsibility to a local department of social services. Md. Ann. Code art. 88A, § 59(d).

Support Payments Assigned. Assistance to dependent children shall be given on condition that the applicant assigns to the state any right in support that the applicant or recipient has. Md. Ann. Code art. 88A, § 48.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

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Maryland

Enforcement of Support by State in Welfare Cases. Included in the bureau of support enforcement's duties is collection of support payments, including those owed to the state because of assignment, and enforcement of support orders. Md. Ann. Code art. 88A, § 59(b)(2)(v) and (vi). The bureau may delegate its responsibility to a local department of social services. Md. Ann. Code art. 88A, § 59(d).

Support Payments Assigned. Assistance to dependent children shall be given on condition that the applicant assigns to the state any right in support that the applicant or recipient has. Md. Ann. Code art. 88A, § 48.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

8/17/83

MASSACHUSETTS

Annotated Laws of Massachusetts (Michie)
Recompiled 1955 (1983 Cum. Supp.)

State Contact
No reply received.

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Adopted with some
variations. Ch. 273, §§ 1 - 10.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version
with numerous variations and without part IV. Ch. 273A,
§§ 1 - 17.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. If paternity is established in a
nonsupport action, no greater burden of proof is required
than is required in any other civil action. Ch. 273, § 7.

Long-Arm Statute Specifically for Paternity. No statutory
provision.

Paternity Actions Brought by State. No statutory provision.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. In any paternity proceeding, the
court, on motion of the alleged father, shall order the
mother, her child, and the alleged father to submit to one
or more blood grouping tests to determine whether the
alleged father can be excluded as being the father of the

child. The results of such tests shall be admissible in evidence only in cases where definite exclusion of the alleged father as such father has been established. If one of the parties refuses to comply with the order of the court relative to such tests, such fact shall be admissible in evidence in such proceeding unless the court, for good cause, otherwise orders. Ch. 273, § 12A.

Support Without Paternity Determination. If the court becomes satisfied that adequate provision has been made for the child's maintenance, the case may be dismissed and no further paternity prosecution shall be maintained. Ch. 273, § 12A.

Factors Considered in Setting Support. Support orders are to be made with regard to the circumstances and the financial ability or earning capacity of the defendant. Ch. 273, §§ 5 and 16.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Any parent who, without just cause, deserts his or her minor child or refuses to provide for the support of his or her minor child, shall be punished by a fine of not more than \$500 or by imprisonment for not more than two years or both. Ch. 273, § 1.

If a spouse fails, without justifiable cause, to provide suitable support for minor children, the probate court for the county in which said minors or any of them are residents or inhabitants, upon complaint, shall have the same power to make judgments relative to their care, custody, education, and maintenance as the superior court has relative to children whose parents are divorced. Ch. 209, §§ 37 and 32.

Initiation of Proceedings. The civil action may be commenced by the filing of a complaint by either parent or a next friend in behalf of the children after notice to both parents. Ch. 209, §§ 37 and 32.

Support Pending Divorce. When the ground of the divorce action is irretrievable breakdown of the marriage, the court may make temporary orders for support and maintenance at any time prior to judgment. Ch. 208, §§ 1B and 20.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. The court shall consider, but is not limited to, the following factors to the extent each is pertinent and raised by the parties:

- (1) the net income, assets, earning ability, and other obligations of the obligor;
- (2) the number and ages of persons to be supported;
- (3) the expenses incurred by the obligor and the persons to be supported for the necessities of life, and the usual standards of living of the persons to be supported;
- (4) the assets and net earnings, including a deduction for the provision of child care, of the persons to be supported;
- (5) the marriage or remarriage of any person being supported;
- (6) the capacity of any person being supported or having custody of supported children, except persons under 18 years of age, to work or to make reasonable efforts to obtain employment, including the extent of employment opportunities in the fields in which such person is suited for employment, the necessity for and availability to said person of job training programs, and the extent to which said person is needed during business hours by members of the family and the availability to said person of child care services and the extent to which such person needs to attend school to obtain skills necessary for employment. Ch. 209, § 32.

Information on Assets of Parties. In a case alleging the failure of a party to pay support, the court may request the assistance of the state police, local police, or probation officers in investigating matters related to such proceeding. Ch. 209, § 32. In a divorce case, the court may appoint an attorney to conduct such an investigation, and if that attorney so requires, the above law enforcement officials shall assist in the investigation. Ch. 208, § 16.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. The department of public welfare, in cases involving a missing parent, shall take all lawful means to locate said missing parent. The department shall follow federal regulations relative to search for missing parents. Ch. 118. § 3.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. Either at the time a support order is issued or at any time thereafter, the court may order the obligor to assign a portion of his or her periodic earnings to the person entitled to receive such support. Ch. 209, § 32E. Also see ch. 208, § 36, and ch. 273, § 5 for similar provisions.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In a paternity action, for failure to comply with an order, the court may order the alleged father committed to jail, as for a contempt of court, for a term not exceeding two months, unless he shall sooner comply therewith. Ch. 273, § 13.

Long-Arm Statute Specifically for Support. The court has personal jurisdiction if one of the parties to a duly executed marriage contract continues to reside in

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Massachusetts

Massachusetts and the marital domicile was in Massachusetts for at least one year within the two years immediately preceding commencement of the action. Ch. 223A, § 3(g).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The department of public welfare shall take all lawful means, including in appropriate cases the institution of criminal proceedings, to compel all persons bound to support children to support them. Ch. 118, § 3. If there is no court order outstanding, the department can apply in its own name for a complaint and initiate nonsupport proceedings or seek a court order, in its name or the aid recipient's, on any outstanding divorce or separate support action to the extent of aid paid. If a court order exists and has not been complied with, the department can institute contempt proceedings. Ch. 18, § 21.

Support Payments Assigned. The department of public welfare is subrogated to the welfare recipient's support rights to the extent of any welfare payments made to that recipient. Ch. 18, § 21.

Agency Can Request Modification of Support. The department of public welfare may by motion in the name of the recipient or in its own name seek to obtain a modification of a probate court order for support to the extent of any aid that may have been authorized by the department. Ch. 18, § 21.

Service on Agency If Public Assistance Involved. No statutory provision.

10/9/83

MICHIGAN

Michigan Compiled Laws Annotated
(1981-82 Cum. Supp.) 1982 Session Laws

State Contact
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Post Office Box 30037
Lansing, Michigan 48909

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version with the 1952 amendments, but without part IV. §§ 780.151 - 780.174.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought By State. The department of social services may file the complaint on the child's behalf if the child receives public assistance but only "after the department has unsuccessfully attempted to have the alleged father voluntarily initiate legal action to acknowledge paternity." § 772.714(h). The department's attorney may represent the complainant if the department determines her to be eligible for public assistance or to be without means to employ an attorney. § 722.714(c).

Default Judgment Allowed. If the defendant "is served with summons or a warrant and a default is duly taken against him, the court shall make an order of filiation declaring paternity and for the support of the child." § 722.717(a).

Procedure for Blood Tests. On the application of either party or its own motion, the court shall order blood or tissue tests on the mother, alleged father, and child (if at least six months old). If either party refuses the refusal shall be disclosed at trial. The court must appoint qualified experts to perform the tests and interpret the results. The results are admissible to show a definite exclusion or, if exclusion of paternity cannot be made, a calculation of the probability of paternity. § 722.716.

Support Without Paternity Determination. A written agreement between the mother or child and the father is binding on the mother and child only when the court having jurisdiction to compel support approves the agreement. § 722.713. A representative of this state indicated that an acknowledgment of paternity is not required under § 722.713.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Parents are jointly and severally obligated to support a minor child. § 722.3(1). The parents of a dependent child under the age of 18, being of sufficient ability, shall jointly and severally support the child in such manner as the county department of social services approves. § 401.2. Also a married woman with a child, who is living separately from the child's father, may complain to the circuit court where she or the father resides for an order for support if the father fails to provide necessary shelter, food, care, and clothing for them. § 552.451.

A man who deserts and abandons his child under 17 without necessary shelter food, care, and clothing and who, having the ability to support, neglects or refuses to do so, is guilty of a felony. Imprisonment may be imposed from one to three years in the state prison or three months to one year

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Michigan

in the county prison. However, the father may, before sentence is passed, enter into a bond agreement conditioned on his compliance with the order. § 750.165.

Any person of sufficient ability who refuses or neglects to support his or her family is deemed a disorderly person and may be imprisoned in county jail up to 90 days or fined not more than \$100 or both. §§ 750.168 and 750.504.

Initiation of Proceedings. Upon failure to provide support under § 401.2 the county department of social services shall apply, with the advice and assistance of the prosecuting attorney, to the probate court for an order to compel relief. § 401.3. Under § 522.451, the mother, guardian of the child, or a representative of the state or county department of social services (if public assistance is involved) may initiate the action for nonsupport. § 522.451(a) and (b).

Support Pending Divorce. On the application of either party, the court may make such order concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of the divorce action as shall be deemed proper and necessary. § 522.15.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In a divorce action, the amount of support is based on what the court deems "just and reasonable, having regard to the ability of either party and the character and situation of the parties, and all the other circumstances of the cases." § 552.23(1).

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In a paternity action, the court shall require that support be paid to the friend of court or clerk of court. § 722.718. Upon the hearing of a

nonsupport complaint, the court shall enter a support order providing that all payments shall be made to the friend of the court. § 552.452. If the mother or child is receiving public assistance, payments received by the friend of the court shall be transmitted to the county department of social services. § 552.454. See also § 552.252.

Mechanism for Keeping Track of Obligors. No statutory provision. However, this may fall within the duties of the friend of the court, who is appointed to enforce delinquent child support payments. § 552.531.

Enforcement of Support by State in Nonwelfare Cases. The duties of the friend of the court include examining all support payment records to see if children are cared for and receiving the ordered support and bringing into court those persons delinquent in making payments. §§ 552.252 and 552.531.

Location of Absent Parents. The office of central registry for the location of absent parents is established in the department of social services. § 400.232. The office's duties include assisting government agencies in locating absent parents, coordinating state level activities, and acting as an information agency. § 400.233(a)-(e). Upon the office's request, any governmental department, board, commission, bureau, or agency shall provide any information that will assist in implementing the location of Absent Parents Act. § 400.234.

Under URESA, if a court of this state (acting as the responding state) is unable to obtain jurisdiction of the obligor or his or her property, the court on its own initiative shall use all means at its disposal to trace the obligor or property. § 780.163a.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. If the obligor has been held in contempt, the court may order an assignment of the obligor's wages, salary, and other income. §§ 722.719(c), 552.201, and 552.203. Also the court may order an assignment of income when the respondent requests an assignment of a specific amount of salary, wages, or other income. § 722.723.

5
Michigan

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. Upon every divorce where any real and personal property or money is awarded, the court may order it placed in trust for the other spouse and the minor children. § 552.20. In an award of child support upon divorce, the amount allowed is a lien on the obligor's real and personal property. In default of payment, the court may order the sale, or award execution for the collection of, or sequester real and personal property and apply the profits to the support payments. § 552.27.

Upon a paternity judgment, the court may require that bond be filed. If the father defaults on support payments, upon the mother's or any interested person's request, the court may issue a citation for execution of sureties. The court may also order a lien on the father's real estate. § 722.719.

In granting a divorce decree, the court may also require that the husband file a bond with one or more sureties guaranteeing the payment of the ordered support. § 552.16. The court may order support and secure payment upon the obligor's real estate and may enforce performance of the decree by sale of the property or otherwise. § 552.333.

Long-Arm Statute Specifically for Support. The court has personal jurisdiction if the person maintains a domicile in this state while subject to a marital or family relationship that is the basis of the claim for divorce, alimony, separate maintenance, property settlement, child support, or child custody. § 600.705(7).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

6
Michigan

Enforcement of Support by State in Welfare Cases. If the child is being partly or completely supported by public assistance, the state or county department of social services may enforce the support duty. §§ 722.3, 401.9, and 400.14(n).

Support Payments Assigned. Upon certification by the county department of social services that the child is receiving public assistance, the friend of the court shall transmit payments to the state department of social services. §§ 552.20, 522.23(2), 522.454, and 722.718.

Agency Can Request Modification of Support No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

9/3/83

MINNESOTA

Minnesota Statutes Annotated (West)
(1983 Cum. Supp.)

State Contact
Mary L. Anderson
Welfare Specialist, Office
of Child Support Enforcement
444 LaFayette Road
St. Paul, Minnesota 55101

UNIFORM ACTS

Uniform Parentage Act. §§ 257.51 - 257.74.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968
version with numerous variations including part IV.
§§ 518C.01 - 518C.36.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Under the Uniform Parentage Act,
a paternity action is civil, governed by the rules of civil
procedure. § 257.65.

Long-Arm Statute Specifically for Paternity. Does not have the
Uniform Parentage Act provision on jurisdiction but refers,
in the paternity statute, to the general long-arm statute,
§ 543.19, which gives jurisdiction over a person who
"commits any act in Minnesota causing injury." § 257.59(2).

Paternity Actions Brought by State. A paternity action may be
brought by the public authority chargeable with the child's
support. § 257.57(2)&(3). If the public authority is a
party, it will be represented by the county attorney, and if
no conflict of interest exists, the custodial parent may
also be so represented. If the child is not receiving

public assistance, the county attorney will represent the custodial parent if that parent requests it. § 257.69(1).

Default Judgment Allowed. No statutory provision. However, under the Uniform Parentage Act, the rules of civil procedure apply so a default judgment may be available. § 257.65.

Procedure for Blood Tests. Under the Uniform Parentage Act, the court may, and on a party's request shall, order the child, mother, or alleged father to submit to blood tests, to be performed by court-appointed experts. The court, on a party's reasonable request, shall order independent tests by other experts. The court determines the number and qualifications of the experts. § 257.62.

Refusal to submit to tests may be admitted into evidence and is subject to the sanctions within the court's jurisdiction. § 257.62. Evidence relating to paternity may include genetic or blood tests or both, weighed with the statistical probability of paternity. § 257.63.

If a pretrial hearing has been held and the judge's recommendations are not accepted by all parties, the court shall order blood tests if practicable. § 257.64. Also the court may order appropriate test costs be paid by the parties in the proportions and at the times it determines. § 257.69(2).

Support Without Paternity Determination. Under § 257.64, the court can recommend a support agreement with no acknowledgment of paternity if the alleged father assumes a defined economic obligation to the child and all parties agree to the agreement. The judge must look to factors for setting child support and the likelihood of paternity being determined.

Factors Considered in Setting Support. Section 257.66 states that the child support order shall be determined in accordance with the divorce chapter. Two sections, §§ 518.17 and 518.551 set factors and percentage of income guidelines. See Factors Considered in Setting Support in next section.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Non-support is a crime against the family under § 609.375. It is a misdemeanor punishable by imprisonment for not more than ninety days or fine up to \$300. If the nonsupport continues in excess of ninety days, it becomes a felony punishable by imprisonment for not more than five years. § 609.375.

Initiation of Proceedings. The county attorney may initiate proceedings. § 518.61.

Support Pending Divorce. The court may order temporary child support. § 518.131.

Effect on Support of Denial of Visitation. Interference with visitation rights or taking the child outside the state without the court's permission is not a defense to non-payment of support. § 518.612.

A parent's failure to pay support because of the inability to do so is not sufficient cause for denial of visitation under § 518.175.

Factors Considered in Setting Support. The court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

- (a) The financial resources and needs of the child;
- (b) The financial resources and needs of the custodial parent;
- (c) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) The physical and emotional condition of the child, and his educational needs; and
- (e) The financial resources and needs of the noncustodial parent.

However, if the amount set for child support under these guidelines is less than an amount determined by percentage of income guidelines specified in § 518.551(5) by which the court is required to set child support in welfare cases, the court makes express findings of fact as to the reason for the lower award. § 518.17(50).

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISM

Payments Through Official Agency. "The court shall direct that all payments ordered for . . . support be made to the public agency responsible for child support enforcement so long as the obligee is receiving or has applied for public assistance. § 518.551.

Under the Uniform Parentage Act, the court may order that payments be made to the clerk of court or the agency designated to administer the support for the child's benefit. § 257.67(2).

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. If a trustee who has been appointed by the court to receive the support payments has not received a support payment and has given the obligor notice of the arrearage without receiving a reply, the trustee may notify the public authority responsible for support enforcement. If the enforcement authority refers the arrearage to the county attorney, he or she may initiate enforcement proceedings against the obligor. § 518.61.

Location of Absent Parents. The commissioner of public welfare is designated as the agent for location of parents and shall have access to all relevant government agencies and bureaus. § 256.978

Child Support Priority over Other Creditors. Income withholding for child support and execution or garnishment on a judgment for child support arrearages have priority over other attachments, executions, garnishments or wage assignment unless otherwise ordered by the court and are not subject to statutory limits on amounts levied against the obligor's income.

Wage Assignment Specifically Available for Support. The public agency responsible for child support enforcement may petition the court for an order providing for withholding, from the wages of the obligor, the amount of child support as determined by court order. § 256.872. Income withholding is available to the public enforcement authority and to the recipient in the support action under § 518.611.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. Upon failure to pay the support, the court may sequester the obligor's personal estate and may cause the personal estate to be applied according to the terms of the order. § 518.24.

Other Special Enforcement Tools. Under the Uniform Parentage Act, the court can require the parent to give bond or security as part of the paternity judgement. § 257.66(3).

The court may, on its own motion or on the motion of either party, appoint a trustee to receive support money and remit it to the support recipient. The trustee shall give a bond for performance of the trust, shall maintain records of payments, and shall inform the public support enforcement authority of any arrearages. § 518.61.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. Under the Uniform Parentage Act, the public authority that has furnished support may enforce the child support order made in a paternity action in the same way the custodial parent may. § 257.67(1).

The procedures set out in § 518.61 for nonwelfare cases having a trustee are also available when the public authority for support enforcement has been appointed the trustee for the support recipient who is also on public assistance. Under that statute, the county attorney can institute enforcement proceedings against the obligor, even if the obligor is outside the court's jurisdiction, through any available state and federal law. Section 393.07(9) gives the county welfare board the power to take such steps necessary to compel payment, including initiation of contempt proceedings.

Support Payments Assigned. An applicant for or recipient of assistance is considered to have assigned all rights to child support to the public agency responsible for child support enforcement. § 256.74(S).

Agency Can Request Modification of Support. In welfare cases where child support was set without notice to the welfare agency and the amount is below the amount specified in the percentage of income guidelines (518.551(5)), the agency shall move the court for a modification of the order to comply with the guidelines § 518.551(6).

Service on Agency If Public Assistance Involved. Notification of all proceedings for dissolution must be given by the petitioner to the agency responsible for the welfare payments if either party is receiving aid to families with dependent children. § 518.551.

9/4/83

MISSISSIPPI

Mississippi Code Annotated
(1982 Cum. Supp.)

State Contact
Monte L. Barton, Director
Child Support Division
Department of Public Welfare
Post Office Box 352
Jackson, Mississippi 39205

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted, but has adopted the Uniform Act on Paternity which has substantially similar blood test provisions. §§ 93-9-1 - 93-9-49.

Uniform Desertion and Nonsupport Act. § 97-5-3.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version including the 1952 amendments, but not part IV. §§ 93-11-1 - 93-11-67.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No specific statutory provision but it appears to be preponderance of the evidence because § 93-9-9 provides that if the alleged father is dead the proof must be clear and convincing.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. The child support unit of the state department of public welfare has the authority to institute paternity proceedings. § 43-19-31(a).

Mississippi

"It shall be the duty of the county attorney . . . to prosecute all cases relating to natural children where the complainant is a state or county public welfare official In counties not having a county attorney, the complaint shall be prosecuted by the district attorney, or by an attorney representing the state or county public welfare official as the petitioner" § 93-9-43.

Also, "Paternity may be determined upon the petition of the mother, the child or any public authority chargeable by law with the support of the child; . . ." § 93-9-9.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. Mississippi has adopted the Uniform Act on Paternity which contains the following blood test provisions. "The court, upon motion of the defendant, shall order the mother, the child, and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require." § 93-9-21. "The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court." § 93-9-23. "If the court finds that the conclusions of all the experts . . . are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly." § 93-9-27.

Support Without Paternity Determination. "An agreement of settlement with the alleged father is binding only when approved by the court." § 93-9-49. The use of the word "alleged" may indicate that an agreement to support without paternity acknowledgement is possible.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Any parent who willfully neglects or refuses to provide for his or her child under the age of 16, leaving the child in destitute or necessitous circumstances, is guilty of a felony. This is punishable by a fine between \$25 and \$500 or imprisonment for up to two years or both. § 97-5-3.

Also § 43-19-31 authorizes the department of public welfare to secure support for any child receiving aid from the department.

Initiation of Proceedings. An action under § 43-19-31 is commenced by the county or district attorney if that person has been contacted by the department of public welfare and the attorney feels such an action is feasible and in the public's best interest. § 43-19-1.

Support Pending Divorce. "[T]he chancellor in vacation may, upon reasonable notice, in urgent and necessitous cases, hear petitions for temporary alimony and temporary custody of the children and make all proper orders and decrees thereon." § 93-5-17.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision. Section 93-5-23 merely directs the court to make support orders "having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just."

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. If public assistance is involved, the court shall direct the support payments to the child support unit of the state department of public welfare. § 43-19-37. This also includes paternity cases if public assistance is involved.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The child support unit may "initiate support or paternity actions in behalf of nonrelated aid to dependent children families upon payment of a fee . . . and the subsequent payments of all costs assessed by the court." § 43-19-31(c).

Location of Absent Parents. The child support unit shall establish a parent locator service for the purpose of locating absent and nonsupporting parents. § 43-19-5. When the court of this state, acting as the reponding state in a URESA action, is unable to obtain jurisdiction over the defendant, the court shall on its own initiative use all means at its disposal to trace the defendant or his or her property. § 93-11-37.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support No statutory provision.

Garnishment Specifically Available for Support. Although garnishment is not specifically available for support, § 85-3-4(3) provides that the restrictions on the timing and amount of garnishments do not apply when the garnishment is pursuant to a support order by a court or the proper administrative procedure.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In paternity cases, the court may require that support payments be made to a trustee, which shall be the public welfare agency if the child is or is likely to become a public charge. § 93-9-29(4). Also in paternity cases, if the obligor defaults on any payment, the court may order a lien placed on his or her real estate. § 93-9-31(2).

If a parent fails to comply with a support order for 30 days or more, the court may issue execution. § 43-19-37.

Long-Arm Statute Specifically for Support. A court may exercise personal jurisdiction over the respondent in a child support action if "personal service of process is made as provided . . . and if the parties had resided in a marital relationship with each other in this state for 30 days and if the complainant has continuously resided in this state after the defendant has become a nonresident." § 93-11-67(1).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The child support unit is "to develop and implement a nonsupport and paternity program and institute proceedings in the name of the state department of public welfare." § 43-19-31(a). This unit may also secure from a parent who has failed to meet the support obligation, support for a child receiving aid from the department. § 43-19-31(b). It may also initiate contempt proceedings or other remedial proceedings in order to enforce a child support order or decree. § 43-19-31(d).

Support Payments Assigned. "By accepting public assistance for and on behalf of a child or children, the recipient shall be deemed to have made an assignment to the state department of public welfare of any and all rights and interests in any cause of action, past, present or future, that said recipient may have against any parent failing to provide for support and maintenance of said minor child or children for the period of time that assistance is being paid by said department" § 43-19-35.

Agency Can Request Modification of Support. The state seems to have the power to request modification of support because the recipient is deemed to have appointed the state as his or her attorney to act on his or her behalf. § 43-29-35.

Service on Agency If Public Assistance Involved. No statutory provision.

MISSOURI

Vernon's Annotated Missouri Statutes
(1983 Cum. Supp., Laws 1982)

State Contact
Richard Huber
Missouri Department of
Social Services
Division of Family Services
Post Office Box 88
Jefferson City, Missouri 65103

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version
with the 1958 amendments and part IV. §§ 454.010
- 454.360.

ESTABLISHMENT OF PATERNITY

There are no statutory provisions relating to the determination of paternity.

ENFORCEMENT OF SUPPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"When the husband, without good cause, shall abandon his wife, and refuse or neglect to maintain and provide for her, the circuit court, on her petition for that purpose, shall order and adjudge such support and maintenance to be provided and paid by the husband for the wife and her children, or any of them, by that marriage, out of his property, and for such time as the nature of the case and the circumstances of the parties shall require" § 452.130.

When spouses are living together and one spouse inflicts injury, attempts to inflict injury, or places the other spouse in apprehension of physical injury, the spouse may file a petition alleging this abuse and the court may order child support within those proceedings. §§ 455.010, 455.020, and 455.050.2 (2).

A parent commits the crime of nonsupport if such parent knowingly fails to provide, without good cause, adequate

support that such parent is legally obligated to provide for his or her child. "Criminal nonsupport is a class A misdemeanor, unless the actor leaves the state for the purpose of avoiding his obligation to support, in which case it is a class D felony." § 568.040. The fine for a class A misdemeanor may not exceed \$1,000, and imprisonment may not exceed one year. §§ 560.016.1(1) and 558.011.1(5). The fine for a class D felony may not exceed \$5,000 and imprisonment may not exceed five years. §§ 560.011(1) and 558.011.1(4).

Initiation of Proceedings. Under § 452.130, the mother's petition "may be filed and the case heard and determined in the circuit court, and the . . . process and proceedings shall be had as in other civil suits." § 452.240. Under § 455.020, the spouse may file a petition alleging the abuse. §§ 455.020 and 455.040.

Support Pending Divorce. "In a proceeding for dissolution of marriage . . . either party may move for temporary support for children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested." § 452.315.

Effect on Support of Denial of Visitation. "If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but he may move the court to grant an appropriate order." § 452.365.

Factors Considered in Setting Support. In a proceeding for child support, legal separation, maintenance, or divorce, the court shall consider, without regard to marital misconduct, "all relevant factors including:

- "(1) the father's primary responsibility for support of his child,
- "(2) the child's financial resources,
- "(3) the financial resources of the custodial parent,
- "(4) the standard of living the child would have enjoyed had the marriage not been dissolved,
- "(5) the child's physical condition, emotional condition, and educational needs, and
- "(6) the financial resources and needs of the noncustodial parent." §452.340.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. If AFDC is involved, the court shall order the payments to be made to the clerk of court. § 208.040.5. If AFDC is not involved, the court may on its own motion or a party's motion require that payments be made to the clerk of court. § 452.345.1.

Mechanism for Keeping Track of Obligors. "There is no statutory provision in paternity actions. In other cases, § 452.345 provides that the parties shall inform the clerk of any address change or other changes that may affect administration of the order.

Enforcement of Support by State in Nonwelfare Cases. "The prosecuting attorney shall assist the court on behalf of a person entitled to receive maintenance or support in all proceedings initiated under this section to enforce compliance with the order." § 452.345.5. See § 452.345.6 for a similar provision.

"The division [of family services] shall render child support enforcement services to persons who are not recipients of public assistance as well as to such recipients. . . . An additional fee for expenses incurred in the collection of support shall be imposed by the division as required by 42 USC 654 and federal regulations." § 6, Child Support Enforcement Act, Laws 1982.

In addition, "[t]he circuit judges of the circuit courts of the city of St. Louis and St. Louis County may appoint at least one 'friend of the court' . . . whose duty it shall be to prosecute any necessary civil action to enforce the payment of all delinquent payments duly ordered and decreed by the court for the support, maintenance, and education of a dependent minor child." § 478.422.

Location of Absent Parents. "To assist in locating parents who have deserted their children . . . the division [of family services] may request and receive information from the federal Parent Locator Service, from available records in other states, territories and the District of Columbia and from the records of all departments, boards, bureaus, or other agencies of this state and the departments, boards, bureaus, and other agencies of this state shall provide such information as is necessary for this purpose, notwithstanding any other provision of law making such information confidential. Only information directly bearing on the whereabouts, identity, most recent address and place of employment and income of a person owing or asserted to be

owing an obligation of support shall be requested and used or transmitted by the division" § 9, Child Support Enforcement Act, Laws 1982.

In a URESA action, the prosecuting attorney shall trace the defendant or his or her property using all means at his or her disposal if the court has not obtained jurisdiction over the defendant or property. § 454.190.

Child Support Priority over Other Creditors. Although child support does not have priority over other creditors, no property shall be exempt "from attachment or execution upon a judgment or order issued to enforce a decree for . . . the support and maintenance of children." § 452.140.

Wage Assignment Specifically Available for Support. "Each order for child support . . . shall include an order directing the person obligated to pay such support . . . to assign a part of his periodic earnings . . . If the obligor fails to execute the assignment of income within ten days of being ordered to do so, the court shall enter the assignment of income on behalf of the obligor." § 452.350(1). In addition, the court must order an obligor to execute an income assignment upon the application of any person entitled to a support payment. § 452.350 (2). The assignment is binding on the employer or other payor of the funds two weeks after service upon him of notice that it has been made. § 452.350 (4).

Garnishment Specifically Available for Support. "No property shall be exempt . . . from attachment or execution upon a judgment or order issued to enforce a decree . . . for the support and maintenance of children. And all wages due to the defendant shall be subject to garnishment or attachment or execution in any proceedings mentioned in this section, whether the wages are due from the garnishee to the defendant for the last thirty days' service or not." § 452.140.

Attachment Specifically Available for Support. See § 452.140, above.

Other Special Enforcement Tools. See § 452.140, above. Also, when a husband abandons his family and the mother petitions for support, the court may make further orders to enforce the judgment including execution and sequestration of property. § 452.130.

Long-Arm Statute Specifically for Support. The Missouri Supreme Court Rules provide for jurisdiction over any person "who has lived in lawful marriage within this state, as to all civil actions for dissolution of marriage or for legal separation and all obligations arising for . . . support of any child of the marriage . . . if the other party to the lawful marriage continues to live in this state." Mo. Sup. Ct. R. 54.06(b).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "The director of the division [of family services] shall render child support enforcement services to persons who are not recipients of public assistance as well as to such recipients. . . . § 6, Child Support Enforcement Act, Laws 1982.

"The duty under the state plan to litigate or prosecute support actions shall be performed by the appropriate prosecuting attorney. . . ." § 1, Child Support Enforcement Act, Laws 1982. See also § 208.040.5.

Support Payment Assigned. "The division of family services shall require as a condition of eligibility for benefits that each applicant for or recipient of aid . . . assign to the division of family services in behalf of the state any rights to support from any other person such applicant may have in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and which have accrued at the time such assignment is executed." § 208.040.2

"The support rights assigned to the division in behalf of the state shall constitute an obligation owed to the state by the person responsible for providing such support" § 208.040.4.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

2/3/84

MONTANA

Montana Code Annotated
(1983 Cum. Supp.)

State Contact
Michael G. Garrity
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59601

UNIFORM ACTS

Uniform Parentage Act. §§ 40-6-101 - 40-6-131.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 40-5-101 - 40-5-142.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Under the Uniform Parentage Act, the paternity action is civil, governed by the rules of civil procedure. § 40-6-115(1). Therefore, the burden of proof is preponderance of the evidence.

Long-Arm Stature Specifically for Paternity. Under the Uniform Parentage Act, personal jurisdiction is established over any person who has sexual intercourse in this state resulting in the birth of a child who is the subject of the action. § 40-6-109(2).

Paternity Actions Brought by State. Under the Uniform Parentage Act, if there is a particular presumption of paternity, a paternity action may be brought by any interested party. If there is no presumed father, the department of social and rehabilitative services or its appropriate local affiliate may bring the action. § 40-6-107.

Default Judgment Allowed. Under the Uniform Parentage Act, the rules of civil procedure apply, and default judgment should be available. § 40-6-115(a).

Procedure for Blood Tests. The court may, and on a party's request shall, require that the child, mother, or alleged father submit to blood tests performed by court-appointed experts. The court, on a party's reasonable request, will order independent tests by other experts. The court determines the number and qualifications of the experts. § 40-6-112.

Also evidence relating to paternity may include blood test results weighed with the statistical probability of paternity. § 40-6-113. If a pretrial hearing has been held and all parties do not accept the judge's recommendations, the court shall require blood tests if practicable. If the scientific evidence from the blood tests conclusively shows the defendant could not be the father, the action shall be dismissed. § 40-6-114.

The defendant can offer evidence only about a man who had sexual intercourse with the mother near the conception time if the defendant has undergone and made available blood tests that do not exclude him as the father. § 40-6-115(3).

Support Without Paternity Determination. Under § 40-6-107(3), the court can approve a support agreement with no acknowledgment of paternity if the alleged father assumed a defined economic obligation to the child and all parties accept the agreement. The judge must look to the factors for setting child support and the likelihood of paternity being determined.

Factors Considered in Setting Support. Under the Uniform Parentage Act, the court shall consider all relevant facts including:

- (1) child's needs,
 - (2) parents' standard of living and circumstances,
 - (3) parents' relative financial means,
 - (4) parent's earning ability,
 - (5) child's need and capacity for education, including higher education.
 - (6) child's age,
 - (7) child's financial resources and earning ability,
 - (8) parents' responsibility for the support of others, and
 - (9) value of custodial parent's services.
- § 40-6-116(5).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"The parent or parents entitled to custody of a child must give him support and education suitable to his circumstances." § 40-6-211. Under § 40-2-106, the family's necessities and the children's education are chargeable on the property of both husband and wife or either of them. They can be sued jointly or separately. This appears to be an action for family, rather than child, support.

A parent who violates the duty to care, protect, or support a child less than sixteen years old is endangering the child's welfare and may be fined up to \$500 or imprisoned not more than six months or both. A second conviction carries a fine not more than \$1,000 or imprisonment of six months or both. § 45-5-622(3). A parent may also be convicted of nonsupport, which carries the same penalties. § 45-5-621(3). However, if the nonsupport is aggravated, it may be punished by up to ten years imprisonment. § 45-5-621(3).

Initiation of Proceedings. "Any married parent with minor children . . . who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse . . . to provide for . . . the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order. If it appears . . . that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent." § 40-5-211.

The child support duty provided in § 40-6-211 may be established in an action against the parent for failure to provide the necessary articles to the child. This action may be brought by a third person who supplies these necessities in good faith. § 40-6-215. Also a parent may bring this action against the other parent for exclusive control of, and child support for, the child of a marriage without applying for a divorce. § 40-6-223.

The criminal nonsupport provisions provide that the court may order any fine or forfeited bond to be paid to the dependent the obligor failed to support. §§ 45-5-621(4) and 45-5-622(5).

Support Pending Divorce. "[E]ither party may move for temporary maintenance or temporary support of a child of the marriage entitled to support." § 40-4-106(1).

Effect on Support of Denial of Visitation. "If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended but he may move the court to grant an appropriate order." § 40-4-109.

Factors Considered in Setting Support. In a civil action for divorce, legal separation, maintenance, or child support, the court may consider "all relevant factors including:
"(1) the child's financial resources,
"(2) the custodial parent's financial resources,
"(3) the standard of living the child would have enjoyed had the marriage not been dissolved,
"(4) the child's physical and emotional condition, and his or her educational needs, and
"(5) the noncustodial parent's financial resources and needs.
"(6) the amount received by children under the AFDC program for the purposes of determining a minimum amount for support."
§ 40-4-204.

The state has enacted administrative rules that establish a scale of suggested minimum support contributions to assist counties and courts in determining the amount of support that parents should be expected to pay. § 40-5-214(1).

Information on Assets of Parties. The court may order the production of all evidence relating to the parties' financial condition. § 40-4-202. Also the state may require certain financial information from any parent applying for public assistance, and if the state initiates the child support proceedings, it makes this information available to the court. § 40-5-213.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency., Under the Uniform Parentage Act, the court may order the payments made to the clerk of court or the agency designated to administer the support for the benefit. § 40-6-117(1).

In other actions, on "its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments." § 40-4-206(1).

Mechanism for Keeping Track of Obligor. There is no statutory provision in paternity actions. However, in other cases, the parties affected by the order shall inform the clerk of court of any address change or of any other condition that may affect the administration of the order § 40-4-206.

Enforcement of Support by State in Nonwelfare Cases. The department of revenue may accept applications for support enforcement services on behalf of persons who are not recipients of assistance and may take appropriate action to establish or enforce support obligations against support obligors. The department may make rules to limit applications and charge a fee for these services. § 40-5-203(1).

Location of Absent Parents. "The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies."
§ 40-5-206(1).

"To effectuate the purposes of this section, the director may request from state, county and local agencies all information and assistance as authorized by this part. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information relative to the location, income, and property of the parents." § 40-5-206(2). See § 53-2-202 for a similar provision.

In an action under URESA, the prosecuting attorney on his or her own initiative shall use all means at his or her disposal to locate the obligor or his or her property. § 40-5-120. If the state information agency (designated as the state department of social and rehabilitation services) does not know the location of the obligor or his or her property, and no state location service is available, it shall use all means at its disposal to obtain this information, including examination of official state records and other sources. § 40-5-118(3).

Child Support Priority over Other Creditors. "This [child support] lien has the same preference against the assets of the debtor as claims for taxes." § 40-5-241(2).

Wage Assignment Specifically Available for Support. Under the divorce provisions, "the court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments." § 40-4-207.

"Any person, firm, corporation, association, political subdivision or department of the state employing a person owing a support debt or obligation shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to court order, presented by the department as a plan to satisfy or retire a support debt or obligation." § 40-5-257.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. If the obligor refuses to pay a support debt owed to the state "the department [of revenue] may issue an abstract of any final order in the form of a warrant of distraint under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the support debt" § 40-5-241(1).

Long-Arm Statute Specifically for Support. The court may decide child custody matters, including support, if the child is present in Montana or has been abandoned in Montana, or Montana was the child's home when the action was begun, or other significant ties to Montana exist. § 40-4-211.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. If no court order exists, the department may issue a notice of support liability to be served upon the responsible parent. If no answer is made, the support debt is assessed and the department issues a warrant of distraint authorizing a collection action. If the responsible parent makes an answer to the department and alleges defenses to liability, the department may hold a contested hearing to determine liability and responsibility and future periodic support payments. §§ 40-5-223, 40-5-225, and 40-5-226.

Enforcement of Support by State in Welfare Cases. When the department of social rehabilitation services receives an application for public assistance and it appears that those responsible have failed to support the child, it shall "refer the matter to the department of revenue for action under the provisions of this part of the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child." § 40-5-202(1).

"The department is subrogated to the right of the child or person having the care, custody, and control of the child to prosecute any support action or execute any administrative remedy . . . to obtain reimbursement of money . . . expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department is subrogated to the debt created by the order and the money judgment is in favor of the department." § 53-4-248(2).

Support Payments Assigned. If public assistance is furnished by a state or county agency or the department has contracted to collect support, the department shall become trustee of any cause of action "to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee." § 40-5-202(2).

The payment of public assistance money creates a debt due to the department by the parent equal to the amount of public assistance paid. However, where the support obligation is based upon a court decree, the debt is limited to the amount of the court decree. § 53-4-248(1).

Agency Can Request Modification of Support. "The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do." § 40-5-202(6). See § 53-4-248(5) for a similar provision.

Service on Agency If Public Assistance Involved. "No obligee may commence an action to recover support due and owing to him without first filing an affidavit with the court stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department in writing of the pending action." § 53-4-248(2).

10/23/83

NEBRASKA

Revised Statutes of Nebraska
1943 (1983 Cum. Supp.)

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. 1968 version
including part IV. §§ 42-762 - 42-7, 104.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence.
The method of trial shall be the same as that in other civil
proceedings. § 13-112.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Actions Brought by State. The proceeding may be instituted by the mother of such child or by the guardian or next friend of the child. § 13-111. If the child is a recipient of public assistance, the attorney general may file the complaint if the child is born out of wedlock in any state institution. § 13-113. The county attorney may file the petition if requested by the department of public welfare or the county division of public welfare. § 43-512.03. The

county attorney also has the authority to file a petition, upon application of the child or a relative of the child, in cases where no public assistance is received. § 43-512.02.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. No statutory provision.

Support Without Paternity Determination. If an agreement is acknowledged by both parties in the presence of the judge stating that the defendant shall pay all prosecution costs to date and pay any public assistance incurred or to be incurred in the future, the court shall dismiss the complaint. § 13-113. There appears to be no requirement that the defendant admit paternity.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. Applicable if the father is absent. Notwithstanding the confidentiality statutes, "every department and agency of state, county, and city government shall assist and cooperate with the Department of Public Welfare in locating absent parents, determining an absent parent's income, and identifying an absent parent's employer for the exclusive purpose of collecting child support." § 43-512.06.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. It appears that there is a separate civil action for non-support, according to § 43-512.04, which indicates that an action for child support need not be part of a divorce action. A criminal action for nonsupport may be initiated under § 28-706 which is punishable by a maximum of five years imprisonment or \$10,000 fine or both.

Initiation of Proceedings. No statutory provision.

Support Pending Divorce. The court may order either party to pay the clerk a sum of money for the temporary support of minor children. § 42-357.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In a proceeding for dissolution of marriage or legal separation, the court shall consider the earning capacity of each parent in determining child support. § 42-364.

Information on Assets of Parties. The court can order access to all revenue information of the parties. § 42-358(4).

"Applications for support or alimony shall be accompanied by a statement of the applicant's financial condition and, to the best of the applicant's knowledge, a statement of the other party's financial condition. Such other party may file his statement if he so desires, and shall do so if ordered by the court. Statements . . . shall show income from salary or other sources, assets, debts and payments thereon, living expenses and other relevant information."
§ 42-359.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "All orders or judgments for temporary or permanent support payments . . . shall direct the payment of such sums to the clerk of the district court for the use of the persons for whom the same have been awarded." § 42-369.

Mechanism for Keeping Track of Obligors. The clerks of the district courts shall maintain delinquency records in each case docketed in which child support is fixed by the court. The court-ordered support shall be declared in arrears when more than thirty days overdue to the clerk of the court. § 42-358(1). Also the employer of the obligor is compelled to notify the clerk of the court of any change of employment of the obligor and change of address. § 42-364.01(6).

Enforcement of Support by State in Nonwelfare Cases. The county attorney may intervene or reopen any proceeding for child support if it appears that the children are not otherwise represented by counsel. § 43-512.08.

"[O]n request by the child caretaker, [one of the duties of the county attorney is to] file a petition against an absent parent in the district court praying for an order for child support on behalf of children who are not recipients of aid to dependent children." § 43-512.03(1).

Location of Absent Parents. The department of public welfare is the parent locator service. § 43-512.06. Also every department and agency of state, county, and local government shall assist and cooperate with the department in locating absent parents, determining an absent parent's income, and identifying an absent parent's employer for the exclusive purpose of collecting child support. § 43-512.06.

In an action under URESA, if the director of public welfare (the state information agency) does not know the location of the obligor or his or her property in the state, and no location service is available, he or she shall use all means at his or her disposal to obtain this information, including the examination of official state records and other sources. § 42-778(b). In addition, the prosecutor is required to use all means at his or her disposal to locate the obligor or property. § 42-780(a).

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. In any proceeding, if a court has ordered a parent-employee to pay an amount for the support of a child, that court must order the employer of such parent to withhold a sum of the wages for the purpose of payment of child support. § 42-364.01(1) - 42-364.12.

Garnishment Specifically Available for Support. "A garnishment for the collection of child support may be filed in any jurisdiction where any property or credits of the defendant may be found" § 43-512.09.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In a paternity action, "[t]he court may require the posting of a bond at the time that a permanent child support decree is issued to insure performance of the decree." § 42-358.05. A representative of the state says that § 13-116 contains a similar provision. (We cannot verify that.)

A lien upon the property of one who is delinquent may be instituted and enforced. All judgments and orders for payment of money for child support in divorce and annulment proceedings may be liens upon property as in other actions and may be enforced or collected by execution. § 42-371(1).

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The county attorney, on request of the department of public welfare, shall take all actions necessary to enforce child support orders or to initiate court proceedings to establish support orders. § 43-512.03.

"If . . . the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the . . . application shall immediately be filed with the county attorney." § 43.512(2).

"It shall be the duty of the county attorney . . . to immediately file complaint against the father or stepfather of the dependent child under section 28-706 [criminal non-support] or file a civil petition under the provisions of section 43-512.03 [asking for entry of an order of child support] whenever the recovery of child support appears to be practicable." § 43-512.01.

6
Nebraska

Support Payments Assigned. The acceptance of aid to a dependent child shall constitute an assignment of child support payments to the department up to the amount of aid to dependent children paid to the recipient. § 43-512.07.

Agency Can Request Modification of Support. The county attorney may intervene in or reopen any proceeding regarding child support for the purpose of amending an order for inadequate child support. § 43-512.08.

Service on Agency If Public Assistance Involved. No statutory provision.

10/25/83

NEVADA

Nevada Revised Statutes
1955 (1979 Cum. Supp.)
1983 Session Laws

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UNIFORM ACTS

Uniform Parentage Act. Partially adopted. Sections 126.011 - 126.231 incorporate §§ 1-23 of the act with some changes, omitting §§ 24-29 of the act.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Sections 201.020 - 201.080 with some changes.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 130.010 - 130.370.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence. A paternity action is civil, governed by the rules of civil procedure. § 126.151(1).

Long-Arm Statute Specifically for Paternity. Under the Uniform Parentage Act, a person "who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought . . . with respect to a child who may have been conceived by that act of intercourse." § 126.091(2).

Paternity Action Brought by State. The district attorney of the county in which the child resides shall take such action as is necessary to establish the parentage of the child when asked to act by the custodial parent or a public agency providing assistance to the child or parent. § 126.381(1).

But the district attorney does not become the parent's or child's representative. The attorney-client privilege does arise except for disclosures of criminal activity, but welfare officials are entitled to information relevant to the performance of their duties. § 126.381(3).

Default Judgment Allowed. A paternity action is civil. § 126.151(1). Therefore, a default judgment may be allowed.

Procedure for Blood Tests. Under the Uniform Parentage Act, the court may, and shall upon a party's motion, order the mother, child, alleged father, or any other person involved to submit to one or more blood tests. Whenever the test is ordered and made, its results may be received in evidence. The court may order the experts to testify or to be examined by deposition. If any party refuses to submit to a blood test, the court may assume the results would have been adverse to the party or may enforce its order if justice and the rights of others so require. The court shall, on the reasonable request of a party, order independent tests be made by other experts. In all cases, the court determines the number and qualifications of the experts. § 126.121.

Evidence relating to paternity may include an expert's opinion on the statistical probability of paternity and the blood test results. § 126.131.

If a pretrial hearing has been held and the presiding judge, master, or referee's recommendations are not accepted by all parties, the court shall require blood tests if practicable. § 126.141(3).

The defendant in the paternity action may offer evidence about a man who had sexual intercourse with the mother near the time of conception only if the defendant has undergone and made available blood tests that do not exclude the defendant's paternity of the child. A man who is identified and subject to the court's jurisdiction will be made a defendant in the action. § 126.151(2).

The court may order the blood test costs to be paid by the parties in the proportions and at the times it determines, and it may order an indigent party's portion to be paid by the county. § 126.171.

Support Without Paternity Determination. Under the Uniform Parentage act, the mother, child, and alleged father can make an agreement in which the alleged father has a defined economic obligation to the child but paternity is not acknowledged, subject to the approval of the judge, master, or referee conducting the pretrial hearing. § 126.141(1). Any other agreement with the alleged father will not bar a paternity action. §126.071(4).

Factors Considered in Setting Support. Under the Uniform Parentage Act, the court shall consider the relevant facts, including the:

- (1) child's needs,
- (2) parents' circumstances and standard of living,
- (3) parents' relative financial means,
- (4) parents' earning ability,
- (5) child's need and capacity for education,
- (6) child's age,
- (7) child's earning ability and financial resources,
- (8) parents' responsibility for support of others,
- (9) value of custodial parent's services,
- (10) assistance paid by public agencies to child and reasonably related expenses of the mother's pregnancy and confinement. § 126.161(5).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

A parent has a duty to support his or her children. Breach of this duty is a crime. § 201.020. In lieu of or in addition to other penalties, the court may order the defendant to make periodic support payments for a period not to exceed one year. § 201.050. Responsibility is established by instituting a criminal trial against the alleged nonsupporter. §§ 201.020 and 201.025.

Initiation of Proceedings. Any person may institute such a proceeding, including the attorney general, upon complaint made under oath. § 201.030.

Support Pending Divorce. The court may require either party to assist the other party in providing temporary support for children of the parties. § 125.040.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. Section 125.140 provides that the court has broad discretion in determining amount of support.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. The court may require that payments be made to the custodial parent, public agency, or some person or corporation designated as trustee. If the welfare division has provided for the child's support, the payments will be directed to it. The payments will be made to a trustee if the custodial parent does not reside within the court's jurisdiction or has assigned his or her support right to a public agency in another state. § 126.331.

Under the Uniform Parentage Act, the court may order that child support payments be made to the clerk of court or the public agency designated to administer them for the child's benefit. § 126.181(2).

Mechanism for Keeping Track of Obligors. The mechanism applies only to parents convicted of nonsupport, whom the court may commit to the sheriff's custody upon such terms of payment and personal reports as the court may direct. § 126.341(2).

Enforcement of Support by State in Nonwelfare Cases. The district attorney and welfare division may take appropriate action to enforce the responsible parent's duty of support if the child is a minor, application has been made to them, and the Social Security Act requires it. § 425.370(2).

Also the district attorney of the county in which the child resides shall take all necessary action to locate and take action against a deserting or nonsupporting parent when requested to do so by the custodial parent or a public agency that provides assistance to the child or parent. § 126.381(1). See § 201.025(1) for a similar provision that does not require that a parent or public agency request this action.

Location of Absent Parents. The welfare division may establish a central unit to coordinate and supervise departmental activities in relation to deserting responsible parents. The administrator or prosecuting attorney may request information and assistance from state, county, and local agencies; public and private employers; and employee organizations and trusts. These persons and entities shall supply all information relative to the location, income, and property of such parents. Sections 126.381(1) and 201.025(1) require the appropriate district attorney to take all necessary action to locate such parents.

Any person applying for aid on behalf of a child must furnish the social security number of any responsible parent if known. § 425.125(1).

In an action under URESA, the attorney general shall use all means at his or her disposal to obtain information on the location of the obligor or his or her property (if no location service is available), including the examination of official state records and other sources.. § 130.180. The prosecuting attorney shall also on his or her own initiative use all means at his or her disposal to locate the obligor or property. § 130.200.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. In any proceeding where the court has ordered a parent to pay child support, the court may order the parent to assign that part of salary, wages, or commissions due them or in the future that will pay the child support ordered. The court may order it assigned to the county clerk or county officer designated to receive such payment or to the welfare division if applicable. Such order is binding on all existing or future employers served with a copy of it. The court may modify or revoke the order at any time. § 31.463.

Upon application and proof that the responsible parent has failed to make an equivalent of two monthly support payments in a 12-month period, the court must order the responsible parent to make an assignment. § 31.463(1).

Garnishment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. Execution is specifically available for failure to pay support in divorce actions (§ 125.180), in actions for separate maintenance (§ 125.280), and in actions for annulment or declaration of a void marriage (§ 125.440).

Also the court may order a nonsupporting parent to give security by bond with sureties for the payment of a child support judgment. If the parent defaults on the security and does not show cause why execution should not be issued, execution shall issue. §§ 126.341 and 126.351.

Long-Arm Statute Specifically for Support. Persons who live in a marital relationship within this state submit themselves to personal jurisdiction, notwithstanding subsequent departure from this state, as to all obligations arising from alimony, child support, or property settlement if the other party to the marital relationship continues to reside in this state. § 14.065(2)(e).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The attorney general shall cause appropriate legal action to be taken to enforce support of a child who is a recipient of public assistance. § 422.340. See § 425.380 giving the attorney general similar powers. Also see §§ 425.215(1) and 425.370(1) giving district attorneys the power to enforce the support duty of these parents.

Under the Uniform Parentage Act, the public authority that has furnished or may furnish child support may enforce the child support obligation. § 126.181(1).

Support Payments Assigned. When a parent or child receives public assistance, the recipient is deemed to have assigned to the division of social services all rights against the obligor. § 425.350.

Agency Can Request Modification of Support. "The [welfare] division may petition the appropriate court for modification of its order on the same grounds as a party to the action." § 425.360(2).

Service on Agency If Public Assistance Involved. No statutory provision.

10/25/83

NEW HAMPSHIRE

New Hampshire Revised Statutes Annotated
(1983)

State Contact
No reply.

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. §§ 522:1 - 522:10. Also has adopted the
Uniform Act on Paternity §§ 168-A:1 - 168-A:12.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. §§ 546-A:1 - 566-A:12.

Uniform Reciprocal Enforcement of Support Act. The 1968 version
including part IV. §§ 546:1 - 546:41.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision.

Long-Arm Statute Specifically for Paternity. No statutory
provision.

Paternity Action Brought by State. "Paternity may be determined
upon the petition of the mother, child, or the public authority
chargeable by law with the support of the child."
§ 168-A:2.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. New Hampshire has adopted the Uniform
Blood Test Act, which provides that, in a civil action to
establish paternity, the court on its own initiative or upon
suggestion of another party shall order the mother, child,
or alleged father to submit to blood tests. The court may
resolve the question of paternity against any party who
refuses to submit to such a test. § 522:1.

New Hampshire

The tests shall be made by court appointed experts (§ 522:2), and the court may apportion the costs between the parties or order that the county pay any such amount (§ 522:3).

If the court finds, upon the conclusion of the experts, that the alleged father is not the father of the child, judgment shall be resolved accordingly. If the experts disagree, the question of paternity shall be submitted upon all the evidence. If the experts conclude that there is a possibility that the alleged father is the father of the child, the admissibility of the tests is within the discretion of the court, depending upon the infrequency of the blood type. § 522:4.

These provisions shall apply to criminal cases provided the proper application has been made to the court and compensation of the experts is paid by the county by court order. The court also has the authority to direct a verdict of acquittal in a criminal action. § 522:6.

Support Without Paternity Determination. "[A]n agreement of settlement with the alleged father is binding only when approved by the court." § 168-A:8.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity of Marital Dissolution.

New Hampshire has adopted the Uniform Civil Liability for Support Act, which provides that "[e]very person whose income or other resources are more than sufficient to provide for his or her reasonable subsistence compatible with decency or health owes a duty to support or contribute to the support of his or her wife, husband, child, father or mother when in need." § 546-A:1. Also, if a mother fails to provide for her children, she is guilty of a misdemeanor. § 460:24. Endangering the welfare of a child by violating a duty of support is a misdemeanor. § 639:3. Knowingly failing to provide support is also a misdemeanor. § 639:4.

Initiation of Proceedings. Under the Uniform Civil Liability for Support Act, the obligee or the state or any of the state's political subdivisions may enforce in the superior court the obligee's right of support. § 546-A:4 and 7.

Support Pending Divorce. "At any time after the filing of a petition for an allowance, and before final hearing, the court may, on satisfactory affidavits or other proofs, order a temporary allowance to be paid to the wife by the husband, pending the final hearing on the petition." § 458:33.

"After the filing of a libel for divorce . . . the superior court may issue orders with such conditions and limitations as the court deems just which may, at the discretion of the court, be made ex parte." The orders may determine "the temporary custody and maintenance of any minor children from the marriage." § 458:16.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. Section 458:17 provides that the court "may order a reasonable provision for [the children's] support and education." However, under the Uniform Civil Liability for Support Act, the court shall consider all relevant factors including but not limited to:

- (1) the standard of living and situation of the parties,
- (2) the relative wealth and income of the parties,
- (3) the ability of the obligor to earn,
- (4) the ability of the obligee to earn,
- (5) the need of the obligee,
- (6) the age of the parties, and
- (7) the responsibility of the obligor for the support of others. § 546-A:5.

Information on Assets of Parties. Upon a decree of nullity or divorce, the court may compel the husband to disclose, under oath, the situation of his property. § 458:19.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. If the child is a recipient of public assistance, payments are to be made to the child support unit of the division of welfare. § 161-B:4.

See also § 168-A:6 which provides that, in paternity proceedings, the court may order payments to be made to a "person, corporation or agency designated to administer them under the supervision of the court."

Mechanism for Keeping Track of Obligators. Obligors and obligees must notify the state division of health and welfare of changes in address. § 458:49. Obligors must notify the division of changes in employment. § 458:50.

Enforcement of Support by State in Nonwelfare Cases. "The director of the division of welfare, department of health and welfare, may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take action as he deems appropriate to establish or enforce support obligations against persons owing a duty to pay support." The director may charge a fee to compensate the department for rendering such services. Also "[t]he director may establish . . . such reasonable standards as he deems necessary to limit applications for support enforcement services. Said standards shall take into account the income, property, or other resources already available to support said person for whom a support obligation exists." § 161-B:3.

Also, under the Uniform Civil Liability for Support Act, "the state or any political subdivision thereof may proceed on behalf of the obligee to enforce his right of support against the obligor." § 546-A:7.

Location of Absent Parents. "[T]he division is authorized and directed to establish a central unit to serve as a repository of information, to answer inquiries concerning absent parents and other persons legally responsible for support, to coordinate and supervise divisional activities in relation to such persons, and to ensure effective cooperation with law enforcement agencies." § 161-B:7(I).

"[I]n order to effectuate the purposes of [the support of dependent children] section, the director [of the enforcement agency] may request cooperation from state county, and local agencies in the location of parents . . . and information relative to the location, income, and property of such parents, and it shall be the duty of such persons to cooperate in responding to such requests." § 161-B:7(II).

Child Support Priority over Other Creditors. Wage assignments become a priority before other voluntary deductions and are not subject to existing wage attachment limitations. § 458:48.

Wage Assignment Specifically Available for Support. Child support orders effective after June 29, 1982 must contain a wage assignment provision that can be automatically invoked when a delinquency occurs. § 458:40; 458:42. Orders in effect prior to that date can become subject to wage assignment when the state department of health and welfare or the obligee notifies the court and the obligor that "a delinquency equal to 1/12 of the annual court-ordered support obligation is incurred." § 458:39; § 458:42. Employers of persons owing a support debt to the state for public assistance provided a dependent child must honor a duly executed assignment of earnings presented by the director of the state welfare division. § 161-C:21.

Garnishment Specifically Available for Support. The child support statutes covering children receiving public assistance allow a procedure that looks like garnishment as a collection technique. The "amount stated in the note of debt [where there's a pre-existing court order] or the decision shall be a lien in favor of the division against all property of the responsible parent." Ch. 161-C:10. The lien attaches to all real and personal property of the responsible parent; however, 50% of the disposable earnings of a responsible parents shall be exempted. § 161-C:11. In addition, the director of the division of health and social services may serve an order to "withhold and deliver" on a 3rd party, where he or she believes that the person has possession of property due or owing the debtor. 161-C:12. That property may include wages. 161-C:13 [VI].

Attachment Specifically Available for Support. Section 458:34 provides for attachment of the husband's property in a divorce action to enforce a temporary allowance for support pending the final hearing on a petition for support. Section 498:16 provides for attachment of the defendant's property pursuant to libel for divorce to secure the performance of any decree or order that may be made in the suit.

The lien for collection of a support debt owed to the state shall attach to all real and personal property of the responsible parent [§ 161-C:10(II)] and the director of the welfare division may collect the support debt stated in said lien by the distraint, seizure, and sale of the property [§ 161-C:13(I)]. An administrative order to withhold and deliver is also available. § 161-C:12.

Other Special Enforcement Tools. In a case involving an order for support of children or alimony, "the court may order the property to be conveyed or the money to be paid to a trustee, to invest and to apply the income thereof to the support of the wife or the maintenance and education of the minor children, and to pay over the principal sum, or any part thereof, as the court may from time to time order." § 458:20. See also § 168-A:6.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. "If no court order of support exists the division [of welfare, department of health and welfare] may, by notice of hearing and other procedures . . . establish a periodic payment to satisfy the responsible parent's support obligation" § 161-C:8.

Enforcement of Support by State in Welfare Cases. Upon the request of the director of the welfare division of the department of health and welfare, the parent or stepparent of any child receiving public assistance shall provide child support or the director may bring an action to compel support. After the court has ordered child support, failure to comply with that order will be considered contempt and be punished if the court held a hearing and determined the failure to be without good

New Hampshire

cause. The contempt action may be brought by the attorney general or the appropriate county attorney if the welfare division director requests it. § 167:3.

"[T]he division is hereby authorized to commence or appear in any proceedings before any court or administrative agency for the purpose of obtaining, enforcing, or modifying an order of support on behalf of any dependent child or any other person for whom the division has a duty to obtain or enforce an order of support under this chapter." § 161-B:5.

Support Payments Assigned. "The receipt of public assistance for a child shall constitute an assignment by the recipient to the division of any and all rights, title, and interest in and to support obligation owed to or for the child up to the amount of public assistance money paid for or on behalf of such child or such children, including any support unpaid at the time of assignment as long as public assistance is paid." § 161-C:22.

Agency Can Request Modification of Support. See Enforcement of Support by State in Welfare Cases, § 161-B:5.

Service on Agency If Public Assistance Involved. No statutory provision.

11/3/83

NEW JERSEY

New Jersey Statutes Annotated (West)
(1981-82 Cum. Supp.)
1983 N. J. Sess. Law Serv. (West)

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UNIFORM ACTS

Uniform Parentage Act. Adopted with modifications. Ch. 17, 1983
N. J. Sess. Law Serv. 77-99 (West).

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Partially adopted.
Although it repealed the act in 1979, the Code of Criminal
Justice incorporates §§ 3, 4, and 5 and portions of § 6 of
the act. However, §§ 1, 2, 7, and 8 are not included.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 act and
1952 amendments, but not part IV. §§ 2A:4-30.1 - 2A:4-30.23.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Preponderance of the evidence.
A paternity action is civil. Ch. 17, 1983 N. J. Sess. Law
Serv. § 12 (West).

Long-Arm Statute Specifically for Paternity. Under the Uniform
Parentage Act, a person "who has sexual intercourse in this
state thereby submits to the jurisdiction of the courts of
this state as to an action brought . . . with respect to a
child who may have been conceived by that act of inter-
course." Ch. 17, 1983 N. J. Sess. Law Serv. § 9 (West).

Paternity Actions Brought by State. Any person with an interest
recognized by the court as justiciable including the State
Division of Public Welfare or a county welfare agency may

bring an action to determine the existence of a parent-child relationship but not more than 5 years after the child attains the age of majority. Ch. 17, 1983 Sess. Law Serv. § 8 (West).

Default Judgment Allowed. Not applicable because reputed father is arrested and brought before the court. § 9:17-6.

Procedure for Blood Tests. The court may, and upon request of a party shall, require the child, mother or alleged father to submit to blood tests, which will be performed by a court-appointed expert. The court, upon a party's reasonable request, shall order independent tests by other experts. The court determines the number and qualifications of the experts.

Refusal to submit to these tests is admissible as evidence and gives rise to a presumption that the results of the tests would have been unfavorable to the interests of the refusing party. The court may also issue sanctions for refusal to submit to tests.

Results of blood and genetic tests are admissible in evidence, and parties may request expert testimony pertaining to the tests, but only where a definite exclusion is indicated or where an additional test is made. The court may limit the admissibility of these tests for good cause.

In addition, evidence related to paternity may include genetic or blood tests, weighed in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. Ch. 17, 1983 N. J. Sess. Law Serv. § 14 (West).

Support Without Paternity Determination. Apparently not allowed. Ch. 17, 1983 N.J. Sess. Law Serv. § 11.b. (West).

Factors Considered in Setting Support.

- 1) Needs of the child,
- 2) standard of living and economic circumstances of each parent,
- 3) income and assets of each parent,
- 4) earning ability of each parent,
- 5) need and capacity of the child for education, including higher education,
- 6) age and health of the child and each parent,
- 7) financial resources, income, assets, and earning ability of the child,

- 8) parents' responsibility for the support of others,
- 9) value of services contributed by the custodial parent,
- 10) debts and liabilities of each child and parent,
- 11) other factors the court finds appropriate.

Ch. 17, 1983 N. J. Sess. Law Serv. § 16 (West).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"If a husband, without justifiable cause, shall abandon his wife or separate from her . . . , the court may order suitable support and maintenance . . . for the wife and her children, or any of them, by their marriage." § 2A:34-24. See also § 44:1-143 which gives the court the power to order support from either parent if he or she deserts a child and leaves it as a public charge.

When a husband or father shall desert his wife, child, or children or a woman shall desert her child or children and leave them as public charges, the director of welfare of a municipality or county may apply to the juvenile and domestic relations court, and the court may order and adjudge suitable support and maintenance to be paid. §§ 44:1-143 and 44:4-104.

A parent who willfully deserts or neglects to care for a child is a disorderly person and, upon being so adjudged, shall be committed to the county jail or workhouse for a period not to exceed sixty days in the discretion of the court. § 44:4-108. See also § 44:1-147 which sets out the same provision but adds that the judge may order the sentenced be served periodically (such as over weekends) instead of consecutively. Persons commit a crime of the fourth degree if they willfully fail to provide support that they can provide and that they know they are legally obligated to provide a spouse, child, or other dependent. § 2C:24-5.

Under this criminal proceeding, "the court, having regard to the circumstances and the financial ability or earning capacity of the defendant, may make an order . . . directing the defendant to pay a sum certain periodically to the spouse, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee" § 2C:62-1.

Initiation of Proceedings. The director of welfare of a municipality or county may initiate a civil action. §§ 44:1-143 and 44:4-101. A representative of the state indicates that a wife can initiate proceedings under the statute on abandonment and support of wife and children. § 2A:34-24. The criminal nonsupport action is initiated by a sworn complaint alleging the crime, but the statute setting out the action (§ 2C:62-1) does not indicate who may make this complaint.

Support Pending Divorce. Pending any matrimonial action, the court may make an order as to the care, custody, education, and maintenance of the children. § 2A:34-23.

Effect on Support of Denial of Visitation. Nothing in the section on failure to support a child shall prevent the father from visiting such child while in the mother's custody or under her control upon such terms and conditions as the court may order. § 9:2-6.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. No statutory provision.

Child Support Priority over Other Creditors. If the state board of child welfare accepts a written agreement for payment from any person to the board for care and custody of the child and if such person is legally obligated to provide support for such child, the board then shall have a lien

against such property equal to the amounts contracted to be paid, which lien shall have priority over all unrecorded encumbrances. § 30:4C-29.1.

See also § 2A:17-56.1 which gives priority to an execution ordered against wages, debts, earnings, salary, income from trust funds, or profits of the defendant for satisfaction of arrearages and current support payments over any other executions.

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. In any proceeding brought for failure to make support and maintenance payments upon a showing that such payments are more than forty-five days overdue, the court may grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of the defendant for the full amount of both the arrears payments and the satisfaction of current support and maintenance payments. Such execution shall have priority over any other executions. § 2A:17-56.1.

Attachment Specifically Available for Support. If a parent deserts his or her child leaving it a public charge, the juvenile and domestic relations court can: issue process for the immediate sequestration of the obligor's personal estate and rents and profits of the obligor's real estate; appoint a receiver; and apply these assets toward the support owed as seems just and reasonable. § 44:1-144. See § 44:4-105 for a similar provision. The court has the same powers when a divorce or maintenance action is pending or judgment has been made and the obligor does not give reasonable security or does not comply with any such order. § 2A:34-23.

Other Special Enforcement Tools. In a paternity action, a father is discharged from arrest only upon giving bond. § 9:17-14. Section 44:1-144 provides for a trust account in cases involving the sequestration of the obligor's property.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. The father and mother of a person under eighteen years of age who applies for and is eligible to receive public assistance shall pay child support, if able, if ordered to "after due notice and opportunity to be heard, by any county director of welfare, or by any court of competent jurisdiction." § 44:4-101(a).

Enforcement of Support by State in Welfare Cases. When either parent deserts a child, leaving it a public charge, the director of the city or county welfare department may bring an action to compel child support, and the court may make further orders to enforce the child support order. §§ 44:1-143 and 44:4-104. Among the enforcement tools available to the court is sequestration of the obligor's personal estate and profits and rents of the obligor's real estate, with the director of the county welfare department or someone else appointed as receiver and these assets being applied to child support payments as the court sees fit. § 44:4-105.

"The county through its governing body may also bring an appropriate action to recover any sum of money due for the relief, support and maintenance of any poor person against any person chargeable by law therefor." § 44:4-102. See § 44:1-141 for a similar provision.

Support Payments Assigned. "Application for a receipt of aid to families with dependent children shall operate as an assignment . . . to the county welfare agency of any rights to support from any other person." § 44:10-2.

Agency Can request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

11/3/83

NEW MEXICO

New Mexico Statutes Annotated
1978 (1982 Session Laws)

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 40-6-1 - 40-6-41.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Section 40-5-9 states that "[t]he procedure shall be the same as in other civil actions," which is preponderance of the evidence.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Actions Brought by State. If the child is likely to become a public charge, the state may bring a civil action to compel support and establish paternity. § 40-5-7. Also see the criminal penalty for nonsupport, § 40-5-20, referred to in Support Enforcement Apart from Paternity or Dissolution of this survey. That section allows for a state action when paternity has been acknowledged in writing but not yet adjudicated.

Default Judgment Allowed. "If the defendant fails to appear, the trial shall proceed as if he were present; and the court shall upon the findings of the judge or the verdict of the jury make such orders as if the defendant were in court."
§ 40-5-12.

Procedure for Blood Tests. No statutory provision.

Support Without Paternity Determination. Section 40-5-18 does provide for an agreement or compromise concerning the support of the child, and the section makes no mention of the necessity of acknowledging paternity. Such agreement "shall be binding upon the mother and child only when adequate provision is fully secured by payment or otherwise and when approved by a court having jurisdiction to compel support of the child. The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support of the child."

Factors Considered in Setting Support. "When a support obligation is imposed on the parents, the amount due from either parent for support of the child and the period during which support shall be due are determined by the court on the basis of all relevant facts, including but not limited to:

- "(1) the need of the child;
 - "(2) the standard of living and situation of the parents;
 - "(3) the relative wealth and income of the parents;
 - "(4) the ability of the parents to earn;
 - "(5) the need and capacity of the child for education;
 - "(6) the age of the child, and
 - "(7) the ability of the child to earn."
- § 40-5-2.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. Abandonment of a dependent by a person able to provide for the minor child's support, thereby leaving the child dependent on public support, constitutes a fourth degree felony. § 30-6-2. The statutory sections dealing with illegitimacy and support include a criminal penalty for

nonsupport: "The failure of either spouse, without lawful excuse, to support the child when parentage has been judicially established, or has been acknowledged in writing or by the past performance of parental obligations, is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the penitentiary for not exceeding two years or by both" § 40-5-20.

Initiation of Proceedings. See the criminal statutes in the above section.

Support Pending Divorce. "In any proceeding for the dissolution of marriage, division of property, disposition of children or alimony, the court may make . . . an order . . . for the control of the children or to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper." § 40-4-7A.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. The court "[s]hall make a specific determination and finding of the amount of support to be paid by a parent to provide properly for the care, maintenance and education of minor children, considering the financial resources of the parent and . . . [s]hall not consider present or future welfare financial assistance payments to or on behalf of the children in making its determination" § 40-4-11.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision. Section 40-5-16 indicates that support payments in a paternity action may be made to a trustee.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. All state, county, and municipal agencies shall, upon request, supply the human services department with information concerning the location, income, and property of absent parents, notwithstanding other provisions of law making such information confidential. § 27-2-32.

If the state information agency in a URESA action (designated as the human services department) does not know the location of the defendant or his or her property, and no state locator service is available, it shall use all means at its disposal to obtain such information. § 40-6-17. The prosecuting attorney shall also on his or her own initiative use all means at his or her disposal to locate the obligor or property. § 40-6-19.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. Section 40-4-19.1 permits a court to order that wages be deducted and paid toward a child support obligation. The court must find an arrearage of at least three payments, and a hearing is required.

Garnishment Specifically Available for Support. In proceeding to compel support and determine parentage and in a proceeding connected with the dissolution of marriage, the complainant or person entitled to benefits may enforce the judgment or decree by garnishment proceedings in accordance with state law. §§ 40-4-19 and 40-5-17.

Attachment Specifically Available for Support. In cases under the Public Assistance Act, the court "may make and enforce by attachment or otherwise such order to restrain the use

or disposition of the property of the defendant to provide for the support of the dependents during the pendency of the suit as in his discretion may seem just and proper." § 27-2-30. Nothing in §§ 40-4-12 - 40-4-19 [concerning creation and removal of liens in compliance with divorce decrees] "shall prevent a person or persons entitled to the benefits of any decree for alimony or support from enforcing the decree by attachment" § 40-4-19.

The complainant in an illegitimacy support proceeding shall also have available the remedy provided by the attachment law of New Mexico. "The judgment [giving support] when rendered, shall be alien on all real estate or the defendant . . . and . . . enforceable the same as other judgments." § 40-5-17.

Other Special Enforcement Tools. In proceedings to compel support and establish parentage, the court may order payments to be made to a trustee and is required to do so if the mother does not reside within the jurisdiction of the court. § 40-5-16.

"In proceedings for the dissolution of marriage, separation or support between husband and wife, the court may make an allowance of certain property or properties of either party or of both parties for the maintenance, education and support of the minor children of the parties, and may vest title to the part of the property so allowed in a conservator appointed by the court." § 40-4-14.

"The failure, without lawful excuse, of a parent to comply with and carry out a judgment for the support of the child whether the child be a resident in the jurisdiction where the judgment was rendered or not, is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the penitentiary for not exceeding two years, or by both such fine and imprisonment, at the discretion of the court." § 40-5-21.

Long-Arm Statute Specifically for Support. With respect to actions for divorce, separate maintenance, or annulment, the circumstance of living in the marital relationship within the state, notwithstanding subsequent departure from the state, subjects a person to the jurisdiction of the courts of this state as to all obligations arising from

alimony, child support, and property settlement if one party to the marital relationship continues to reside in the state. § 38-1-16.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The state may bring proceedings to compel support and establish parentage if an illegitimate child is likely to become a public charge. § 40-5-7.

Noncustodial parents are liable to the department in the amount of public assistance furnished to the children and the spouse with whom they are living. Apparently the department may bring the action. Liability is limited to the amount specified in the support order, when such an order has been entered. The department's power to seek reimbursement for claims not based on a prior judgment is limited to 6 years prior to the date of filing the action. § 27-2-8 (A).

Support Payments Assigned. No statutory provision.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

11/25/83

NEW YORK

McKinney's Consolidated Laws
(1981-1982 Supplement) 1983 Session Laws

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. Not adopted.

New York has adopted the Uniform Support of Dependents Law, which is similar to URESA and includes a section providing for the registration of foreign support orders as does part IV of URESA. Dom. Rel. Law §§ 30-43.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision.

Long-Arm Statute Specifically for Paternity. The court may serve process on an individual residing outside the state if one of six requirements is met. 1) The child was conceived in the state and the person over whom jurisdiction is sought is a parent or alleged parent. 2) The child resides in the state as a result of acts or directives of the person over whom jurisdiction is sought. 3) The person has resided with the child in the state. 4) The person either

acknowledged paternity in writing or furnished support for the child while either he or the child lived in the state.
5) The person filed with the putative father registry.
6) There is any basis consistent with federal or state constitutional law for the exercise of personal jurisdiction. Jud. Law - Fam. Ct. Act. § 154.

Paternity Actions Brought by State. Proceedings to establish paternity, if the mother or child is or is likely to become a public charge, may be commenced by a public welfare official. Jud. Law - Fam. Ct. Act § 522.

"The county attorney, or an attorney designated by the board of supervisors, or the corporation counsel of a city, shall represent the public welfare official . . . in all proceedings under this article in which the official is the petitioner." Jud. Law - Fam. Ct. Act § 535. If a social services official has accepted an assignment of support rights from a person receiving or applying for AFDC, that official or an authorized representative of the state may bring a proceeding in the family court to enforce such support rights and, when necessary, to establish the paternity of a child. Jud. Law - Fam. Ct. Act § 571(1).

Default Judgment Allowed. There is no express statutory provision, but two, somewhat conflicting provisions seem relevant. When a paternity petition is presented to the court and it appears that the respondent has failed to obey the summons, the court may issue a warrant directing that the respondent be arrested and brought before the court. Jud. Law - Fam. Ct. Act §§ 526 and 427.

It appears that a default judgment may be entered when service of summons is by mail, but "no default may be entered without proof satisfactory to the court that the respondent had actual notice of the commencement of the proceeding." Jud. Law - Fam. Ct. Act § 525(c).

Procedure for Blood Tests. On motion of any party, the court shall order the mother, her child, and the respondent to submit to one or more blood grouping tests to determine whether the defendant can be excluded as being the father of the child. The results of such tests may be received in evidence, but only in cases where definite exclusion is established. Jud. Law - Fam. Ct. Act § 532.

The court is given the authority to order blood tests in a support proceeding and may direct the respondent to pay for such test if he is financially able to do so. If the respondent is not financially able to pay for a blood grouping test, the court may direct payment from its own funds or from the funds of a public welfare officer (if the child is, or is likely to become, a public charge). Jud. Law - Fam. Ct. Act § 418.

Support Without Paternity Determination. It seems possible to have an agreement without determination of paternity if approved by the court. An agreement or compromise made by the mother or on behalf of either the mother or child concerning the support of either is binding upon the mother or child only if the court determines that adequate provision has been made and is fully secured and approves said agreement or compromise. Jud. Law - Fam. Ct. Act § 516.

"If an agreement for the support of petitioner is brought about, it must be reduced to writing and submitted to the family court for approval. If the court approves it, the court without further hearing may thereupon enter an order for the support of the petitioner by the respondent in accordance with the agreement, which shall be binding upon the respondent and shall in all respects be a valid order as though made after process had been issued out of the court. The court record shall show that such order was made upon agreement." Jud. Law - Fam. Ct. Act § 425.

Factors Considered in Setting Support. "The amount of support determined in accordance with the statewide child support formula . . . shall constitute prima facie evidence of the ability of any person chargeable . . . to support or contribute such amount towards the support . . ." Jud. Law - Fam. Ct. Act § 440(3).

Information on Assets of Father. "On its own motion, the court may adjourn the hearing after it has made a finding of paternity to enable it to make inquiry into the surroundings, conditions and capacities of the child, into the financial abilities and responsibilities of both parents . . ." Jud. Law - Fam. Ct. Act § 534.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"The parents of a child under the age of twenty-one years are chargeable with the support of such child and, if possessed of sufficient means or able to earn such means, may be required to pay for such child's support a fair and reasonable sum according to their respective means, as the court may determine and apportion." Jud. Law - Fam. Ct. Act § 413.

A parent of a child under age twenty-one also has a duty to support that child, if of sufficient ability, if the child is a recipient of public assistance or welfare or is a patient in an institution in the department of mental hygiene. Jud. Law - Fam. Ct. Act. § 415.

"[T]he . . . parent of a recipient of public assistance or care or of a person liable to become in need thereof shall, if of sufficient ability, be responsible for the support of such person, provided that a parent shall be responsible only for the support of a child under twenty-one years." Soc. Serv. Law § 101(1).

A person is guilty of nonsupport of a child when, being a parent, guardian, or other person legally charged with the care or custody of a child less than sixteen years old, he or she fails or refuses without lawful excuse to provide support for such child when he or she is able to do so; or becomes able to do so when, though employable, he or she voluntarily terminates his or her employment, voluntarily reduces his or her earning capacity, or fails to diligently seek employment. Nonsupport of a child is a class A misdemeanor. Penal Law § 260.05.

Initiation of Proceedings. Procedure for compelling support may be found at Jud. Law - Fam. Ct. Act §§ 421 - 430. The process is initiated by a husband, wife, child, or relative filing a petition to compel support. It may also be initiated by a social services official, commissioner of mental health, parent or guardian or other person in loco parentis, representative of an incorporated charitable or philanthropic society having a legitimate interest in the petitioner, or a guardian ad litem, committee, next friend, or other person appointed by the court. Jud. Law - Fam. Ct. Act §§ 422-423.

Support Pending Divorce. In a matrimonial action or in an independent action for child support, the court may order either or both parents to pay child support, without considering the misconduct of either party, but after consideration of all relevant factors. Dom. Rel. Law § 236B(7)(a).

"In an action for divorce . . . the supreme court on its own motion or on motion of one of the parties may refer an application for temporary or permanent support or both of a child of the marriage to the family court. If the supreme court so refers the application, the family court shall have jurisdiction to determine the application with the same powers possessed by the supreme court . . ." Jud. Law - Fam. Ct. Act § 461(c). See Jud. Law - Fam. Ct. Act § 464 for a similar provision on temporary spousal support.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. "In any matrimonial action, or in an independent action for child support, the court . . . may order either or both parents to pay temporary child support or child support. The court shall not consider the misconduct of either party but shall make its award for child support after consideration of all relevant factors, including:

- "(1) the financial resources of the custodial and non-custodial parent, and those of the child;
 - "(2) the physical and emotional health of the child, and his or her educational or vocational needs and aptitudes;
 - "(3) where practical and relevant, the standard of living the child would have enjoyed had the marriage not been dissolved;
 - "(4) where practical and relevant, the tax consequences to the parties; and
 - "(5) the non-monetary contributions that the parents will make toward the care and well-being of the child."
- Dom. Rel. Law § 236B(7)(a).

In any divorce action the court must give such direction, between the parties, for the custody, care, and maintenance of any child of the parties as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child. Dom. Rel. Law § 240.

The state department of social services is authorized to promulgate regulations to provide for a statewide child support formula. Such formula shall reflect:

- (1) all earnings, income, and resources of the absent parent, including real and personal property;
- (2) the earnings potential of the absent parent;
- (3) the reasonable necessities of the absent parent;
- (4) the ability of the absent parent to borrow;
- (5) the needs of the child for whom support is sought;
- (6) the amount of public assistance that would be paid to the child under the full standard of need applicable to such child;
- (7) the existence of other dependents; and
- (8) other reasonable criteria that the department may choose to include.

Soc. Serv. Law § 111-i.

The amount of support determined according to this formula constitutes prima facie evidence of ability to pay. Jud. Law - Fam. Ct. Act. § 440(3).

Information on Assets of Parties. "In all matrimonial actions and proceedings in which alimony, maintenance or support is in issue and all support or maintenance proceedings in family court, there shall be compulsory disclosure by both parties of their respective financial states." Dom. Rel. Law § 236B(4).

See also Dom. Rel. Law § 236A(2) which is the same provision for matrimonial actions and proceedings commenced on or after 9/1/75.

"In all support proceedings in family court, there shall be compulsory disclosure by both parties of their respective financial states" Jud. Law - Fam. Ct. Act § 424-a.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Any support order made by the court shall direct that payments be made either directly to the petitioner or to the support collection unit designated by the appropriate social services district, who shall receive and disburse funds so paid. Jud. Law - Fam. Ct. Act § 440(1).

"Any support order made by the [family] court in such a proceeding [where assignment of support rights has been made and accepted] shall direct payments be made directly to the support collection unit." Jud. Law - Fam. Ct. Act § 571(3).

In divorce proceedings in the supreme court (as opposed to the family court), support may be ordered paid to the custodial parent or third persons (for goods and services furnished to the child). Dom. Rel. Law § 240.

In a paternity action, "[t]he court may require the payment to be made to the mother or the support collection unit." Jud. Law - Fam. Ct. Act § 546(a).

Mechanism for Keeping Track of Obligors. The court shall require that a parent who has been found chargeable with the support of a child make his or her residence known at all times should he or she move from the address last known to the court, by reporting such change to the support collection unit. Jud. Law - Fam. Ct. Act §§ 442, 443. There does not seem to be any statutory provision if the supreme court (rather than the family court) is exercising jurisdiction over a divorce case.

Also the court shall require persons chargeable with support to provide his or her social security number, the name and address of his or her employer, a change of employer, changes in employment status affecting compensation received, including rate of compensation and loss of employment, and to keep the support collection unit advised of the current employer and current employment status. Jud. Law - Fam. Ct. Act § 440(2).

Enforcement of Support by State in Nonwelfare Cases. The state department of social services and the social services districts, in accordance with the regulations of the department, shall make services relating to the establishment of paternity and the enforcement of support obligations available to persons not receiving aid to dependent children upon application by such persons. The department may require payment of an application fee for such services and the deduction of costs in excess of such fee from the amount collected in behalf of such persons. Soc. Serv. Law § 111-g.

Location of Absent Parents. The state department of social services shall maintain and operate a parent locator service for the location of absent parents and fathers of children born out of wedlock. Soc. Serv. Law § 111-b(4).

"The social services official providing aid to dependent children allowances . . . , for the benefit of a child who has an absent parent, shall . . . take such steps and make such efforts to locate any parent of such child . . . as all available means will allow" Soc. Serv. Law § 352(2)(a). See also Soc. Serv. Law § 352.

To effectuate the purposes of the support enforcement section, the commissioner shall request and receive from the departments, boards, bureaus, or other agencies of the state or its political subdivisions, such assistance and data as will enable the department and social services districts to properly carry out their powers and duties to locate absent parents and to enforce their liability for the support of their children. Soc. Serv. Law § 111-b(4)(k).

"The court shall require any person chargeable with support under the provisions of article four [support proceedings], five [paternity proceedings], or five-A [special provisions relating to enforcement of support and establishment of paternity] of this chapter to provide their social security number . . . to the support collection unit" Jud. Law - Fam. Ct. Act § 440(2).

Child Support Priority over Other Creditors. "[A]n assignment of or order for monies due or payable to be paid for the support of a person's children under the age of twenty-one . . . in compliance with an order of the court for the support of his or her children under the age of twenty-one . . . takes priority over any other assignment or garnishment of monies due or payable, except as to those deductions made mandatory by law or hereinafter made mandatory, including labor union dues." Pers. Prop. Law § 49-b(2).

Wage Assignment Specifically Available for Support. The family court is authorized to enter an order with respect to an income deduction in accordance with Personal Property Law § 49-b in any support proceeding. Jud. Law - Fam. Ct. Act § 448.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. If a respondent is brought before the court for failure to obey a lawful support order, the court may order the sequestration of his or her property, both real and personal. The property thus sequestered and the income therefrom may be applied in whole or in part toward the support order. Jud. Law - Fam. Ct. Act §§ 454, 457 [only where respondent leaves or threatens to leave the state], 429, and 475. Soc. Serv. Law § 103 provides for seizure of property of persons liable for support by the responsible public welfare official.

In an action for divorce the relevant sections are Dom. Rel. Law §§ 233 [sequestration of defendant's property in an action for divorce where defendant cannot be personally served], 243 [security for payments by defendant in action for divorce; sequestration], and 244 [enforcement by execution of judgment or order in action for divorce].

Other Special Enforcement Tools. If a respondent is brought before the court for failure to obey a lawful order issued under a paternity proceeding, the court may commit the respondent to jail for a term not to exceed six months if the failure was willful. Such commitment may be served on certain specified days or parts of days as the court may direct. Jud. Law - Fam. Ct. Act §§ 548 and 454. Jud. Law - Fam. Ct. Act §§ 471-479 set out the provisions relating to undertaking bond.

If an undertaking uses real property as security, it may be filed with the county clerk and will constitute a lien. Jud. Law - Fam. Ct. Act § 472.

Long-Arm Statute Specifically for Support. "A court in any matrimonial action or family court proceeding involving a demand for support or alimony may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the

plaintiff in this state, or the obligation to pay support or alimony accrued under the laws of this state or under an agreement executed in this state." Civ. Prac. Law § 302(b).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. Each social services district shall enforce support obligations owed to the state and to the social services district pursuant to an assignment of support rights. Soc. Serv. Law § 111-c(2)(d).

"A public welfare official . . . is empowered to bring proceedings in a court of competent jurisdiction to compel any person liable by law for support to contribute to the support of any person cared for at public expense or such person liable to become so dependent." Soc. Serv. Law § 102(1).

Support Payments Assigned. Application for or receipt of aid to dependent children shall operate as an assignment to the state and the social services district concerned of any rights to support from any other person. Soc. Serv. Law § 348(2). One of the conditions of eligibility for public assistance is that the applicant is required "to assign to the state and the social services district any rights to support such person may have either in his own behalf or in behalf of any other family member for whom he is applying for or receiving aid." Soc. Serv. Law § 349-b(1)(a).

Agency Can Request Modification of Support. The agency can request modification as assignee of support rights. Soc. Serv. Law § 349.

Service on Agency if Public Assistance Involved. No statutory provision.

12/1/83

NORTH CAROLINA

General Statutes of North Carolina
(1981 Cum. Supp.) 1983 Session Laws

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 52A-1 - 52A-32.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. The burden of proof in a civil action for paternity is beyond a reasonable doubt (§ 49-14), which is the same burden as in the criminal nonsupport action under § 49-2.

Long-Arm Statute Specifically for Paternity. "The act of sexual intercourse within this State constitutes sufficient minimum contact with this forum for purposes of subjecting the person or persons participating therein to the jurisdiction of the courts of this State for actions brought under this Article for paternity and support of any child who may have been conceived as a result of such act." § 49-17(a).

Paternity Action Brought by State. There are two procedures for determination of paternity: one is civil [§ 49-14(a)] and one is criminal [§ 49-2]. The criminal statute makes failure to support an illegitimate child a misdemeanor, and paternity is one of the issues to be decided. § 49-7.

Under the criminal proceeding, the action "may be brought by the mother or her personal representative or, if the child is likely to become a public charge, the director of social services or such person as by law performs the duties of such official in said county where the mother resides or the child is found." § 49-5.

Proceedings under the civil provision may be brought by the director of social services or such person as by law performs the duties of such official when the child or the mother, in case of medical expenses, is likely to become a public charge. § 49-16.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. Under the criminal proceeding, "[t]he court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adopted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person." § 49-7.

"Upon receipt of a motion . . . [in a criminal action] the court shall proceed as follows: (1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those events, and if they believe that the tests and comparisons were conducted

properly, then it will be their duty to decide that the alleged-parent is not the natural parent; whereupon the court shall enter the special verdict of not guilty." § 8-50.1(a).

"In the trial of any civil action in which the question of parentage arises, the court . . . upon motion of the plaintiff, alleged-parent defendant, or other interested party, shall order blood tests." The provisions for jury instruction are similar to those for criminal actions. § 8-50.1(b).

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. Under the criminal proceeding, "[t]he court . . . shall take into account the circumstances of the case, the financial ability to pay and earning capacity of the defendant, and his or her willingness to cooperate for the welfare of the child." § 49-7.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"Any parent who shall willfully neglect or refuse to provide adequate support for that parent's child, whether natural or adopted, and whether or not the parent abandons the child, shall be guilty of a misdemeanor" § 14-322(d).

"Any man or woman who, without just cause or provocation, willfully abandons his or her child or children for six (6) months and who willfully fails or refuses to provide adequate means of support for his or her child or children during the six months' period, and who attempts to conceal his or her whereabouts from his or her child or children with the intent of escaping his lawful obligation for the support of said child or children, shall be punished as a Class I felon." § 14-322.1.

"Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a

minor child by his guardian may institute an action for the support of such child" §50-13.4(a).

"In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child, and any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support."
§ 50-13.4(b).

Initiation of Proceedings. "Upon conviction for an offense under this section [abandonment, neglect, or inadequate support in a criminal proceeding], the court may make such order as will best provide for the support, as far as may be necessary, of the abandoned spouse or child, or both, from the property or labor of the defendant." § 14-322(e).

In a civil nonsupport proceeding: "Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child"
§ 50-13.4(a).

Support Pending Divorce. In a proceeding for custody and support of minor children [including divorce and annulment proceedings], "the court may enter orders for the temporary custody and support of the child, pending the service of process or notice" § 50-13.5(d)(2).

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In an action by a parent, person, agency, organization, or institution having custody of the child, or in any action for custody of the child or for support, "[p]ayments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case." § 50-13.4(c).

In a civil proceeding for paternity (§ 49-14) or criminal action for nonsupport (§ 49-2), the court "shall take into account the circumstances of the case, the financial ability to pay and earning capacity of the defendant, and his or her willingness to cooperate for the welfare of the child."
§ 49-7.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Payments "shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the court, for the benefit of such child." § 50-13.4(d).

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. All child support and paternity determination services provided to recipients of public assistance must be made available to any individual not receiving public assistance, upon application and payment of a fee. § 110-130.1.

Location of Absent Parents. "The Department of Human Resources shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The Department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents

"[T]he Department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the

location, income and property of such parents, notwithstanding any provision of law making such information confidential." § 110-139.

The Department of Human Resources must also transmit requests for information about absent parents or children to the federal parental locator service upon request from a judge, federal attorney, or district attorney, to aid in enforcing state or federal laws concerning child custody determinations. § 110.139.1.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. Under the divorce and alimony laws, "[t]he court may require the person ordered to make payments for the support of a minor child to secure the same . . . by requiring the execution of an assignment of wages, salary or other income due or to become due." § 50-13.4(f)(1).

Garnishment Specifically Available for Support. Under the divorce and alimony laws, "[t]he remedies of attachment and garnishment . . . shall be available in an action for child-support payments Additionally . . . a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition." § 50-13.4(f)(4). Section 50-13.4(f)(4) also provides for a continuing wage garnishment proceeding.

Section 110-136 provides that a judge may order garnishment of no more than forty percent of the responsible parent's monthly disposable earnings.

Attachment Specifically Available for Support. "The remedies of attachment and garnishment . . . shall be available in an action for child-support payments" § 50-13.4(f)(4).

Other Special Enforcement Tools. "A judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by separate action be reduced to judgment which shall be a lien as other judgments." § 50-13.4(f)(8).

"The remedies . . . [of] Execution; . . . Execution Sales; . . . and Supplemental Proceedings, shall be available for the enforcement of judgments for child support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution" § 50-13.4(f)(10).

Orders for child support are enforceable by civil contempt proceedings; disobedience is punishable by criminal contempt proceedings. § 50-13.4(f)(9).

In a paternity proceeding, the court may order the defendant to serve up to six months in prison, but may place the defendant on probation conditioned on payment of support. § 49-8.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall without delay notify the designated representative who shall take appropriate action under this Article to provide that the parent(s) responsible supports the child." § 110-138.

The acceptance of public assistance creates a debt owing to the state by the responsible parent. § 110-135.

"Any county interested in the paternity and/or support of dependent child may . . . institute civil or criminal proceedings against the responsible parent of the child and may take up and pursue any action commenced by the mother, custodian or guardian for the maintenance of the child, including any ancillary action to establish paternity, if she fails to prosecute to final judgment." § 110-130.

North Carolina

Support Payments Assigned. "By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the State or to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid." § 110-137.

Agency Can Request Modification of Support. "An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested." § 50-13.7(a).

Service on Agency If Public Assistance Involved. No statutory provision.

12/1/83

NORTH DAKOTA

North Dakota Century Code
(1981 Cum. Supp.)
1983 Session Laws

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UNIFORM ACTS

Uniform Parentage Act. §§ 14-17-01 - 14-17-26.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. §§ 14-07-15 - 14-07-22.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 14-12.1-01 - 14-12.1-43.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Under the Uniform Parentage Act, paternity actions are civil actions and are governed by the rules of civil procedure. § 14-17-13.

Long-Arm Statute Specifically for Paternity. The Uniform Parentage Act gives the courts in this state jurisdiction over anyone who has sexual intercourse in the state with respect to an action involving a child who may have been conceived by that act. § 14-17-07(2).

Paternity Action Brought by State. Under the Uniform Parentage Act, a paternity action may be brought by the authorities charged with the child's support if there is no presumed father. Also any interested party may bring the action if certain presumptions of paternity exist. §§ 14-17-04 and 14-17-05.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. Under the Uniform Parentage Act, the court may, and on a party's motion shall, require the child, mother, or alleged father to submit to blood tests to be performed by a court-appointed expert. The court, on a party's reasonable request, shall order independent tests by other experts. The court shall determine the number and qualifications of the experts. § 14-17-10.

Evidence relating to paternity may include blood test results weighed with the statistical probability of paternity. § 14-17-11. If a pretrial hearing has been held and a party refuses to accept the judge's or referee's recommendations, the court shall require blood tests if practicable. § 14-17-12. The defendant can offer evidence only about a man who had sexual intercourse with the mother near the conception time if the defendant has undergone and made available blood tests that do not exclude him as the father. § 14-17-13(3).

The court may order the blood test costs to be paid by the parties in the proportions and at the times it determines and may order an indigent party's portion to be paid by the appropriate social service board. § 14-17-15.

Support Without Paternity Determination. Under the Uniform Parentage Act, any promise to furnish child support that is in writing and grows from a presumed or alleged father and child relationship does not require consideration and shall be enforceable according to its terms. § 14-17-21(1). However, only a support agreement made pursuant to § 14-17-12 acts as a bar to a paternity action. § 14-17-05(4).

Under § 14-17-12, the court can approve a support agreement with no acknowledgement of paternity if the alleged father assumed a defined economic obligation to the child and all parties approve the agreement. The judge must consider the factors in setting child support and the likelihood of paternity being established.

Also, if the alleged father and mother try to marry after the child's birth and the man is obligated to support the child under a written voluntary agreement, this creates a presumption of paternity within a paternity action. § 14-17-04.

Factors Considered in Setting Support. Under the Uniform Parentage Act, the court shall consider all the relevant facts including the:

- (1) child's needs,
- (2) parents' standard of living and circumstances,
- (3) parents' relative financial means,
- (4) parents' earning ability,
- (5) child's need and capacity for education, including higher education,
- (6) child's age,
- (7) child's financial resources and earning ability,
- (8) parents' responsibility for the support of others, and
- (9) value of custodial parent's services. § 14-17-14(5).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Any married person may maintain an action in the district court of the county where the person resides for failure to support minor children living with the party bringing suit. § 14.08-01.

Initiation of Proceedings. The practice in an action against a husband or wife to provide support for his or her minor children shall conform as nearly as possible to the practice in actions for divorce. § 14-08-03.

In a criminal nonsupport action, the district attorney may prosecute for desertion or nonsupport. During the course of the trial, with the consent of the defendant, the court in its discretion may establish a bond in lieu of punishment. §§ 14-07-19 and 14-07-20.

Support Pending Divorce. During the time that an action for divorce is pending, the court may issue, ex parte, an order requiring a party to pay support of the spouse and minor children. § 14-05-23.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Under the Uniform Parentage Act, the court may order payments to the mother, clerk of court, person, corporation, or agency designated. § 14-17-16.2.

"In any action wherein a court decrees that payments for child support or alimony combined with child support be made, the court shall provide in its decree that such payments be made to the clerk of court as trustee for remittance to the recipient or person or public agency providing support for such recipient." § 14-08-07(1).

Mechanism for Keeping Track of Obligor. "The parties subject to the decree shall immediately inform the clerk of court of any change of address or change of any other condition which may affect the proper administration of sections 14-08-07 through 14-08-10." § 14-08-07(1).

In an action under URESA, the prosecuting attorney on his or her own initiative shall use all means at his or her disposal to locate the obligor or his or her property. § 14-12.1-19.

If the state information agency (designated as the public welfare board) does not know the location of the obligor or property, and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official state records and other sources. § 14-12.1-17.

Enforcement of Support by State in Nonwelfare Cases. One of the duties of the state's attorney is to "[a]ssist the district court in behalf of the recipient of payments for child support or alimony combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments." § 11-16-01(15).

There is also an automatic enforcement mechanism for all child support orders. The clerk of court, upon application of an authorized person or agency, sends notice to a person who failed to make the required support payment that informs that person that a wage assignment is to go into effect unless a timely request for a hearing is made. § 14-09-09.1.

Location of Absent Parents. Section 50-09-08 gives all public assistance agencies authority to provide service for locating absent parents.

Child Support Priority over Other Creditors. Wage assignments ordered by the court have priority over any other attachment, execution, garnishment, or wage assignment. § 14-09-09.1(7).

Wage Assignment Specifically Available for Support. Each judgment containing a child support provision must include a wage assignment provision. This automatic enforcement mechanism requires the clerk of court to send notice to an obligor who failed to make the required support payment within 20 days of the due date that a wage assignment will go into effect unless a timely request for hearing is made. Employers must notify the clerk of court when the obligor terminates employment.

Where a wage assignment has not been secured, the court may order an assignment upon the application of the child or an interested party when the obligor fails to make a support payment within 20 days of the due date. § 14-09-09.2.

"This section does not authorize a clerk of court who receives child support payments as trustee under section 14-08-07 to make such application." § 14-09-09.1.

Garnishment Specifically Available for Support. "[T]he court may . . . enforce the obligation [for child support] by attachment, garnishment, or by other appropriate remedies" § 14-08.1-03.

Attachment Specifically Available for Support. The court may enforce an obligation for support by attachment. § 14-08.1-03.

Other Special Enforcement Tools. Under the Uniform Parentage Act, the public authority that furnishes support can enforce the support duty against the father. § 14-17-16(1).

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Upon request of the county social service board director or the executive director of the social service board of North Dakota, the state's attorney of any county furnishing public assistance or poor relief shall commence any appropriate action or proceeding under sections 14-08.1-02 and 14-08.1-03 [support enforcement provisions]." § 14-08-1.04.

A person legally responsible for the support of a minor child who fails to provide support, subsistence, or education for the child is liable for the value of support provided by institutions, agencies, or county social service boards. Any payment of public assistance money made to or for the benefit of a child creates a presumption that the payment equals the reasonable value of care or support.
§ 14-08.1-01.

Support Payments Assigned. An applicant for assistance is deemed to have assigned to the state agency all rights to child support from any obligor. § 50-09-06.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. The clerk of court is to inform the county welfare board when a support decree has been issued and when support payments are being received. § 14-08-08.

OHIO

Ohio Revised Code Annotated (Page)
(1982 Supp.)

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UNIFORM ACTS

Uniform Parentage Act. §§ 3111.01 - 3111.19.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version
including part IV. §§ 3115.01 - 3115.34.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Under the Uniform Parentage Act,
a paternity action is civil, governed by the rules of civil
procedure. § 3111.08.

Long-Arm Statute Specifically for Paternity. Under the Uniform
Parentage Act a person who has sexual intercourse in the
state submits to the jurisdiction of the state courts as to
an action brought under the paternity statute with respect
to a child who may have been conceived by that act of
intercourse. § 3111.06.

Paternity Actions Brought by State. If a child receiving
public support becomes the subject of an action, the county
department of welfare or other public agency may intervene
to collect or recover the support. § 3111.07.

Default Judgment Allowed. If a defendant doesn't appear at the mandatory pretrial hearing, plaintiff may file a motion for default judgment. The court may under a judgment against the defendant after hearing satisfactory evidence of the truth of the statements in the complaint. § 3111.08.

Procedure for Blood Tests. The court may, upon its own motion or upon the timely motion of any party to the action, order genetic tests on the mother, child, alleged father, or any other defendant. The court shall appoint qualified examiners to make the tests; however any party may demand that other qualified examiners perform the tests independently. If the court finds that the examiners' conclusions excludes the alleged father, it shall enter a judgment that the man is not the father. If the examiners disagree in their findings or conclusions, the court or jury shall determine the father based upon all the evidence. § 3111.09. Evidence relating to paternity may include genetic tests weighted in accordance with evidence of the statistical probability of the alleged father's paternity. § 3111.10.

Support Without Paternity Determination. After the commencement of an action and before judgment, the alleged father and mother may reach a compromise agreement concerning support of the child. In reviewing the obligation undertaken by the alleged parent, the court shall consider the interest of the child, factors to be considered in setting support under § 3111.13, and the probability of establishing the existence of a parent and child relationship in a trial. § 3111.19. However, agreements do not bar paternity actions. § 3111.04.

Factors Considered in Setting Support. A court enforcing the obligation of support shall base the judgment or order of support upon the financial status of the parents and the father's ability to pay support, including, but not limited to the following:

- 1) needs of the child,
- 2) standard of living and circumstances of the parents,
- 3) the relative financial means of the parents,
- 4) the earning ability of the parents,
- 5) the need and capacity of the child for education,
- 6) the age of the child,
- 7) the financial resources and earning ability of the child,
- 8) the responsibility of the parents for the support of others,

- 9) the value of services contributed by the custodial parent. § 3111.13.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able." § 3103.03.

Ohio law makes nonsupport of dependants a first degree misdemeanor. § 2919.21(D).

Initiation of Proceedings. No statutory provision.

Support Pending Divorce. "When requested in the complaint, answer or counterclaim or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court or referee, without oral hearing and for good cause shown, . . . may make a temporary order regarding the custody, support, maintenance and care of minor children of the marriage . . . during the pendency of the action for divorce, annulment or alimony." Ohio R. Civ. P. 75(m)(1).

Effect on Support of Denial of Visitation. "The court may, upon notice and hearing, make such modification as it determines just in an order of support of a child . . . upon proof that the party subject to the order has been continuously or repeatedly prevented from exercising a right to visit the child established by an order of court." § 3109.05.

Factors Considered in Setting Support. "[A]ll relevant factors including:

- "(1) The financial resources of the child;
- "(2) The financial resources and needs of the custodial parent and of the noncustodial parent, when there is only one custodian;

- "(3) The standard of living the child would have enjoyed had the marriage continued;
- "(4) The physical and emotional conditions of the child and his educational needs;
- "(5) The financial resources and needs of both parents when there are joint custodians;
- "(6) The educational needs of the child and the educational opportunities which would have been available to him had the circumstances requiring a court order for his support not arisen." § 3109.05.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "[T]he court shall, upon request of either party or the court's own motion or when required by court rule, require that support payments be made to the bureau of support as trustee for remittance to the person entitled to receive payments" 2301.36(A).

Mechanism for Keeping Track of Obligors. "The parties affected by the support order shall inform the bureau of support of any change of name or address or other changes of conditions that may affect the administration of the order." § 2301.36(D).

Enforcement of Support by State in Nonwelfare Cases. The parties to a support proceeding may request that payments be made through the bureau of support. If payments fall behind, the bureau must notify the court. The court, after hearing, may order assignment or garnishment of wages to enforce the support order. The bureau may also notify the obligee of the availability of the services of the county IV-D agency. The obligee may apply to the agency or, if no county agency has been appointed, to the prosecuting attorney to maintain an action on behalf of the obligee to obtain the support money. §§ 2301.35 to 2301.38.

Location of Absent Parents. Section 5101.37 provides that the department of public welfare "may make such investigations as are necessary in the performance of its duties," and § 5107.14 gives the department the power to compel the attendance and testimony of witnesses.

In an action under URESA, the state information agency (designated as the attorney general) is authorized to use all means at his or her disposal to locate the obligor or his or her property if no state locator service is available, including examination of official state records and other sources. § 3115.15(B).

Child Support Priority over Other Creditors. An order to withhold the obligor's personal earnings for enforcement of a child support order is superior to any other order of attachment or execution on the obligor's wages. If two or more orders for support enforcement are received by the employer, they are to be given priority in the sequence in which they are received. § 3113.21(C).

Wage Assignment Specifically Available for Support. If child support has been ordered and it appears to the court that the obligor has failed to pay support as ordered, the court, on its motion or that of an interested party, may order the employer to withhold the obligor's personal earnings after notice to the obligor and the obligor's employer. § 3113.21(A).

"In any action where support is ordered under [a paternity, divorce, alimony, or child support proceeding] . . . and where it appears to the court making the order that the person ordered to pay the support has failed to make payments in accordance with the order, the court, on its own motion or that of an interested party, after notice to the employer of the person ordered to pay support and on the person ordered to pay the support, may order the employer to withhold from the personal earnings of the person . . . the amount ordered for support plus poundage and to continue the withholding each pay period until further order of the court." § 3113.21. See also §§ 2301.37 and 2301.38.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. "A mother, child, or welfare agency may enforce a father's obligation arising from paternity proceedings." § 3111.15.

After notice that the child support obligor is delinquent in support payments and that the court has not held a hearing on this matter or the court did so and the obligor has still not complied with the order, the obligee may

apply to the local support enforcement agency or to the prosecuting attorney to bring an action for execution against the obligor's property or attachment of the obligor's property. § 2301.38(A).

Other Special Enforcement Tools. "Upon entering a support order or at any time thereafter, the court may order the bureau of support to transmit the payments or make them payable to any third person that is either agreed upon by the parties and approved by the court or appointed by the court. Third persons include but are not limited to a trustee, a custodian, the guardian of the estate of the child, the county department of public welfare, county children's services board, or any appropriate social agency." § 2301.36(B).

Long-Arm Statute Specifically for Support. Rule 4.3(a) of the Ohio Rules of Civil Procedure provides: "Service of process may be made outside of this state, as provided herein, in any action in this state upon a person The term 'person' includes an individual . . . who . . . has caused an event to occur out of which the claim which is the subject of the complaint arose, from the person's: . . .

(8) Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state."

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "The office of child support and fraud is hereby created in the department of public welfare. The office shall establish and administer a program of child support enforcement, which program shall meet the requirements of Title IV-D of the 'Social Security Act.'" § 5101.31.

If a child is a recipient of aid pursuant to chapter 5107 or chapter 5113, a parent charged with maintenance shall not neglect or refuse to pay a county children services board or a county department of welfare the reasonable cost of

maintaining the child when the parent is able to do so. The board or department shall file charges against a parent for violation of this section unless the board or department files charges under § 2191.21, or unless nonsupport charges are filed by a relative or the child's guardian, or unless action to enforce support is brought under chapter 3115. § 3113.06.

Support Payments Assigned. "The acceptance of aid . . . constitutes an assignment to the department of public welfare of any rights an individual receiving aid has to support from any other person." § 5107.07.

See also, in the case of a conviction for nonsupport of a child, § 2151.49 which provides: "In the case of conviction for nonsupport of a child who is receiving aid under chapter 5107 or 5113 of the revised code, if the juvenile judge suspends sentence on condition that the person make payments for support, the payment shall be made to the county welfare department rather than to the child or custodian of the child."

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

12/13/83

OKLAHOMA

Oklahoma Statutes Annotated (West)
1951 (1981-82 Cum. Supp.)
1983 Session Laws

State Contact
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Tit. 10, §§ 501-508.

Uniform Desertion and Nonsupport Act. Tit. 21, §§ 853 and 854.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. Tit 12, §§ 1600.1 - 1600.38.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision.

Long-Arm Statute Specifically for Paternity. Possibly. Tit. 12, § 1272.2 provides: "A court may exercise personal jurisdiction over a person, whether or not a resident of this state, who lived within this state in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the marital relationship continues to reside in this state." (Emphasis added.)

Paternity Action Brought by State. The complaint may be made by any person. Tit. 10, § 71. "The board of county commissioners is hereby required to cause proceedings under this chapter to be brought in all cases where any child born out of wedlock or its mother is likely to become a charge upon the county." Tit. 10, § 81. The department of institutions, social and

rehabilitation services is authorized to provide paternity determination services for both those receiving and those not receiving AFDC benefits. Tit. 56, § 237.

Default Judgment Allowed. Apparently not. "The judge shall issue his warrant for the arrest of the accused requiring that he be forthwith brought before such court for trial." Tit. 10, § 72.

Procedure for Blood Tests. [T]he court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall, order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require." Tit. 10, § 501. If, based on the test results, all the experts conclude that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. Evidence showing the "possibility" of paternity shall be inadmissible, and the question of paternity will be resolved on the basis of other evidence. Tit. 10 § 504.

Support Without Paternity Determination. There is no specific statutory provision covering support agreements. However, a settlement that is approved by the county court relieves the natural father of all other liability for the support and education of the child to the extent to which settlement is honored by him. Tit. 10, § 85.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. Failure to support and abandonment of a child under the age of fifteen years are felonies punishable by imprisonment for one to ten years. Tit. 21, § 853. A parent who, without lawful excuse, willfully fails to support his or her child is guilty of a misdemeanor. If the parent leaves the state with the intent to avoid providing support for such child, that parent is guilty of a felony and may be "punished by imprisonment in the state penitentiary for a period not exceeding one (1) year." Tit. 21, § 852.

Initiation of Proceedings. No statutory provision.

Support Pending Divorce. After a petition has been filed in an action for divorce, the court may make and enforce an order for child support and alimony as it deems fit. Tit. 12, § 1276.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The department may collect and distribute support money and locate absent parents for an individual not receiving aid to dependent children if he or she makes the proper application. A reasonable fee and costs may be assessed for the services under the department's rules and regulations. Tit. 56, § 237(D).

Location of Absent Parents. The department of institutions, social and rehabilitative services is authorized to provide parent location services pursuant to title IV-D of the Social Security Act. Tit. 56 § 237(A).

In an action under URESA, the state information agency (designated as director of the department of public welfare) is authorized to use all means at his or her disposal to locate the obligor or his or her property, including official state records and other sources, provided that no location service is available. Tit. 12, § 1600.17(b). Furthermore, the prosecuting attorney on his or her own initiative may use all means at his or her disposal to locate the obligor or property. Tit. 12, § 1600.19(a).

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. In AFDC situations, any person employing an obligor shall honor a duly executed assignment of earnings presented by the director of the department as a plan to satisfy a support obligation. Tit. 56, § 238.2.

Garnishment Specifically Available for Support. "Any person awarded custody of and support for a minor child . . . shall be entitled to proceed by garnishment to collect any child support due and owing [T]he court may issue an order continuing the garnishment for the collection of child support for a period not to exceed six (6) months from the date of issuance of the order." Tit. 12, § 1171.2.

Attachment Specifically Available for Support. In paternity proceedings, "[t]he judge may also issue an attachment on such complaint without bond, which attachment shall specify the amount in value of property to be seized under the attachment." Tit. 10, § 74.

In divorce actions the court may enforce by attachment an "order to restrain the disposition of the property of the parties or of either of them." Tit. 12, § 1276.

Other Special Enforcement Tools. If the defendant is found guilty in a paternity proceeding, "[t]he court shall require the defendant to secure the performance of the order of the court, in such manner as the court shall direct, and the court shall have power to punish, as for contempt, any disobedience by the defendant of an order of the court issued under this Section." Tit. 10, § 78.

Long-Arm Statute Specifically for Support. Tit. 12, § 1272.2 provides that any party to a marital relationship carried on within the state is subject to personal jurisdiction for child support arising out of such relationship. A court may exercise personal jurisdiction over a person as to a cause of action arising from that person's "support for minor children who are residents of this state which affords a basis for the exercise of personal jurisdiction by this state consistently with the Constitution of the United States." Tit. 12, § 1701.03(a)(7).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. In the absence of a court order, the department may determine the amount of child support owed to the department based on public assistance. The department holds a hearing if the obligor makes a timely request for one. If there is no timely request, the support determination is final. If there is a hearing and the obligor makes a timely appeal to the district court, the court makes a de novo support determination. Tit. 56, §§ 238.3 and 238.4.

Enforcement of Support by State in Welfare Cases. The department is authorized to initiate legal actions and provide other services to enforce child support orders (for both recipients and nonrecipients of aid) if it is done in cooperation with the local district attorney. Tit. 56, § 237.

Support Payments Assigned. A recipient shall be required to assign to the department all rights of support. Tit. 56, § 237(C)(1).

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

12/20/83

OREGON

Oregon Revised Statutes
(1981 Replacement Part)
Digest of Oregon Laws (1983)

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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. §§ 109.250 - 109.262.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version
including part IV. §§ 110.005 - 110.291.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. The burden of proof is preponderance
of the evidence. § 109.155(2).

Long-Arm Statute Specifically for Paternity. The court has
jurisdiction of a party in any proceeding to establish
paternity or any action for declaration of paternity where
the primary purpose of the action is to establish responsi-
bility for child support, when the act of sexual intercourse
that resulted in the birth of the child is alleged to have
taken place in this state. Oregon Civil Procedure Rule 4K(3).

Paternity Action Brought by State. Any of the following may
commence filiation proceedings: (a) a mother of a child
born out of wedlock or a woman pregnant with a child who may
be born out of wedlock; (b) any state agency if it is

furnishing aid to the mother for the benefit of the child or if furnishing any services or assistance due to the birth, or impending birth, of the child; (c) the guardian of the child under specified circumstances; (d) the support enforcement division of the department of justice; or (e) a person claiming to be the father. § 109.125(1).

"In all cases of public interest, the proceeding may be commenced by the district attorney when requested by any person named in subsection (1) of this section."
§ 109.125(3).

In any case where a child, custodian parent, or other dependent person is a recipient of public assistance or care, support, or services, the support enforcement division of the department of justice is to represent such person or the department of human resources in modifying or enforcing support orders and "shall also move to initiate proceedings for orders of support." § 23.789(2).

If public assistance is not involved, the district attorney, when requested, carries out the same duties described above [in § 23.789(2)]. However, the district attorney may, after notice to the person requesting the service that recovery of the support owed is remote, require payment of an application fee. § 23.789(1).

Default Judgment Allowed. If the defendant fails to appear as required by citation, the court shall have the power to proceed to a determination of paternity and to impose such obligations on the defendant as it deems reasonable.
§ 109.145.

Procedure for Blood Tests. The following provisions are from the Uniform Blood Test Act. "In a civil action . . . in which paternity is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to such blood tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interest of justice so require." § 109.252. If the results of the test show that the alleged father is not the father, the question of paternity shall be resolved accordingly. If the experts disagree, the question shall be submitted upon all the

evidence. If the tests show the possibility of the alleged father's paternity, admission of this evidence is within the discretion of the court, depending upon the infrequency of the blood type. § 109.258.

Support Without Paternity Determination. Oregon had a statute that allowed a compromise or arrangement between the putative father and the court, but this statute (§ 109.220) was repealed in 1979. Also § 109.230 recognizes any contract between the parents of an illegitimate child as a legal contract "and the admission by the father of his fatherhood of the child is sufficient consideration to support the contract." The implication from this statute is that fatherhood must be admitted as part of the agreement.

Factors Considered in Setting Support. The court has the power to order the father to pay a sum it deems appropriate. § 109.155(4).

Information on Assets of Father. The court "may order such investigation or the production of such evidence as it deems appropriate to establish a proper basis for relief." § 109.155(2).

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. Parents must maintain their children who are poor and are unable to work to maintain themselves. § 109.010. Any minor child or a state agency on its behalf may apply to the circuit court for an order upon the child's mother or father to pay support. § 109.100. "The expenses of the family and the education of minor children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them. However, with regard to stepchildren, the obligation shall cease upon entry of a decree of separation or dissolution." § 109.053(1).

If the juvenile court determines the issue of child support within one of its proceedings, the court may require the parents of a child within the court's jurisdiction to pay toward the child's support such amounts at such intervals as the court may direct. § 419.513(1).

A parent, lawful guardian, or other person lawfully charged with the support of a child under eighteen, born in or out of wedlock, is guilty of a class C felony if he or she refuses or neglects to provide support for such child. It is no defense that either parent has subsequently married or had children of a subsequent marriage or that the child is being supported by another person or agency. § 163.555.

The maximum term of imprisonment for a class C felony is five years and the maximum fine for a class C felony is not to exceed \$2,500. § 161.605.

Initiation of Proceedings. A civil nonsupport action pursuant to either § 109.010 or 109.053(1) may be brought by the other spouse or by a state agency providing public assistance or services to the spouse or child in the county where either spouse resides. The plaintiff files a petition setting forth the facts and circumstances for the action. The court directs the other spouse to appear and show cause why a support order should not be entered. If the court determines the spouse bringing the action cannot obtain counsel, it will direct the district attorney or support enforcement division to prepare the petition and order to show cause. § 108.110(1).

If public assistance has been paid or the department of human resources has been assigned the support rights, the support enforcement division may also initiate administrative proceedings to get child support under § 416.415.

Support Pending Divorce. After commencement of a divorce action and before a decree therein, the court may provide for the support and maintenance of the minor children by one party or jointly, as well as for the support and maintenance of one party by the other. § 107.045(1).

Effect on Support of Denial of Visitation. The support duty is not affected until and unless a decree is made under § 107.431(1). Under that statute, the court may set aside or modify visitation or support rights after a separation or divorce decree when: the noncustodial parent makes the motion; service is made on the custodial parent and the support division if the child receives assistance; and a showing is made of interference with or denial of visitation without good cause.

Factors Considered in Setting Support. In making a support order within an action for separation, annulment, or dissolution of a marriage, the court shall consider:

- (1) the duration of the marriage,
- (2) the ages of the parties,
- (3) their health and conditions,
- (4) their work experience and earning capacity,
- (5) their financial conditions, resources, and property rights,
- (6) the provisions of the decree relating to custody of the minor children of the parties,
- (7) the age, health, and dependency conditions of the children of the parties, or either of them,
- (8) the need for maintenance, retraining, or education to enable the spouse to become employable at suitable work or to enable the spouse to pursue career objectives, and
- (9) such other matters as the court shall deem relevant.
§ 107.105(1)(c).

These guidelines also apply to civil actions for support not related to marriage dissolution. §§ 109.100 and 109.103.

When making a support order requiring any parent to support his or her child under § 419.513(1) (the juvenile court statute), the court shall "give due regard to the cost of maintaining the child, the financial resources of the parent . . . and all other financial demands on the resources of the parent." § 419.513(1).

Information on Assets of Parties. Whenever a domestic relations suit is filed, if minor children are involved, the court may cause an investigation to be made as to the earning ability and financial worth of the parties. § 107.425.

In arriving at a just property division in a divorce action, the court shall require full disclosure of all assets by the parties. § 107.105(1)(e).

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. If the child is a welfare recipient, payment is to be made to the department of human resources. § 23.765(1). If the child is not a welfare recipient, payment is to be made to the department or clerk

of court [§ 23.767(1)], or a special election may be made to make payment to a bank account with a receipt of deposit forwarded to the department or clerk within ten days [§§ 23.767(1), 23.807, and 23.809]. A delinquent payment terminates this special election, whereby all payments must be made to the clerk or department. §§ 23.790, 23.807, and 23.809(2) and (3). A representative indicates that all payments in AFDC cases and in 85 percent of the nonwelfare cases are made to the department.

Mechanism for Keeping Track of Obligor. Each person shall, within ten days after a change in home or business address, inform the clerk in writing of such change. §§ 23.765(2) and 23.775(2). In addition, § 23.765(2) requires the court order to contain the party's social security number.

Enforcement of Support by State in Nonwelfare Cases. If the obligor is delinquent for two payments of child support and public assistance is not involved, the clerk of court sends the obligor notice of the amount due. If payment is not made, the clerk notifies the district attorney or support enforcement division. Either may enforce the support order by bringing an action for contempt or wage assignment. §§ 23.764(3), 23.775(3) 23.780, and 23.789.

The district attorney or support enforcement division is given discretion to enforce a support obligation, but when the obligee requests enforcement, they lose that discretion and are required to enforce. §§ 23.765(4) and 23.789.

Location of Absent Parents. All state agencies, district attorneys, and police officers of the state, county, or any municipality or court thereof, shall cooperate with the support enforcement division of the department of justice in furnishing and making available information, records, and documents in the enforcement of support laws. §§ 180.320 and 418.135.

If the state information agency (designated as the attorney general's office) in an action under URESA does not know the location of the obligor or his or her property, it may use all means at its disposal to obtain this information (if no locator service is available), including official state records and other sources. § 110.162. Furthermore, "[t]he district attorney or the Support Enforcement Division shall use all means at their disposal to locate the obligor or the obligor's property. . . ." § 110.182.

Child Support Priority over Other Creditors. An order to withhold wages for delinquent support payments shall have priority over a notice of garnishment subsequently served on an employer. §§ 23.777(5) and 23.783(4).

Wage Assignment Specifically Available for Support. Any decree, judgment, or order for the payment of support for the benefit of a spouse and child may, in the discretion of the court, include an order directing any employer or trustee of the obligor to withhold and pay over to the department of human resources or the clerk of court an amount ordered to be paid for support out of the money to become due such obligor at each pay period. § 23.783(1).

Garnishment Specifically Available for Support. The court, upon notice that support payments are delinquent and upon application by the obligee, district attorney, or support enforcement division, shall issue an order directing any employer or trustee of the obligor to withhold any pay and pay over to the department of human resources or the clerk of court up to one-fourth of the obligor's disposable earnings each pay period until all delinquent amounts and interest are paid in full, plus all further amounts coming due before the delinquent amounts are paid in full. § 23.777. An administrative order of support may be enforced by garnishment under a similar statute. § 416.445.

If the support order was issued pursuant to § 419.513 (juvenile proceeding), the court may order the parent-obligor's employer, trustee, financial agency, or custodian to pay the court the money due or to become due to the obligor in the amount of one-fourth the obligor's earnings or the support ordered, whichever is less. § 419.515(2).

Arrearages under a temporary support order may also be garnisheed. After suit for divorce or annulment has begun, but before a decree is entered, if there is support owed under a court order, the amount owed will be entered as a judgment, and execution may be used to enforce its payment as if it were a final decree. § 107.095(2).

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. If there is a minor child of the marriage, the court's decree of divorce may provide for the appointment of one or more trustees to hold, control, and manage, for the benefit of the children, such real and personal property of either or both of the parties as the court may order to be allocated to their support and welfare; and to collect, receive, expend, manage, or invest any sum of money decreed for the support and welfare of minor children of the parties. § 107.105(1)(f).

If the support order was issued pursuant to § 419.513 (juvenile proceeding), then "no property of the child's parents . . . is exempt from levy and sale or other process to enforce collection of the amounts ordered by the court to be paid toward the support of the child." § 419.515(4).

Long-Arm Statute Specifically for Support. A court has jurisdiction over a party "[i]n any action to enforce personal obligations arising under Chapter 106 or 107 [marriage and divorce chapters] if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under Chapter 106 or 107 is not commenced within one year following the date upon which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action." Oregon Rules of Civil Procedure Rule 4K(2).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. If the department of human resources is assigned the support rights or public assistance has been paid, the administrator of the support enforcement division of the department of justice may, if no court order exists, issue a finding of financial responsibility by the obligor, on which the obligor can request a negotiation conference or a hearing. If no timely request for a hearing is received, the administrator may enter the support order. If a timely request is received, the obligor has a right to a hearing in the circuit court. § 416.415.

Enforcement of Support by State in Welfare Cases. When a support payment is delinquent, the department of human resources, in public assistance cases, shall promptly send, by mail, notice of the amount due to the defaulting party.

If payment is not made within ten days, the department of human resources shall send to the support enforcement division of the department of justice a copy of the statement and delinquent amount. Upon receipt of this statement, the support enforcement division, in its discretion, shall institute contempt proceedings or other enforcement action. §§ 23.765(4) and 23.789(2). See also § 23.780.

Support Payments Assigned. When the state provides public assistance, this creates an obligation called "state debt" owed by the parents, and the state is subrogated to the right to obtain child support. § 416.410(1) and (2). "Aid . . . shall not be granted . . . as long as the applicant or recipient refuses to assign to the Department of Human Resources any rights to support from any other person" § 418.042.

Whenever the state has custody of a child and must provide it with financial assistance, it shall "by operation of law, be assignee of and subrogated to any right to support from any other person."

§ 418.032. Receipt of public assistance operates as an assignment of support rights by operation of law. Digest of Oregon Laws (1983) 55 (Oregon Laws 1983 C. 761).

Agency Can Request Modification of Support. The agency can move for modification if it holds the support rights. If the order was entered by either the judicial or the administrative process, the holder of the support rights can move for modification by filing a motion with the support enforcement division or the court and serving notice on the parties. If it is filed with the division, its administrator will send it to the court for a hearing within thirty days of receipt unless the parties reach a stipulated agreement. Generally only future support payments may be modified. The party requesting the modification must show good cause and a change in circumstances. § 416.425.

In any case where the child or its custodian receives public assistance, the support enforcement division shall represent the child, the custodian, or the state in a modification of support action. § 23.789(2).

Service on Agency If Public Assistance Involved. Whenever a marriage

dissolution, annulment, or separation action is begun and public assistance is given, a copy of the petition must be served on the support enforcement division or the county branch of the division where the suit is filed. § 107.087.

Also the support enforcement division must be served when a support modification action is begun if public assistance is given to the child. See §§ 107.431 and 416.425.

12/20/83

PENNSYLVANIA

Purdon's Pennsylvania Statutes Annotated
Pennsylvania Consolidated Statutes Annotated (Purdon)
(1981-82 Cum. Supp.) 1982 Session Laws; 1983 Session Laws.

State Contact
Robert M. Kemp, President Judge
Fourth Judicial District
Tioga County Courthouse
Wellsboro, Pennsylvania 16901

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. 42 Pa. Cons. Stat. Ann. §§ 6131 - 6137.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. 42 Pa. Cons. Stat. Ann. §§ 6741 - 6780.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. The burden of proof is preponderance of the evidence. 42 Pa. Cons. Stat. Ann. § 6704(d).

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Actions Brought by State. "A complaint may be filed by any person . . . to whom a duty of support is owing. . . . It may be filed by any public body or public or private agency having any interest in the care, maintenance or assistance of any person to whom a duty of support is owing." 42 Pa. Cons. Stat. Ann. § 6704(b).

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Pennsylvania

The district attorney shall at all times aid in the enforcement of the duty to support and shall cooperate with the domestic relations section in the presentation of complaints for support (which may include a determination of paternity). 42 Pa. Cons. Stat. Ann. § 6711.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. The court on its own may and on request of any party shall order a blood test. If any party refuses to submit to such a blood test, the court may decide the issue of paternity against such party. 42 Pa. Cons. Stat. Ann. § 6133. If the experts agree that the blood test shows that the alleged father is not the father of the child, judgment shall be made accordingly.

However, if the experts disagree on the results of the blood test, the result may be placed into evidence. 42 Pa. Cons. Stat. Ann. § 6136.

Support Without Paternity Determination. If a written acknowledgment of paternity is not made within an action for child support, the applicable statute of limitations is changed. Instead of the paternity action having to be brought within six years of the child's birth, it can be brought within two years of the acknowledgment. 42 Pa. Cons. Stat. Ann. § 6704(b).

Factors Considered in Setting Support. No statutory provisions.

Information on Assets of Father. Subject to any inconsistent general rules and to the supervision and direction of the court, the domestic relations section shall have the power and duty to make such investigation as may be necessary and furnish the court with such information and assistance as it may require and generally perform such services as it may direct relating to support proceedings. § 42 Pa. Cons. Stat. Ann. § 6703.

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Pennsylvania

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"If any man shall separate himself from his wife or children without reasonable cause, and, being of sufficient ability shall neglect or refuse to provide suitable maintenance for his said wife or children, action may be brought, at law or in equity, against such husband for maintenance of said wife or children." Pa. Stat. Ann. tit. 48, § 131.

Pennsylvania also provides criminal sanctions for non-support. A person is guilty of a misdemeanor of the third degree if he, being a husband or father, separates himself from his wife or from his children without reasonable cause or willfully neglects to maintain his wife or children who are destitute or are dependent wholly or in part on his earnings. 18 Pa. Cons. Stat. Ann. § 4321.

A misdemeanor of the third degree is punishable by a fine not to exceed \$2,500 or imprisonment not to exceed one year or both. 18 Pa. Cons. Stat. Ann. §§ 1101 and 1104.

Initiation of Proceedings. The civil action for child support is begun by filing a complaint with the court's domestic relations section. An order is attached to the complaint that requires the parties to attend a conference with a hearing officer. The court may order child support based on an agreement reached between the parties at the conference or on the recommendations of the hearing officer. If the court does not enter the order or if a party requests a hearing within a certain time, then the court holds a de novo hearing and orders child support. 42 Pa. Cons. Stat. Ann. §§ 1910.5, 1910.11, and 1910.12.

This civil action may be brought by: (1) the person to whom the support duty is owed; (2) a person having custody of the child without appointment as guardian ad litem; (3) a public body or public or private agency with an interest in the child's care, maintenance, or assistance; or (4) a parent on behalf of a nonminor child who is owed support if the child gives written consent. 42 Pa. Cons. Stat. Ann. § 1910.3.

In a criminal nonsupport action, the wife or child may file the petition prepared by the district attorney. 18 Pa. Cons. Stat. Ann. § 4322.

Support Pending Divorce. There does not appear to be a provision regarding child support without the consideration of alimony. "The court may, upon petition, in proper cases, allow a spouse reasonable alimony pendente lite" Pa. Stat. Ann. tit. 23 § 502.

Also, at any time after a support action is begun, the court may, upon application, issue a preliminary injunction, "appoint a temporary receiver, order the seizure of property, dispose of seized property or grant other appropriate interim or special relief." 42 Pa. Cons. Stat. Ann. § 1910.25.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision. The court may order the person against whom complaint was made to pay such sum as the court shall think reasonable and proper. 18 Pa. Cons. Stat. Ann. § 4322(b).

Information on Assets of Parties. "Both parties shall submit to the court an inventory and appraisal of all property owned or possessed at the time action was commenced." Pa. Stat. Ann. tit. 23, § 403(b).

In a support action, the court can ascertain a party's earnings and enter an order directing the party's employer to furnish earning information. 42 Pa. Cons. Stat. Ann. § 1910.9(b). Also the parties can be required to give the court their most recent federal income tax returns, their pay stubs for the preceding six months, and statements on their income and expenses. 42 Pa. Cons. Stat. Ann. § 1910.11(c). See also "Information on Assets of Father."

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "An order of support of any person shall direct payment to be made payable to or payment to be made to the domestic relations section for transmission to the complainant or for transmission directly to a public body or public or private agency, whenever the

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care, maintenance, and assistance of such person is provided for by such public body or public or private agency." 42 Pa. Cons. Stat. Ann. § 6706(b).

Mechanism for Keeping Track of Obligors. Support orders shall notify the support obligor that he is "under a continuing obligation to inform the domestic section of any change of his address." 42 Pa. Cons. Stat. Ann. § 1910.17(b).

Enforcement of Support by State in Nonwelfare Cases. The domestic relations section shall have the duty to "[k]eep account of all payments made under order of court and promptly bring to the attention of the court and the district attorney any default in compliance with any order of court." 42 Pa. Cons. Stat. Ann. § 6703. See Pa. Stat. Ann. tit. 23, § 504 for a similar provision which requires the domestic relations section to notify the court whenever a support obligor is thirty days in arrears.

The department shall "[m]ake available child support and paternity determination services to any individual not eligible for assistance to the extent required by Federal law and upon application submitted to the department . . . the payment of any application fee . . . and the agreement to pay costs in excess of the fee out of any recovery made by the department." Pa. Stat. Ann. tit. 62, § 432.7(f).

Location of Absent Parents. It is the department's duty to "[c]reate a single and separate organizational unit which shall be responsible for developing and implementing . . . a federally approved state plan for child support. The unit shall maintain a parent locator service to locate absent legally responsible relatives utilizing all sources of information and legally available records and the parent locator service of the federal government." Pa. Stat. Ann. tit. 62, § 432.7(d).

Under URESA, if the department of public welfare does not know the location of the obligor or his or her property, and no state locator service is available, it shall use all means at its disposal to obtain the information, including the examination of official state records and other sources. 42 Pa. Cons. Stat. Ann. § 6757. The prosecuting attorney on his or her own initiative shall use all means at his or her disposal to locate the obligor or property. 42 Pa. Cons. Stat. Ann. § 6759.

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Pennsylvania

Attached to the complaint in a child support action is an order requiring the defendant to appear at a pretrial conference and bring with him or her, recent federal income tax returns and pay stubs for the preceding six months, either of which may have the obligor's social security number. 42 Pa. Cons. Stat. Ann. §§ 1910.5(c) and 1910.26(b).

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. The court, on the plaintiff's motion or its own, may order the attachment of the obligor's wages, salary, or commissions to be paid by the obligor's employer to the court's domestic relations section. The court shall also require that the employer file a report of the obligor's current wages within ten days after service of the order, and it may order similar supplemental reports. After receipt of any such report, the court may amend the attachment order. The wage attachment order continues until dissolved by the court. 42 Pa. Cons. Stat. Ann. § 1910.22.

If the obligor is thirty days or more in arrears, the chief clerk of court shall enter the judgment unless the obligor appears and shows cause why it should not be done. This judgment may be enforced by attachment of real or personal property or by garnishment of wages. 42 Pa. Cons. Stat. Ann. § 1910.23.

Garnishment Specifically Available for Support. See 42 Pa. Cons. Stat. Ann. §§ 1910.22 and 1910.23, above.

Attachment Specifically Available for Support. See 42 Pa. Cons. Stat. Ann. §§ 1910.22 and 1910.23.

Other Special Enforcement Tools. The court may issue the appropriate writ of execution against any property, real or personal, belonging to the defendant. 18 Pa. Cons. Stat. Ann. § 4322(d). See also reference to other interim or special relief. 42 Pa. Cons. Stat. Ann. § 1910.25.

Long-Arm Statute Specifically for Support. No statutory provision.

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Pennsylvania

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. A complaint may be filed by any public body or public or private agency having any interest in the care, maintenance, or assistance of any person to whom a duty of support is owed. 42 Pa. Cons. Stat. Ann. § 6704(b).

Support Payments Assigned. Acceptance of public assistance operates as an assignment of the recipient's rights to support. The assignment is effective only up to the amount of public assistance received and takes effect at the time the recipient is determined eligible for public assistance. Unpaid support obligations continue as an obligation to the department, after termination of public assistance, to the extent of any unreimbursed assistance. Pa. Stat. Ann. tit. 62, § 432.6(c).

The department has the power to require an applicant for assistance to assign support rights as a condition for eligibility. Pa. Stat. Ann. tit. 62, § 432.7(a)(2).

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

12/22/83

RHODE ISLAND

General Laws of Rhode Island
1956 (1983 Cum. Supp.)

State Contact
Ronald A. Lebel
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Department of Social and
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600 New London Avenue
Cranston, Rhode Island 02920

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV, but with variations. §§ 15-11-1 - 15-11-42.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. In any action to establish paternity under the Uniform Law on Paternity chapter, the standard that must be met by the plaintiff shall be that of clear and convincing evidence. § 15-8-8.

Long-Arm Statute Specifically for Paternity. "A person who has had sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to any action brought under this chapter with respect to a child who may have been conceived by that act of intercourse." § 15-8-7.

Paternity Actions Brought by State. Paternity may be determined upon the complaint of the mother, child, or public authority chargeable by law with the support of the child. § 15-8-2.

Default Judgment Allowed. An action under the paternity chapter is a civil action governed by the rules of civil procedure. § 15-8-16. Therefore, a default judgment may be available.

Procedure for Blood Tests. The court, upon its own initiative or upon motion, shall order the mother, child, and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of others so require. § 15-8-11. See also §§ 15-8-12, 15-8-13, and 15-8-14.

If all the experts conclude that the alleged father is not the father of the child, the question is resolved accordingly. If the experts disagree, the question shall be admitted on all the evidence. If the tests show a probability of paternity, the court may admit the results depending upon the infrequency of the blood type. § 15-8-14.

Support Without Paternity Determination. An agreement of settlement with the alleged father is binding only when approved by the court. § 15-8-21.

Factors Considered in Setting Support. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court shall consider all relevant facts, including:

- (1) the needs of the child;
- (2) the standard of living and circumstances of the parents;
- (3) the relative financial means of the parents;
- (4) the earning ability of the parents;
- (5) the need and capacity of the child for education;
- (6) the age of the child;
- (7) the financial resources and the earning ability of the child;
- (8) the responsibility of the parents for the support of others; and
- (9) the value of services contributed by the custodial parent. § 15-8-18(d).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Every person who shall abandon his or her spouse or children, leaving them in danger of becoming a public charge, or who shall neglect to provide according to his or her means for the support of his or her spouse or children or who shall neglect or refuse to aid in the support of his or her spouse or children shall be deemed guilty of a misdemeanor and shall be punished by imprisonment for not more than six months. § 11-2-1. Section 11-2-2 makes desertion of children by the father by leaving the state a crime.

Initiation of Proceedings. The director of the state department of social and rehabilitative services or the supervisor of the bureau of family support and domestic relations, or chief of police, or director of public welfare, or such officer as the town council of any town or the city council of any city may appoint for the purpose, may make complaint against any person for any of the offenses mentioned in Support Enforcement Apart from Paternity or Dissolution. § 11-2-3.

Support Pending Divorce. The court may regulate the custody and provide for the education, maintenance, and support of children of all persons petitioning for a divorce and of all persons to whom a separate maintenance may be granted. § 15-5-16.

Effect on Support of Denial of Visitation. No statutory provision. However, repeated violations of the court's order for visitation shall be grounds for a change of custody to the noncustodial parent. § 15-5-19.

Factors Considered in Setting Support. In a divorce or child support action, the court may order child support after considering all relevant factors including, but not limited to:

- (1) the financial resources of the child;
- (2) the financial resources of the custodial parent;
- (3) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) the physical and emotional condition of the child and his or her educational needs; and
- (5) the financial resources and needs of the noncustodial parent. § 15-5-16.2

In any support action where public assistance is involved, the court shall consider:

- (1) all earnings, income, and resources of the parent including real and personal property;
- (2) the earnings potential of the parent;
- (3) the reasonable necessities of the parent;
- (4) the needs of the child for whom support is sought;
- (5) the reasonable expenditures of the custodial agency for the support and maintenance of the child;
- (6) the existence and needs of other dependents of the parent;
- (7) any other factors that bear on the needs of the child and the ability of the parent to provide financial support of those needs. § 15-9-1.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. Although written in the chapter relating to "support for children receiving public assistance," the enforcement procedures provision does not specify nonwelfare or welfare cases. In any proceeding brought for failure to make support payments as ordered by the court, upon a showing such payments are more than forty-five days overdue, the family court may grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of the parent responsible for support for the full amount of both the arrears payments and for the satisfaction of current support and maintenance payments until further order of the court. § 15-13-3.1.

Location of Absent Parents. Under URESA, if the state information agency (designated as the department of social and rehabilitative services) does not know the location of the obligor or his or her property in this state and no

locator service is available, it shall use all means at its disposal to locate the obligor or property, including examination of official state records and other sources. § 15-11-17.

Child Support Priority over Other Creditors. In divorce or separation proceedings, the execution for support shall have priority over any other executions with respect to personal property. With real property, it has a similar priority except as prescribed by applicable state and federal statutes. § 15-13-3.1.

Wage Assignment Specifically Available for Support. "Each judgment containing support provisions and each order for support . . . shall include an order directing the obligor to assign such salary currently due or to be due in the future from the obligor's employer or successor employers to the clerk of court . . . in such amount imposed by the court." § 15-5-24. This takes effect when the obligee signs a sworn statement that the obligor failed to make a payment within twenty days of when it was due.

Garnishment Specifically Available for Support. "In any proceeding brought for failure to make support payments as ordered by the court . . . the family court may grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of the parent responsible for support" § 15-13-3.1.

Attachment Specifically Available for Support. If such payments are more than forty-five days overdue, the family court may grant an order directing that an execution issue against the interest of the responsible parent in and to a real estate or personal property within the jurisdiction of the court. § 15-13-3.1. However, this statute is located within a chapter dealing with public assistance. It is unclear if this applies to nonwelfare cases.

Other Special Enforcement Tools. Section 15-5-16.3 provides that any "order made by the family court pursuant to sections 15-5-16 [alimony and counsel fees] and 15-5-16.2 [child support]" is to be regarded as a judgment for a debt and may be executed.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. The parents of a child receiving public assistance are severally liable for reimbursement to the department for children and their families or to any other department responsible for the custody or care of the child. § 15-9-1. All duties of support and maintenance are enforceable by a court proceeding. § 15-9-2. The department of social and rehabilitative services shall represent the department for children and their families in any proceeding for reimbursement. § 15-9-3. Also the chapter entitled Support of the Needy contains a provision for an action by the welfare-granting authority against responsible relatives. § 40-5-14.

Support Payments Assigned. No statutory provision.

Agency Can Request Modification of Support. "Upon application of any party interested, said court may from time to time vary any order it made in the premises, or alter any assessment or apportionment by it made as aforesaid, to meet a change of circumstances." § 40-5-21. This appears in the chapter entitled Support of the Needy, which contains provision for an action against responsible relatives.

Service on Agency If Public Assistance Involved. This is unclear. "The clerk of the family court shall notify the director of the department of social welfare of the names and addresses, if known to him, of the parties to any proceeding of said court, so that said director, if the parties or any of them are recipients of public assistance, shall make known the interest of his department in the proceedings and shall enter an appearance." § 8-10-6.

Relatives of "poor persons" have an obligation to support them in proportion to their ability to do so. The director of public welfare of any town or the department of social and rehabilitative services of the state may petition the court to have the relative pay for part or all of past and future support of a poor person. §§ 40-5-13 - 40-5-18.

12/22/83

SOUTH CAROLINA

Code of Laws of South Carolina 1976
Annotated (Law. Co-op.)
(1983 Cum. Supp.)

State Contact
No reply.

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950
version including part IV and the 1958 amendments.
§§ 20-7-960 - 20-7-1320.

ESTABLISHMENT OF PATERNITY

There are no statutes outlining procedures in paternity actions.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"A husband or wife declared to be chargeable with the support of . . . children, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his or her means, as may be determined by the court." § 20-7-40.

South Carolina also has a criminal action. "Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent on him or her shall be deemed guilty of a misdemeanor § 20-7-90.

The husband and wife can submit a written support agreement to the court for its approval. Where possible, the court shall see each party, read the agreement, and obtain the consent of each party. The court may enter an order for support according to the terms of the agreement without further hearing, and that order will be valid and binding. § 20-7-850.

Initiation of Proceedings. As to all of the above proceedings, "[a]ny interested person may file a petition to the court requesting the court to order persons legally chargeable to provide support as required by law." § 20-7-840.

Support Pending Divorce. At any time during divorce proceedings, the court may make orders concerning the care and maintenance of the children. § 20-3-160.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. The family court may include in the child support order the providing of "necessary shelter, food, clothing, care, medical attention . . . expense of educating his or her child and other proper and reasonable expenses." § 20-7-420(15).

"In any action for divorce from the bonds of matrimony the court may at any stage of the cause, or from time to time after final judgment, make such orders touching the care, custody and maintenance of the children of the marriage and what, if any, security shall be given for the same as from the circumstances of the parties and the nature of the case and the best spiritual as well as the other interests of the children may be fit, equitable and just." § 20-3-160.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. The court ordering the child support has the power "to determine the manner in which sums ordered paid for support shall be paid and applied, either to a person through the court or through the clerk of court." § 20-7-420(21).

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. Under the state plan to reimburse counties for assistance in locating and enforcing support obligations of absent parents, the state may also reimburse services provided to enforce support obligations of parents of children not receiving welfare. § 43-5-235.

Location of Absent Parents. The department of social services shall maintain a central registry of record showing information known about any parent who has deserted or abandoned a child receiving aid. The department will request information from the state government and its political subdivisions to create these records. It will also use the national parent locator service. § 43-5-225.

The department may contract with county government, circuit solicitors, and the circuit court having jurisdiction in that county to reimburse the contracting agency for part of the cost of developing and implementing a child support collection program. Reimbursable services include assistance in locating absent parents. § 43-5-235.

If a court of this state in a URESA action is unable to obtain jurisdiction, it shall use all means at its disposal to trace the defendant or his or her property. § 20-7-1130.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. The court ordering child support has the power to order the child support obligor to give security by a written undertaking that he or she will

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South Carolina

pay the sums ordered. If the obligor fails to pay those sums, the court may punish the obligor for contempt and discharge the undertaking. § 20-7-420(22).

A defendant in any action under § 20-7-90 (see "Support Enforcement Apart from Paternity or Dissolution") "shall give bond, with one or more sureties approved by the clerk of the court . . . for the maintenance and support of the defendant's wife or minor unmarried child or children, [and] he shall not be imprisoned or the fine imposed unless the condition of such bond is broken." § 20-7-910. This bond may be posted before or after conviction.

Assigned support rights shall be collectible under all state and local processes. § 43-5-220. The court ordering child support has the power to determine the manner in which the sums ordered will be paid and the power to make any order necessary to carry out and enforce the support order. § 20-7-420(21) and (30).

The state tax commission must transfer income tax refunds in excess of \$25 to the department of social services to the child support enforcement division upon notification that the taxpayer owes a support payment at least 60 days past due. § 12-7-2240. The department may use the same procedure where children are receiving public assistance. § 43-5-220(i).

Long-Arm Statute Specifically for Support. "When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit . . . and (b) it in like manner appears that a cause of action exists against the defendant . . . such court . . . may grant an order that the service be made by the publication of the summons in any one of the following cases: . . .

"(7) When . . . the subject of the matter involves the . . . support of minor children" § 15-9-710.

"The family court shall have exclusive jurisdiction . . . [t]o require spouse to furnish support or to be liable for nonsupport, as provided above, if, at the time of the filing of the petition for support:

"(C) He is neither residing or domiciled nor found in such area but, prior to such time and while so residing or domiciled, he shall have child and thereafter shall have failed to furnish such support, provided that the petitioner is so residing or domiciled at that time." § 20-7-420(31).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Every applicant for aid to families with dependent children whose eligibility is based on deprivation due to absence of a parent from the home shall . . . be immediately referred to the designated support official of the department. The department shall be responsible for taking all steps necessary to identify, locate and obtain support payments from absent parents." § 43-5-220(a).

The department may demand financial information from the absent spouse, and if efforts to get cooperation from the parent fail, the department shall refer the case for prosecution for nonsupport. § 43-5-220(c).

Support Payments Assigned. As a condition of receiving public assistance, all applicants must sign a certificate of eligibility that assigns to the state all rights to support which have already accrued or which may accrue in the future. § 43-5-65(a)(i).

Also support payments determined under § 43-5-220 [above] must be paid directly to the department of social services as reimbursement for assistance. These assigned support rights shall constitute an obligation to the state and shall be collectible under all state and local processes. § 43-5-220(d).

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

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South Carolina

Also support payments determined under § 43-5-220 [above] must be paid directly to the department of social services as reimbursement for assistance. These assigned support rights shall constitute an obligation to the state and shall be collectible under all state and local processes. § 43-5-220(d).

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.

12/22/83

SOUTH DAKOTA

South Dakota Codified Laws Annotated
(1983 Cum. Supp.)

State Contact
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Enforcement
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Pierre, South Dakota 57501

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 25-9A-1 - 25-9A-44.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision

Long-Arm Statute Specifically for Paternity. "Any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing . . . of any of the following acts: . . . Having sexual intercourse in this state, which act creates a cause of action under chapter 25-8 with respect to a child who may have been conceived by that act of intercourse." § 15-7-2.

Paternity Action Brought by State. "The proceeding to compel support may be brought by the mother, or if the child is or is likely to be a public charge, by the authorities charged with its support." § 25-8-10.

"The department of social servics shall secure the enforcement of the Uniform Illegitimacy Act and other laws for the protection of the unmarried mother"
§ 26-4-8.

"It shall be the duty of the state's attorney to commence and prosecute all actions and proceedings brought for the support of any minor illegitimate child of an unmarried woman, whether such action be brought by or on behalf of the mother of such child, by the child, or its representative, or by the authorities charged with the support of said child." § 7-16-12.

"It shall be the duty of the state's attorney to commence and prosecute forthwith all actions and proceedings, civil or criminal, brought by the authorities charged with the support of any legitimate or illegitimate child for the recovery and enforcement of support for such child"
§ 7-16-13.

Default Judgment Allowed. "If the defendant fails to appear at the time set for trial, the security for his appearance shall be forfeited and shall be applied on account of the payment of the judgment, but the trial shall proceed as if he were present; and the court shall upon the findings of the judge or the verdict of the jury make such orders as if the defendant were in court." § 25-8-25.

Procedure for Blood Tests. "In an action in which the consanguinity of a party with another person or party is in controversy, the court in which the action is pending may order such person or party to submit to a . . . blood test by a physician. The order may be made only on motion for good cause shown and upon notice to the person or party to be examined and to all other persons or parties involved and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made." § 15-6-35(a).

Support Without Paternity Determination. "An agreement or compromise made by the mother or child or by some authorized person on their behalf, with the father concerning the support of the child shall be binding upon the mother and child only when adequate provision is fully secured by payment, or otherwise, and when approved by a court having jurisdiction to compel support of the child. The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support of the child." § 25-8-8.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"The parent entitled to the custody of a child must give it support and education suitable to its circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability." § 25-7-7.

South Dakota also provides criminal penalties for non-support. "A parent of a minor child who intentionally omits without lawful excuse to furnish necessary food, clothing, shelter, medical attendance or other remedial care or other means of support for his child is guilty of Class 1 misdemeanor. If a parent, during a violation, leaves the state and is absent for more than thirty days, he is guilty of a Class 6 felony. A parent who chooses treatment for his child by spiritual means through prayer alone in lieu of medical attendance is not for that reason alone in violation of this section." § 25-7-16.

Under the criminal proceeding, proof of abandonment or omission to provide necessities for the child is prima facie evidence that such abandonment or omission was intentional and without lawful excuse. §§ 25-7-17 and 25-7-23.

Initiation of Proceedings. In a criminal proceeding, "[w]hen any payment of public moneys has been made by the department of social services, under the provisions of this chapter for the support or aid of any person, any representative of the department may sign a criminal complaint against that person for any violation of the provisions of this chapter." § 25-7-20-1.

The department of social services may bring a civil action against a person responsible for support for reimbursement of such money as it has paid for support or aid. § 28-1-28.

Support Pending Divorce. "While an action for divorce is pending, the court may in its discretion require one spouse to pay as alimony any money necessary to support the other spouse or the children of the parties, or to prosecute or defend the action." § 25-4-38.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In a paternity action, "[t]he payments shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court." § 25-8-35.

In other actions, the court may order payments made to the clerk of courts. Such payments shall be made to the department of social services upon receipt by the clerk of notice of assignment. § 25-4-43.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. "The department shall make such child support enforcement services available to any individual not otherwise eligible for such purposes upon application from such individual and payment of a reasonable fee." § 28-7-17.2.

Location of Absent Parents. Under URESA, if the state information agency (designated as the attorney general's office) does not know the location of the obligor or his or her property; and no state location service is available, it shall use all means at its disposal to obtain this information including the examination of official state records and other sources. § 25-9A-17.

Furthermore, "[t]he state's attorney on his own initiative shall use all means at his disposal to locate the obligor or his property" § 25-9A-20.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. Section 25-7-31 provides that, in a judgment for paternity and child support or an order for contempt of a child support decree, the order shall, where applicable, include an order directing the parent to assign as much of his or her salary due now or in the future as is sufficient to meet the child support order.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In paternity actions the court may require payments made to a trustee. §§ 25-8-34 and 25-8-35.

"The court may require the father to give security, by bond with sureties, for the payment of the judgment. In default of such security, when required, the court may commit him to jail. After one year the person so committed may be discharged in accordance with the law relating to the discharge of insolvent debtors, but his liability to pay the judgment shall not be thereby affected." § 25-8-36.

Long-Arm Stature Specifically for Support. "Any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing personally, through any employer, or through an agent, of any of the following acts:
. . . . Failure to support a minor child residing in South Dakota" § 15-7-2.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "The department of social services . . . is hereby authorized and empowered to take whatever action is necessary to enforce the child support obligations for any child who is receiving aid to dependent children through the department." § 28-7-17-1.

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South Dakota

The attorney general is to appoint an assistant attorney general for the department of social services, and the duty of such assistant is to supervise the enforcement of all laws pertaining to desertion, nonsupport, recipient fraud, and similar statutes in instances where public assistance has been applied for or granted. § 28-1-11.

Support Payments Assigned. "An application for, or any acceptance of, aid to dependent children shall operate as an assignment by operation of law of all support rights from any person, which such applicant or recipient may have on their own behalf or on behalf of any other family member for whom the recipient is receiving assistance, including any support payments accrued and unpaid at the time of the assignment." § 28-7-6.3.

Agency Can Request Modification of Support. "In all cases where child support has been assigned to the state, the attorney general or the state's attorney shall have the right to intervene . . . in ongoing divorce actions to obtain child support, or to petition the court to modify existing court orders for child support." § 25-4-45.2.

Service on Agency If Public Assistance Involved. No statutory provision.

12/23/83

TENNESSEE

Tennessee Code Annotated
(1983 Cum. Supp.)

State Contact
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Child Support Services
Department of Human Services
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version including part IV. §§ 36-901 - 36-929.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action brought by State. The state department of human services or any person may file a petition to establish paternity if the child is likely to become a public charge. § 36-224.

Default Judgment Allowed. "If, within thirty (30) days from the date of the entry of the order transferring the case is transferred to the circuit or chancery court, the defendant fails to file an answer to the paternity petition, summary judgment may be taken against such defendant, provided

notice of the proceeding is served upon the defendant or his attorney of record. If the defendant fails to appear, the security of his appearance shall be forfeited and shall be applied upon the order of paternity and support, and a default judgment may be taken, provided notice of the proceeding is served upon the defendant or his attorney of record." § 36-227(2).

Procedure for Blood Tests. "The court, on motion of the defendant, shall order the mother, her child and the defendant to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not the defendant can be excluded as being the father of the child, and the results of such tests may be received in evidence but only in cases where definite exclusion is established." § 36-228. See § 24-7-112 for a similar provision that provides as above except the blood tests can be ordered in any civil or criminal action in any court when the question of paternity is involved and the tests can be made in a Tennessee laboratory by any qualified person who is designated by the judge.

Support Without Paternity Determination. If the father has acknowledged paternity in writing, a paternity action may be brought even though it is more than two years after the child's birth (the usual statute of limitations). § 36-224(2).

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"Fathers and mothers are joint natural guardians of their minor children, and they are equally and jointly charged with their care, nurture, welfare, education, and support, and also with the care, management and expenditure of their estates." § 34-101.

Tennessee statutes make it a "misdemeanor for any person legally chargeable with the care or support of a child under the age of eighteen (18) years to willfully and without good cause neglect or fail to provide for such child according to

his or her means. . . ." § 39-4-102. The statutes provide criminal sanctions for nonsupport.

See also §§ 39-4-112(a) and 39-4-113(a) which make it a felony punishable by a fine not to exceed five hundred dollars or imprisonment from one to three years or both for a person legally chargeable with the care of a minor child who leaves Tennessee abandoning that child (§ 39-217) or for a person under court order to pay child support who leaves Tennessee without complying with that order (§ 39-219).

Initiation of Proceedings. No statutory provision.

Support Pending Divorce. No statutory provision.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. In a support order pursuant to a divorce or separation decree, "[t]he order or decree of the court may provide that the payments for the support of such child or children shall be paid either to the clerk of the court or direct to the spouse or other person awarded the custody of said child or children." § 36-820(a)(4).

Also, when a court orders a wage assignment for child support, "the court may order an assignment to the clerk of the court, of the party's wages, salary, commissions and other income due and to be due as the court may find necessary" § 50-2-105.

In paternity cases, the court may order payments made to a trustee. If the child is likely to become a public charge, the court shall name the state department of human services as trustee. Payment must also be made to a trustee if the mother resides outside the court's jurisdiction. § 36-230.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parent. In an action under URESA, "[t]he district attorney shall, on his own initiative, use all means at his disposal to trace the respondent or his property" § 36-918. A responding court must also attempt to trace the respondent. § 36-1015.

Child Support Priority over Other Creditors. Section 50-2-105 gives child support wage assignments priority over any other assignment or garnishment of wages, salary, commissions, or other income except over deductions that are mandatory.

Also § 26-2-108 states that the personal earnings of an obligor who has not remarried shall never be exempt from a decree or a wage assignment for the support of his or her minor child when ordered by a court pursuant to § 50-2-105.

Wage Assignment Specifically Available for Support. When the court orders child support and finds a prior failure to support, or in any proceeding where the court finds the obligor has been ordered to pay support and failed to comply with that order, "the court may order an assignment to the clerk of court, of the party's wages, salary, commissions and other income due and to be due as the court may find necessary to comply with the order of support, including, in the court's discretion, an amount reasonably sufficient to satisfy an accumulated arrearage." § 50-2-105.

Garnishment Specifically Available for Support. No statutory provision.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In a paternity proceeding, the court may require the payments to be made to some person or corporation whom the court designates as trustee if the mother does not reside within the court's jurisdiction. But if the child is or is likely to become a public charge, the

state department of human services shall be made the trustee. § 36-230.

"When any person, ordered to provide support and maintenance for a minor child or children, shall fail to comply with said order or decree, such person may, in the discretion of the court, be punished by imprisonment in the county workhouse or county jail for a period not to exceed six (6) months." § 36-835.

In paternity proceedings, "no property of the defendant except his homestead shall be exempt from levy and sale under execution or other process issued from the court." § 36-231.

In divorce proceedings, support awards "may be enforced by any appropriate process of the court having jurisdiction thereof, including levy of execution." § 36-820. "The court may enforce its orders and decrees by sequestering the rents and profits of the real estate of the spouse against whom such order or decree was issued, if he has any, and his personal estate and choses in action, and by appointing a receiver thereof . . . or by such other lawful means" § 36-822.

Long-Arm Statute Specifically for Support. "Persons who are nonresidents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from: . . . [a]ny basis not inconsistent with the constitution of this state or of the United States . . . [or] [a]ny action of divorce, annulment or separate maintenance where the parties lived in the marital relationship within this state, notwithstanding one party's subsequent departure from this state, as to all obligations arising for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state." § 20-2-214(a).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. By accepting public assistance, a recipient assigns all rights and interests in support obligations to the state department of human services. The state department may initiate support actions in its own name or in the recipient's name and may receive payments in amounts up to the amount of public assistance paid. § 14-8-124.

The district attorneys general of Tennessee have statutory authority, within budgetary limitations, to set up child support enforcement programs to carry out title IV-D child support enforcement programs. § 14-8-125.

"All payments made by the human services department . . . shall be recoverable against the deserting . . . parents by the state as a debt due to the state The property of the . . . parent within the state of Tennessee should be subject to execution for payment of any judgment taken against him." § 14-8-123.

The department must also alert the county prosecuting attorney when an investigation of welfare applicants shows the claim results from necessity caused by a deserting parent. The attorney must then initiate criminal proceedings. § 14-8-122.

Support Payments Assigned. See information on § 14-8-124, above.

Agency Can Request Modification of Support. Not specifically, but the statute gives the state authority to initiate any support action, and this may include modification orders. § 14-8-124.

Service on Agency If Public Assistance Involved. No statutory provision.

12/23/83

TEXAS

Texas Codes Annotated (Vernon)
(1981-82 Cum. Supp.) 1983 Session Laws

Texas Revised Civil Statutes
Annotated (Vernon)
(1981-82 Cum. Supp.) 1983 Session Laws

State Contact
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Legal Operations Division
Child Support Enforcement
Texas Department of
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UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Repealed in 1975.

Uniform Civil Liability for Support Act. No adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version with elements of the 1968 version and part IV (in the 1958 amendments). Fam. Code Ann. §§ 21.01 - 21.66.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. In an action involving the establishment of a parent-child relationship, "[t]he court's findings shall be based on a preponderance of the evidence under rules generally applicable to civil cases." Fam. Code Ann. §§ 11.01(5) and 11.15.

Long-Arm Statute Specifically for Paternity. In a suit affecting the parent-child relationship, the court may exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative although the person is not a resident or domiciliary of this state, if:

- (1) The child was conceived in this state when at least one biological parent was a resident of this state and the person on whom service is required is a parent or an alleged or probable father of the child;

- (2) The child resides in this state as a result of the acts or directives or with the approval of the person on whom service is required;
- (3) The person on whom service is required has resided with the child in this state; or
- (4) There is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction. Fam. Code Ann. § 11.051.

Paternity Actions Brought by State. Suits affecting the parent-child relationship may be brought by any person with an interest in the child, including an agency of the state, an authorized agency, and the child. Fam. Code Ann. § 11.03.

Under Hum. Res. Code Ann. § 46.007, attorneys employed by the department of human resources may represent the department in a suit to collect child support or determine paternity brought under authority of federal law. At the department's request, the attorney general can represent the department in an appeal of one of these suits. This section does not limit the attorney general's authority to represent the state in a proceeding.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to blood tests. An order issued under this section is enforceable by contempt, except that, if the petitioner is the mother or the alleged father and refuses to submit to the blood test, the court shall dismiss the suit. If the respondent is the mother or alleged father and refuses to submit to the blood test, the fact of refusal may be introduced as evidence. Fam. Code Ann. § 13.02.

The court may appoint one or more blood test experts, determining their qualifications and the arrangements for conducting the tests. The court fixes the fees, requiring any or all of the parties to pay the fees (including the department of human resources) or taxing all or part of the fees as costs of the suit. Any party may employ additional experts and, if requested, the court may order blood samples made available to these experts. Fam. Code Ann. § 13.03.

After the blood tests are finished, the court shall order all parties to appear (in person or by counsel) at a pre-trial conference where the court calls its experts to testify (in person or by deposition) and any party may call his or her expert to testify. The court and parties may cross-examine these witnesses, and all evidence presented will be part of the case's record. Fam. Code. Ann. § 13.04.

Fam. Code Ann. § 13.03 provides for the appointment of experts, and Fam. Code Ann. § 13.04 provides for a pretrial conference at which the appointed examiners testify about their tests and findings. At the conclusion of the pretrial conference, if the court finds that the blood tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

If the court finds that the blood tests fail to show by clear and convincing evidence the alleged father is not the father of the child, the court shall set the suit for trial. Fam. Code Ann. § 13.05.

At the trial, a party can call only those blood test experts who testified at the pretrial conference unless otherwise permitted by the court after showing of good cause. If the blood tests show paternity of the alleged father is possible, the court may admit this evidence if offered at trial. Evidence that the alleged father refused to submit to the tests is admissible only to show he has not been excluded from being the father. Fam. Code Ann. § 13.06.

Support Without Paternity Determination. There is no direct statutory provision but it seems possible. "The child must be a party to a settlement agreement with the alleged father. The child shall be represented in the settlement agreement by a guardian ad litem appointed by the court. The court must approve any settlement agreement, dismissal or nonsuit." Fam Code Ann. § 13.07. Because this statute refers to an agreement with the alleged father, it would appear that an agreement could be made without acknowledgment of paternity if the child was a party and the court approved.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Each parent has the duty to support his or her minor children. A parent who fails to discharge a duty of support is liable to any person who provides necessaries to those for whom support is owed. Fam. Code. Ann. § 4.02.

"[T]he parent of a child has the following rights, privileges, duties, and powers . . . (3) the duty to support the child, including providing the child with clothing, food, shelter, medical care and education." Fam. Code Ann. § 12.04(3).

An individual commits an offense if he or she intentionally or knowingly fails to provide support that he or she can provide and that he or she legally was obligated to provide for his or her children under eighteen or for his or her spouse who is in needy circumstances.

An offense under this section is a class A misdemeanor except that it is a third degree felony if (1) the actor has been convicted one or more times before under this section or (2) the actor commits the offense while residing in another state. Penal Code Ann. § 25.05.

Initiation of Proceedings. A suit affecting the parent-child relationship (including responsibility for support) is commenced by filing a petition that includes a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made. Fam. Code Ann. §§ 11.07 and 11.08.

Such a suit "may be brought by any person with an interest in the child, including the child (through a representative authorized by the court), any agency of the state or of a political subdivision of the state, and any authorized agency." Fam. Code Ann. § 11.03.

Support Pending Divorce. After a petition for divorce or annulment is filed, the judge, after due notice, may order payments for the support of the wife or for the support of the husband until a final decree is entered. Fam. Code Ann. § 3.59.

In a suit affecting the parent-child relationship, the court may make a temporary order for the temporary support of the child. Fam. Code Ann. § 11.11(a)(2).

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Support payments are made in the manner and to the persons specified by the court in the decree. Fam. Code Ann. § 14.05.

Mechanism for Keeping Track of Obligors. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. "The department on request may provide parent locator, child support collection, or paternity determination services available to a person other than an applicant for or recipient of financial assistance The department may charge a reasonable application fee and recover costs for the services provided." Hum, Res. Code Ann. § 46.004.

Location of Absent Parents. "The department shall attempt to locate absent parents and shall cooperate with other governmental agencies in locating the parents." Hum. Res. Code Ann. § 46.002(c).

"The department may request agencies of the state and its political subdivisions to search their records to help locate absent parents." Hum. Res. Code Ann. § 46.002(a)(5).

The department shall provide parent locator services, on request, to persons not applying for or receiving aid and may charge a reasonable fee for those services. Hum. Res. Code Ann. § 46.004.

In an action under URESA, "[t]he prosecuting attorney shall, on his own initiative, use all means at his disposal to trace the defendant or his property" Fam. Code Ann. § 21.33(a).

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. "No current wages for personal services shall be subject to garnishment, and where it appears upon the trial that the garnishee is indebted to the defendant for such current wages, the garnishee shall nevertheless be discharged as to such indebtedness." Rev. Civ. Stat. Ann. art. 4099. Also current wages are exempt from garnishment under Texas Constitution art. 16, § 28.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. In addition to an order for periodic payments, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree. Fam. Code Ann. § 14.05(a).

The court may (and if the parents are separating, must) appoint a managing conservator who has "the power to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child" Fam. Code Ann. §§ 14.01(a) and 14.02(b)(7).

Long-Arm Statute Specifically for Support. If support is being determined within a suit for divorce, annulment, or declaration of void marriage, the court may exercise personal jurisdiction over the respondent even if he or she is not a resident or domiciliary of Texas if the petitioner is a resident or domiciliary at commencement of the action and: (1) Texas is the last marital residence and the suit is commenced within two years after the date on which marital residence ended, or (2) there is any basis consistent with

the Texas or United States constitutions for exercise of personal jurisdiction. Fam. Code Ann. § 3.26(a). See also "Long-Arm Statute Specifically for Paternity."

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "The department is the state agency designated to administer a state-wide plan for child support to provide child support collection, parent locator, and paternity determination services which will enable it to participate in programs established by federal law." Hum. Res. Code Ann. § 46.001. See also "Enforcement of Support by State in Nonwelfare Cases."

Support Payments Assigned. The filing of an application for or the receipt of financial assistance . . . constitutes an assignment to the department of any rights to support from any other person" This assignment is only valid if the application is approved by the department. Hum. Res. Code Ann. § 46.003.

Agency Can Request Modification of Support. Any party affected by the order or portion of the decree to be modified may file a modification motion. Fam. Code Ann. § 14.08. Also the department of human resources has the power to initiate any legal actions necessary to its implementation of the child support collection provisions. Hum. Res. Code Ann. § 46.002(a)(3).

Service on Agency If Public Assistance Involved. No statutory provision.

12/27/83

UTAH

Utah Code Annotated 1953
(1983 Cum. Supp.)

State Contact
John P. Abbott, Director
Office of Recovery Services
Department of Social Services
Post Office Box 2500
Salt Lake City, Utah 84110

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted, but has adopted the Uniform Act on Paternity which has substantially similar blood test provisions.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. §§ 78-45-1 - 78-45-13.

Uniform Reciprocal Enforcement of Support Act. The 1950 version with 1958 amendments and part IV. §§ 77-31-1 - 77-31-39.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. It appears that paternity proceedings are civil under § 78-45a-2, although no statutory provision directly states this. Therefore, the burden of proof is a preponderance of the evidence.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. If the state has furnished public assistance to the child, the state may initiate action and enforce the results of a paternity proceeding. § 78-45a-2.

Default Judgment Allowed. No statutory provision.

Procedure for Blood Tests. "In any civil action or bastardy proceedings in which the parentage of a person is a relevant fact, the court shall order the child and alleged parents to submit to blood tests." § 78-25-18. The results of the tests shall be received into evidence if they show that the alleged father is not the father of the child, and the action shall be dismissed. If the experts disagree as to the findings, the question shall be submitted to the jury; but if the experts conclude that the tests show a possibility that the alleged father is the father, admissibility is within the court's discretion, depending on the infrequency of the blood type. § 78-25-21. Despite the weight of other evidence, the court may resolve the question of parentage against a party who refuses to submit to blood tests ordered by the court. § 78-25-22.

Support Without Paternity Determination. An agreement of settlement with the alleged father is binding only when approved by the court. § 78-45a-13. Because the settlement may be with an alleged father, a settlement in which paternity is denied would seem to be allowed if the court approved.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution. Under the Uniform Civil Liability for Support Act, each parent has the duty to support his or her children. §§ 78-45-3 and 78-45-4.

Utah also provides criminal sanctions for nonsupport. Criminal nonsupport is a class A misdemeanor for the first offense committed in this state. Upon conviction for the second offense or the commission of the offense in another state, nonsupport is a felony of the third degree. § 76-7-201.

The court has the power, in any criminal nonsupport proceeding, to enter a support order before trial (if defendant agrees) or subsequent to conviction under § 76-7-201 (criminal nonsupport). Such order is to last not longer than the term of the sentence that could be imposed under § 76-7-201.

The attorney general has the power to grant immunity in support proceedings in order to secure relevant testimony. The procedure for doing so is also set out. § 78-45b-15.

Initiation of Proceedings. A civil action is commenced by the obligee pursuant to the Uniform Civil Liability for Support Act. "The obligee may enforce his right of support against the obligor and the state department of social services may proceed . . . either on its own behalf or on behalf of the obligee, to enforce the obligee's right of support against the obligor." The obligee must file an affidavit with the court prior to the commencement of the proceeding that no public assistance has been received, and if public assistance has been received, the obligee must join the department of social services as a party plaintiff in the action. § 78-45-9.

Support Pending Divorce. The court may order either party to pay to the clerk a sum of money for the separate support and maintenance of the adverse party and the children and to enable such party to prosecute or defend the action. § 30-3-3.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. Section 30-3-5 grants the court broad discretion in setting child support within a divorce action.

When child support is set pursuant to the Uniform Civil Liability for Support Act, and there is no prior support order or material change in circumstances, the court shall consider all relevant factors, including but not limited to:

- (1) parties' standard of living and situation,
- (2) parties' relative wealth and income,
- (3) obligor's ability to earn,
- (4) obligee's ability to earn,

- (5) obligee's needs,
 - (6) parties' ages,
 - (7) obligor's responsibility for the support of others.
- § 78-45-7(2).

Under the administrative processes used in obtaining an administrative support order in public assistance cases, the factors to be considered in determining the amount of support include "the necessities and requirements of the child, exclusive of any income of the custodian of said child, the amount of the support debt claimed, the amount of assistance paid or to be paid, the abilities and resources of the responsible parent, and the public policy and intent of the legislature to require that children be maintained from the resources of responsible parents thereby relieving to the greatest extent possible the burden upon the general citizenry through welfare programs." § 78-45b-6(2).

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligors. If public assistance is involved and the department of social services has administratively served a notice of support debt on the obligor, the obligor must notify the department by certified mail of any change in address or employment. § 78-45b-4.

Enforcement of Support by State in Nonwelfare Cases. Section 78-45-9 of the Uniform Civil Liability for Support Act authorizes the department of social services to enforce the obligee's right of support against the obligor in any case.

Section 55-15c-4(1) provides that the office of recovery services has the duty to collect child support from the responsible parent when the department has provided public assistance or when it has contracted to collect support. The department may bring an action in its own name or on behalf of the obligee and shall become trustee of any cause of action so initiated. §§ 55-15c-5(1) and 78-45b-3-(1).

Location of Absent Parents. "For purposes of this act, the office [of child support recovery] shall be entitled to information from both public and private employers regarding the name, address and social security number of employees." § 55-15c-61.

In an action under URESA, "[t]he county attorney shall, on his own initiative, use all means at his disposal to trace the respondent or his property" § 77-31-19(1).

Child Support Priority over Other Creditors. Once the judgment is filed as a lien, the child support lien shall have the same preference against the assets of the debtor as claims for taxes. § 78-45b-9. Voluntary and court-ordered wage assignments have the same priority against a debtor as a claim for taxes. § 78-45b-13(3).

Wage Assignment Specifically Available for Support. When an obligor has failed to pay a child support payment in full within 30 days of its due date, the court may order a wage assignment. § 78-45-9.1. With or without a court order, the department of social services may subject the property of the obligor to appropriate collection action, including wage assignment, attachment, and garnishment. §§ 78-45b-4 and 78-45b-5. Also see § 78-45b-13. These provisions appear to apply even when no public assistance is involved.

Garnishment Specifically Available for Support. See "Wage Assignment Specifically Available for Support." §§ 78-45b-4 and 78-45b-5.

Attachment Specifically Available for Support. See "Wage Assignment Specifically Available for Support."

Other Special Enforcement Tools. Docketed administrative orders for child support constitute liens for eight years from the time of docketing and have the same priority as a tax lien. § 78-45b-9. Section 78-45b-11 provides for execution and sale on an administrative lien. See also §§ 30-1-26 to 30-1-29 which provide that the obligor cannot remarry until the arrears are paid or a court approves of the remarriage.

Long-Arm Statute Specifically for Support. "With respect to actions of divorce or separate maintenance, the maintenance in this state of a matrimonial domicile at the time the claim arose or the commission in this state of the act giving rise to the claim," submits the person so acting to personal jurisdiction. § 78-27-24(6).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. Absent a court order, the department of social services may make an assessment against a responsible parent for all money the department has provided for the parent's children. The department may also enforce such assessment. § 78-45b-5.

Enforcement of Support by State in Welfare Cases. Under § 78-45-9 of the Uniform Civil Liability for Support Act, "the state department of social services may proceed pursuant to this act or any other applicable statute, either on its own behalf or on behalf of the obligee, to enforce the obligee's right of support against the obligor." In any of these enforcement actions, the attorney general or county attorney shall represent the department.

Support Payments Assigned. The agency becomes the trustee for the child and custodial parent whenever a party receives public assistance for dependent children. § 78-45b-3.

The department may accept an assignment of alimony or child support from any recipient whether or not its payment is court ordered. Any right to alimony or child support which a recipient of public assistance has or claims passes to the department upon the receipt of assistance by the recipient. § 55-15a-24(8). The department has subrogation rights and is a real party in interest. § 55-15c-5. It is unclear whether, once assistance ceases, the department retains any rights to arrears owing at the time of cessation of the aid.

Section 78-45b-3(5) provides that any court order embodying a money judgment for support to be paid to an obligee shall be deemed in favor of the department to the extent of the amount of the department's subrogation rights.

Agency Can Request Modification of Support. The department has the right to petition a court for modification of any court order on the same basis as a party to that action would have been able to do. § 78-45b-3(6).

Service on Agency If Public Assistance Involved. Prior to commencing any action to recover support owed to an obligee, the obligee must file an affidavit with the court stating whether public assistance has been received and, if it has, the obligee must join the department of social services, as a party plaintiff in the action. § 78-45-9.

1/6/84

VERMONT

Vermont Statutes Annotated
(1983 Cum. Supp)

State Contact
David C. Carter, Staff Attorney
Department of Social Welfare
103 South Main Street
Waterbury, Vermont 05676

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Tit. 15, §§ 201-210.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. Tit. 15, §§ 385-428.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. No statutory provision.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. The commissioner of social welfare, if the interest of the state requires, may commence a prosecution in the name of the child's mother or control and manage a prosecution commenced by her. Tit. 15, § 371.

Default Judgment Allowed. Apparently not available. A warrant is issued to bring the putative father before the court. Tit. 15, § 331.

Procedure for Blood Tests. No statutory provision.

Support Without Paternity Determination. "If such woman or other person gives sufficient security for the support of the child and pays the costs and expenses for its support, the powers granted to the commissioner of social welfare by this sub-chapter shall cease and proceedings commenced by him shall be discontinued." Tit. 15, § 380.

This is despite Tit. 15, § 375, which states if the paternity action was brought by the state on its behalf or on the mother's behalf, then no compromise is valid against the state without the consent of the commissioner of social welfare.

Factors Considered in Setting Support. No statutory provision.

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

When a married person deserts or fails to support his or her spouse, upon the application of the husband or wife the court may order support for that spouse and the minor children of the parties. Tit. 15, § 291.

Vermont also provides criminal sanctions for nonsupport. A married person who, without just cause, shall desert or willfully neglect or refuse to provide for the support and maintenance of his or her spouse and children shall be imprisoned not more than two years or fined not more than \$300 or both. If a fine is imposed, the court may order it to be paid in whole or in part to the needy spouse or to the guardian, custodian, trustee of the child. Tit. 15, § 202.

Initiation of Proceedings A parent, guardian, custodian, the department of social and rehabilitation services, or the department of social welfare may request support. A court may also raise the issue of support on its own motion. Tit. 15 § 651 (b).

The party entitled to support payments under a judgment or order may file a motion for determination of amount due. The department of social welfare may file in welfare cases. Tit. 15 § 606.

Support Pending Divorce. "Either party or both parties to a marriage may apply for temporary relief at any time following the separation of the parties to the marriage" Tit. 15, § 549A. This section appears to refer to any needed marital support, including benefits for both the spouse and the child.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. In resolving an issue of support, the court may consider all relevant factors, including but not limited to:

- (1) the financial resources of the child;
- (2) the financial resources of the custodial parent;
- (3) the standard of living the child would have enjoyed had the marital relationship not been discontinued;
- (4) the physical and emotional condition of the child;
- (5) the educational needs of the child;
- (6) the financial resources and needs of the noncustodial parent; and
- (7) inflation with relation to the cost of living.

In administrative adjudication of support by the welfare commissioner through a hearing of the human services board, the following criteria shall be considered:

- (1) the income, real property, and personal property of the responsible parent,
- (2) the earning ability of the responsible parent,
- (3) the amount of public assistance currently being paid on behalf of the dependent child or children,
- (4) the need of the responsible parent,
- (5) the responsibility of the responsible parent for other dependents. Tit. 3, § 3092.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. To assist in locating parents who have deserted their children, and other persons liable for support of dependents, the department of social welfare may request information from the records of all government officials, departments, and other governmental agencies of this state. Only information directly bearing on the identity and whereabouts of parents or persons may be requested, used, or transmitted by the department. Tit. 33, § 2553.

If the state information agency (designated as the department of social welfare) in an action under URESA does not know the location of the obligor or his or her property, and no state locator service is available, it shall use all means at its disposal to obtain this information including examination of official records and other sources. Tit. 15, § 405(b). Furthermore, the state's attorney on his or her own initiative shall use all means at his or her disposal to locate the obligor or property. Tit. 15, § 407(a).

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. No statutory provision.

Garnishment Specifically Available for Support. In actions by the department of social welfare, when a responsible parent is in default in payment of support to the department, or when there is good cause to believe that the responsible parent will not make future support payments in full to the department, the commissioner may petition the issuing authority to issue an order to withhold and deliver wages. Tit. 33, § 2726.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. Under tit. 33, § 2725, any arrearage in support payments owed to the department of social welfare as a result of a court order, human services board order, or voluntary written agreement shall be a lien in favor of the department against all nonexempt property of the responsible parent. A lien pursuant to this section shall have the effect of an attachment in the amount specified as to all nonexempt real and personal property of the responsible parent.

Thirty days after the authorization of the lien, the commissioner may bring an action in superior or district court to foreclose the lien as in other actions.

In divorce or annulment actions, if a party ordered to pay child support is in default for more than thirty days, the court may order public sale of the person's real or personal property. Tit. 15, §§ 711 and 713.

When a married person deserts or fails to support his or her spouse, the court may order child support upon the deserted spouse's petition. When such an order is properly filed and recorded it becomes a lien upon real estate, personal property, and stock mentioned in the order. Tit. 15, § 291(f).

Tit. 15, § 714 provides that the proceeds from a sale of property upon which a lien exists are to be applied to the debt, and the balance is to be held subject to the lien.

Under a decree of alimony, when part of the estate of the husband, or money in lieu thereof, is awarded to the wife, instead of ordering the same to be delivered or paid into the hands of the wife, the court may order it delivered or paid to one or more trustees appointed by the court. Such trustee shall invest the same and apply the income thereof to the support and maintenance of the wife and minor children of the marriage and shall pay over principal to them as the court directs. Tit. 15, § 756.

After judgment is entered in a paternity action, the father has thirty days to enter into a recognizance before the court, with sufficient sureties to the mother of the child in such sums as directed by the court conditioned that he will abide by and conform to the orders of the court. Tit. 15, § 340.

In IV D cases, the commissioner of employment security shall deduct child support amounts owed by an individual filing a new claim for unemployment compensation. The amount to be deducted may be specified by the individual at the time of

application, by an agreement submitted by the state or local child support enforcement agency, or by legal process. Tit. 21 § 1367a.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. Whenever there is no court order of support for a child on public assistance, the commissioner of the department of social welfare shall investigate the circumstances of the responsible parent. If the investigation reveals a responsible parent who is not receiving welfare assistance, who has earnings available for child support, and who will not agree in writing to make periodic support payments of a satisfactory amount, then the commissioner may proceed to an administrative adjudication of support. Tit. 33, § 2715.

Enforcement of Support by State in Welfare Cases. Each applicant for public assistance shall assign his or her right to support to the department of social welfare, and the recipient of assistance shall be considered to have appointed the commissioner of the department of social welfare to act as his or her attorney in obtaining support from the responsible parent. Tit. 33, § 2715.

An arrearage in support payments owed to the department of social welfare shall constitute a lien in favor of the department against all nonexempt property of the responsible parent. Tit. 33, § 2725. The commissioner of the department of social welfare may issue an order to withhold and deliver wages. Tit. 33, § 2726.

Support Payments Assigned. As a condition of eligibility for public assistance, each applicant or recipient shall assign to the department of social welfare any right to support from a responsible parent. Tit. 33, § 2715. The amount of assistance paid creates a debt to the department of social welfare by the responsible parent. Tit. 33, § 2717.

Agency Can Request Modification of Support. On the petition of either parent, the stepparent, or the department of social welfare, the court may annul, vary, or modify the support order. Tit. 15, § 293.

Service on Agency If Public Assistance Involved. "In any action for divorce, when either party is a recipient of public assistance from or through the Vermont Department of Social Welfare the complaint shall recite that fact and a copy of the summons and complaint shall be served upon the Commissioner of the Department of Social Welfare" Vt. R. Civ. P. 80(b).

1/14/84

VIRGINIA

Code of Virginia
(1983 Cum. Supp.)

State Contact
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Juvenile and Domestic Relations
District Court
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Richmond, Virginia 23223

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. §§ 20-88.12 - 20-88.31.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. The burden of proof is evidence beyond reasonable doubt that the defendant is the father of the child and that he should be responsible for the support of the child. § 20-61-1.

Long-Arm Statute Specifically for Paternity. No statutory provision.

Paternity Action Brought by State. No direct statutory provision. Section 63.1-273 expressly assigns the rights of a recipient of public assistance to the department of welfare for any right or interest in any support obligation. Although there is no express authorization for the state to bring a paternity action on behalf of an obligee, this section appears to authorize such an assignment because of the purpose of the paternity proceeding, i.e., establishment and collection of a support obligation.

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Virginia

"Proceedings under this [desertion and nonsupport] chapter may be instituted upon petition . . . filed by the spouse or child or by any probation officer or by any State or local law-enforcement officer or by any State or local public welfare officer" § 20-64. (Provisions for the determination of paternity are made in the desertion and nonsupport chapter.)

"To be eligible for payments for aid to dependent children an applicant or recipient shall: . . . [c]ooperate in . . . establishing the paternity of a child born out of wedlock" § 63.1-105.1(3)(ii).

Default Judgement Allowed. If the defendant defaults, he can be found guilty. However, he may have the verdict set aside if he so moves within thirty days of entry of judgment and may be retried if his reason for absence is excusable. § 20-66.

Procedure for Blood Tests. Upon motion of either party, the court may order the alleged father, the mother and the child to submit to blood grouping tests. The results of such blood grouping tests shall be admitted in evidence when offered by a licensed and certified practicing physician or other qualified scientist. § 20 - 61.2.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. Virginia utilizes the general support factors [see "Factors Considered in Setting Support"] in a paternity proceeding for "support, maintenance and education of such child as if such child were born in lawful wedlock." §§ 20-61-1 and 20-107.2.

See also § 20-72 ("having regard to the circumstances of the case and to the financial ability of earning capacity of the defendant") and § 63.1-286 (where the department of welfare is authorized to establish a scale of contribution under the IV-D program).

Information on Assets of Father. No statutory provision within a paternity action. However, a criminal nonsupport provision may be utilized and, in that type of case, the court may order an investigation. § 20-65.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Each parent is presumed responsible for his or her child. Proof of neglect by nonsupport is sufficient for conviction. It is a misdemeanor for a parent to fail to support his or her child. § 20-61.

"Before the trial, with the consent of the defendant, or at the trial on entry of a plea of guilty, or after conviction, instead of imposing the [criminal] penalties . . . or in addition thereto, the judge, in his discretion, having regard to the circumstances of the case and to the financial ability or earning capacity of the defendant, shall have the power to make an order, directing the defendant to pay a certain sum or a certain percentage of his or her earnings periodically, either directly or through the court to the spouse or to the guardian, curator or custodian of such minor child" § 20-72.

Initiation of Proceedings. Proceedings may be instituted upon petition filed by the spouse or child or by any probation officer or by any state or local law enforcement officer or by any state or local public welfare officer upon information received or by any other person having knowledge of the facts. § 20-64.

Support Pending Divorce. At any time pending the suit, the court may make any order that may be proper to compel the spouse to pay any sums necessary for the maintenance of the minor children of the parties during the pendency of the suit. § 20-103.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support.

2. "The court, in determining the amount of support of the minor child or children, shall consider the following:
 - a. The age and physical and mental condition of the child or children;
 - b. The independent financial resources, if any, of the child or children;
 - c. The standard of living for the family established during the marriage;
 - d. The earning capacity, obligations and needs, and financial resources of each parent;

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Virginia

- e. The education and training of the parties and the ability and opportunity of the parties to secure such education and training;
- f. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
- g. The provisions made with regard to the marital property under § 20-107.3; and
- h. Such other factors as are necessary to consider the equities for the parents and children." § 20-107.2.

The department of welfare may administratively establish child support, considering the income and resources of the parent, the amount of public assistance available, and other circumstances such as the ability to borrow, earning potential, reasonable necessities, support of others, and special hardships. § 63.1-286.

In the criminal nonsupport action, the court may order child support, in its discretion, after considering "the circumstances of the case and . . . the financial ability or earning capacity of the defendant" § 20-72.

Information on Assets of Parents. A parent must file a financial statement with the department of public welfare if the parent's absence is the basis for the child's receiving assistance. § 63.1-285. This does not appear to authorize filing the information with the court. See also the criminal nonsupport provision, § 20-65, under "Information on Assets of Father."

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. Support payments are required to be paid to the court when the obligee has received support from public assistance or when the obligor has been convicted of nonsupport or desertion or is on probation. §§ 63.1-279 and 20-72.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases. The department of welfare is authorized to set up a central unit, and one of that unit's duties is to "[p]rovide its services of support collection and paternity determination to any individual who is ineligible for such services as a recipient of public assistance." A fee shall be charged by the unit for such services. § 63.1-287(8).

Location of Absent Parents. The parent locator service is one of the functions of the central unit of the department of welfare. § 63.1-287.

"To assist in locating parents . . . the Department of Welfare may request and shall receive information from the records of all departments, boards, bureaus or other agencies of this State and the same are authorized to provide such information" § 20-87.1.

"The Department of Social Services may request and shall receive information from the records of all departments, boards, bureaus or other agencies of this State and the same are authorized to provide such information" § 63.1-1.1:1.

In an action under URESA, the state information agency (designated as the department of welfare) shall use all means at its disposal, if no locator service is available, to trace the obligor or his or her property, including the examination of official state records and other sources. § 20-88.15:1. The attorney for the commonwealth on his or her own initiative shall use all means at his or her disposal to locate the obligor or property. § 20-88.23:1.

Child Support Priority over Other Creditors. The liens of the department of welfare on support debts have the priority of a secured creditor. § 63.1-254. An order to withhold and deliver issued in an administrative enforcement action has priority over all other debts and creditors. § 63.1-256.

Wage Assignment Specifically Available for Support. After it has served notice of the child support debt, the department of social services may issue an order to withhold and deliver earnings due or owing to the obligor. § 63.1-256. Section 63.1-272 provides that an employer of a person who owes a support debt or obligation shall honor an assignment of earnings presented by the director.

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Virginia

Garnishment Specifically Available for Support. Entry of a support order constitutes a final judgment for purposes of garnishment. § 20-78.1. For failure to obey a support order, wages may be garnisheed up to 50 percent of wages made. § 63.1-257.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. The department of welfare can subject the obligor's property to lien, foreclosure, distraint, seizure, or sale pursuant to a court order for support paid to the department (§ 63.1-252) or on its own because of the public assistance it paid (§ 63.1-253). See §§ 63.1-254 to 63.1-273 for the procedures and limitation on this.

Also an order stating the obligor is delinquent in child support payments shall be a lien against the obligor's property. § 8.01-460.

Long-Arm Statute Specifically for Support. Section 8.01-328.1(A)(8) specifically confers personal jurisdiction over a person as to a cause of action arising from having executed an agreement in the commonwealth that obligates the person to pay child support to a domiciliary, and § 8.01-328.1(A)(9) confers personal jurisdiction over a person who maintained a matrimonial domicile in the commonwealth at the time of separation of the parties, at the time the cause of action for divorce arose, or at the commencement of the action if the other party resides in the commonwealth.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. In the absence of a court order, the department of welfare can assess against the responsible parent the complete debt owed because of public assistance to the child. The department can also enforce such an assessment without court order.
§ 63-1.253.

"The Director may at any time consistent with the scale of suggested minimum contributions established pursuant to § 63.1-286, set or reset the amount of the debt accrued or accruing, due and owing to the Department in those cases where

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Virginia

there has been no court order or final decree of divorce entered." § 63.1-264.

The department must develop and utilize a scale for the amount of support obligations established by use of the administrative process. Variables to be considered include income, resources, earnings potential, and need. Use of the scale by courts and other agencies is optional. § 63.1-286.

Enforcement of Support by State in Welfare Cases. Whenever an obligee has received support from public assistance, the department of welfare has a duty to take legal action against anyone not meeting his or her support responsibility. § 63.1-277. The state may also bring a criminal nonsupport action under §§ 20-61 - 20-64. See "Support Enforcement Apart from Paternity or Dissolution."

Support Payments Assigned. Any payment of public assistance money made to or for the benefit of any dependent child creates a debt due and owing to the department by the person responsible for support. The department is subrogated to the right of such child to prosecute or maintain any support action or execute any administrative remedy. § 63.1-276.

As soon as an obligee receives public assistance, there is an automatic assignment to the department of welfare of all debts of child support. The agency also becomes the recipient's attorney in fact. § 63.1-273.

See also § 63.1-105.1 requiring assignment of support rights in order to become eligible for AFDC benefits.

Agency Can Request Modification for Support. The agency has all the rights that the obligee possesses. § 63.1-251.

If the court enters a decree regarding an amount to be paid for child support, it may later upon petition of the superintendent of public welfare revise and alter such decree. § 20-108.

Service on Agency If Public Assistance Involved. No statutory provision.

1/14/84

WASHINGTON

Revised Code of Washington Annotated
(1981 Supp.) (1983 Session Laws)

State Contact
Jon Conine, Acting Program
Director
Office of Support Enforcement
Department of Social and
Health Services
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Olympia, Washington 98504

UNIFORM ACTS

Uniform Parentage Act. §§ 26.26.010 - 26.26.905. However, there
are very significant variations from the act.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. §§ 26.20.030 - 26.20.050.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1950 version
as amended in 1958 and part IV. §§ 26.21.010 - 26.21.910.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Under the Uniform Parentage Act,
a paternity action is civil, governed by the civil rules of
procedure. § 26.26.120(1).

Long-Arm Statute Specifically for Paternity. Under the Uniform
Parentage Act, a person "who has sexual intercourse in this
state thereby submits to the jurisdiction of the courts of
this state as to an action brought . . . with respect to a
child who may have been conceived by that act of inter-
course." § 26.26.080(2).

See also "Long Arm Statute Specifically for Support."

Paternity Actions Brought by State. A child, his or her mother, or a man presumed to be the father may bring an action to declare the existence of the father-and-child relationship or the nonexistence of such relationship if the action is brought within a reasonable time. § 26.26.060(1). The department of social and health services, the state of Washington, or any interested party may bring the action at any time. § 26.26.060(2). If there is no presumed father, the above parties or their personal representatives may bring the action; and the department or state shall bring the action promptly if none of the other parties has brought this action or any adoption action. § 26.26.060(4).

Default Judgment Allowed. Under the Uniform Parentage Act, the rules of civil procedure apply, indicating a default judgment may be available. § 26.26.120(1).

Procedure for Blood Tests. The court may, and shall on a party's request, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by a court-appointed expert. The court shall, on the reasonable request of a party, order independent tests by other experts. The court shall determine the number and qualifications of the experts. § 26.26.100. The evidence relating to paternity may include blood test results weighed with the statistical probability of paternity. § 26.26.110(3).

The defendant in a paternity action may offer evidence about a man who had sexual intercourse with the mother near the time of conception only if the defendant has undergone and made available blood tests that do not exclude the defendant's paternity of the child. A man who is identified and subject to the court's jurisdiction will be made a defendant in the action. § 26.26.120(4).

The court may order the blood test costs to be paid by the parties in the proportions and at the times it determines. § 26.26.140.

Support Without Paternity Determination. No statutory provision.

Factors Considered in Setting Support. Under the Uniform Parentage Act, the court shall consider all relevant facts, including but not limited to the:

- (1) child's needs,
 - (2) parents' circumstances and standard of living,
 - (3) parents' relative financial means,
 - (4) parents' earning ability,
 - (5) child's need and capacity for education, including higher education,
 - (6) child's age,
 - (7) parents' responsibility for support of others,
 - (8) value of the custodial parent's services.
- § 26.26.130(5).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

"The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately."
§ 26.16.205.

Washington also provides criminal penalties for nonsupport.

"(1) Every person who:

"(a) Has a child dependent upon him or her for care, education or support and deserts such child in any manner whatever with intent to abandon it; or

"(b) Wilfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his or her child . . .

"shall be guilty of the crime of family desertion or nonsupport.

"(2) When children are involved under the age of sixteen years, such act shall be a felony and punished by imprisonment in the state penitentiary for not more than twenty years or by imprisonment in the county jail for not more than one year or by fine of not more than one thousand dollars or by both fine and imprisonment.

"(3) When there is no child under sixteen years, such act shall be a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or by fine of not more than one thousand dollars, or by both fine and imprisonment." § 26.20.030.

Initiation of Proceedings. Section 26.16.205 provides that a husband or wife may be sued jointly or separately for failure to support a child. A married parent receiving public assistance may sue the other parent for child support. If the parent cannot afford counsel, the department of social and health services, through the attorney general, may file a petition on the parent's behalf. § 74.20.230.

Support Pending Divorce. "[E]ither party may move for temporary maintenance or for temporary support of children entitled to support." § 26.09.060.

The parties to a marriage may enter into a separation contract that may, among other things, provide for the support of their children. If the parties later file for dissolution, legal separation, or declaration of invalidity, the terms of the contract providing for child support will not be binding on the court. The parties may elect to terminate the separation contract by mutual agreement or by filing a statement terminating the contract. § 26.09.070.

Effect on Support of Denial of Visitation. If a party fails to comply with a provision of a decree or temporary injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but he or she may move the court to make an appropriate order. § 26.09.160.

Factors Considered in Setting Support. In actions for separation, divorce, maintenance, and child support, the court may consider all relevant factors and order either or both parents to pay an amount reasonable and necessary for the support of the child. § 26.09.100.

In a criminal nonsupport action, see "Factors Considered in Setting Support: in "Establishment of Paternity", § 26.26.130(5).

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. The court may order the payments to be made through the clerk of court, but is not required to do so. § 26.09.120(1).

Under the Uniform Parentage act, the court may order payments to the department of social and health services, the clerk of court, or any person, corporation, or agency so designated. § 26.26.150.

Mechanism for Keeping Track of Obligors. If the court orders payment made through the clerk of court, the parties must notify the clerk of any change of address or any other conditions that could affect administration. § 26.09.120(2).

Enforcement of Support by State in Nonwelfare Cases. There is an automatic mechanism for all child support orders. If the court orders payment through the clerk of courts and the party fails to make payments within ten days after the clerk mails notice of arrearage, the clerk may certify to the prosecuting attorney the amount due. § 26.09.120(2)(c).

The secretary of the department of social and health services may accept applications for support enforcement service on behalf of persons who are not recipients of public assistance and may take action as appropriate to establish or enforce support obligations against persons owing a duty to pay support. The department may establish, by regulation, standards of income, property, and other resources to limit applications. It may also charge a fee for services after it has established a fee schedule and made it available to applicants. § 74.20.040.

The department may enforce the child support duty through any of the public assistance or nonsupport statutes. § 74.20.040. Thus the same enforcement tools are available to this group of nonrecipients as are available to recipients of public assistance.

Location of Absent Parents. The department of public assistance is authorized to establish a central unit to coordinate the gathering of information and the operation of all governmental units in the effort to locate deserting parents. The

department of social and health services has authority to gather all information on hand notwithstanding confidentiality provisions. § 74.20.280.

Child Support Priority over Other Creditors. "The claim of the department for a support debt, or paid when due, shall be a lien against all property of the debtor with priority of a secured creditor." § 74.20A.060.

Wage Assignment Specifically Available for Support. In marriage dissolution proceedings, "[t]he court may order the person obligated to pay support . . . to make an assignment of a part of his or her periodic earnings . . . to the person or agency entitled to receive the payments." § 26.09.130.

Any person, firm, corporation, association, political subdivision, or department of the state employing such a person must honor this assignment of his or her earnings. § 74.20A.240.

Under the Uniform Parentage Act, the paternity judgment (which may include a child support order) may be enforced by all remedies for the enforcement of judgments. § 26.26.150(3).

Garnishment Specifically Available for Support. The secretary of the department of social and health services may issue an order to withhold and deliver earnings (§ 74.20A.080) after serving a notice of support lien on the party in possession of the earnings. § 74.20A.070.

Also, if the service requirements of § 74.20A.070 are met, the secretary can attach a lien against the person's earnings upon filing with the county auditor where the person's employer does business or maintains an office or agent for the purpose of doing business. § 74.20A.060.

Attachment Specifically Available for Support. A lien may be asserted against the real and personal property of the debtor. § 74.20A.060. "Whenever a support lien has been filed . . . the secretary may collect the support debt . . . by the distraint, seizure and sale of the property subject to said lien." § 74.20A.130.

The secretary can issue to any person, firm, corporation, association, political subdivision, or department of the state, an order to withhold and deliver property of any kind

due or belonging to the support debtor if the secretary believes it has such property in its possession. The secretary shall hold such property in trust for application to the debt or return, dependent on the final determination as to liability. § 74.20A.080. See also § 74.20A.140, which sets out the superior court proceedings for foreclosure of the support lien.

Other Special Enforcement Tools. No statutory provision.

Long-Arm Statute Specifically for Support. "Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of said acts: . . .

"The act of sexual intercourse within this state with respect to which a child may have been conceived; . . .

"Living in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state or has continued to be a member of the armed forces stationed in this state." § 4.28.185(1)(e) and (f).

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. In the absence of a superior court order, the secretary of the department of social and health services may serve on the responsible parent a notice and finding of financial responsibility requiring the parent, in a hearing held by the department, to appear and show cause why the finding of responsibility or the amount thereof or both is incorrect, should not be finally ordered, or should be modified or rescinded. The notice and finding shall relate to the support debt accrued or accruing, including periodic payments to be made in the future for any time period in which the child is in need.
§ 74.20A.055.

Enforcement of Support by State in Welfare Cases. "Whenever the department of social and health services receives an application for public assistance on behalf of a child the department shall take appropriate action under the provisions of this chapter, Chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys." § 74.20.040.

The department may assert a lien against the obligor's real and personal property (§ 74.20A.060) and order the obligor's property including wages to be withheld and delivered (§ 74.20A.080).

Under the Uniform Parentage Act, the state or public authority that provides or may have provided assistance may enforce the child support duty. § 26.26.150(1).

Support Payments Assigned. Wherever public assistance is paid, each recipient is deemed to have made assignment of any rights to support from any other person to the department of social and health services. § 74.20.330. See § 74.20A.030 for a similar provision.

Agency Can Request Modification of Support. The department of social and health services, through the attorney general, is authorized to "[a]pppear in behalf of a custodial parent of a dependent child . . . on whose behalf public assistance is being provided, when so requested by such parent, for . . . assisting such parent in securing a modification of a divorce or separate maintenance decree wherein no support, or inadequate support, was given for such child" § 74.20.220(3).

If public assistance has been applied for or granted on the child's behalf and the parents are divorced or legally separated, the attorney general may apply for an order directing either or both parents to show cause why a child support order should not be entered or why the previously ordered support should not be increased. § 74.20.220(4).

Service on Agency If Public Assistance Involved. No statutory provision.

1/22/84

WEST VIRGINIA

West Virginia Code
1966 (1983 Cum. Supp.)

State Contact
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21st Judicial Circuit
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Keyser, West Virginia 26726

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version,
including part IV. §§ 48-9-1 - 48-9-42.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. The plaintiff must prove that the
defendant is the father of the child by clear and convincing
evidence. § 48-7-4(c).

Long-Arm Statute Specifically for Paternity. No statutory
provision.

Paternity Action Brought by State. The mother, a person with
physical or legal custody of the child, or a guardian may
initiate a paternity action. § 48-7-4(a). The prosecuting
attorney of the county shall represent the plaintiff.
§ 48-7-4(c).

Default Judgement Allowed. No statutory provision.

Procedure for Blood Tests. The court may, on its own motion or
upon the motion of any party order the mother, her child,

and the defendant to submit to blood tests. Blood test results which exclude the defendant are admissible and are considered clear and convincing evidence of nonpaternity allowing the court to dismiss the action. Blood test results which show a statistical probability of paternity of more than 75% are admissible and must be weighed with other evidence of the defendant's paternity. If a party disputes blood test results, the court may order additional tests. § 48-7-4(6).

Support Without Paternity Determination. "Whenever any infant or unemancipated child is owed a duty of support from any person, the parent or other person having legal custody, the legal guardian the committee of the child, the child by his next friend, or any public agency assigned the right to support shall have a right to institute a civil action for support." § 48-7-3.

Factors Considered in Setting Support. In setting the amount of support, the court shall consider the income, the assets, the earning ability and other obligations of the person owing the duty of support, and the needs, other income and any other circumstances relevant to the needs of the obligee. § 48-7-3(d).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Any person to whom support is due and owing shall be entitled to seek enforcement of the order of support. § 48-8-1(a).

A party who leaves employment, refuses to seek employment, or transfers assets or income to avoid paying support, or who intentionally fails to provide support when he has the ability to do so, shall be guilty of a misdemeanor. § 48-8-1(e).

One spouse may sue the other spouse for separate maintenance if the spouse failed to provide suitable support without good cause, if the spouse abandoned the suing spouse, or if the suing spouse has grounds for divorce. Within this action,

the court may make orders concerning the maintenance, custody, care, and education of the parties' children. § 48-2-28.

Initiation of Proceedings. Any person owed support under § 48-7-1 et seq. or any persons eligible to be a party under § 48-8-3 and § 48-8-4 may petition the court where the original proceedings were held for enforcement of the support order. § 48-8-1(a).

A civil action for separate maintenance, which may include child support, may be initiated by either spouse. § 48-2-28.

Support Pending Divorce. The court may, at any time after the commencement of the action, make any order that may be proper to compel either party to pay a sum necessary for the maintenance of the minor children or of the other party during the pendency of the action. § 48-2-13.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. After finding that a person owes a duty of support to a spouse or a child, the court must consider the income, the assets, the earning ability and other obligations of the person owing the duty of support, and the needs, other income, and any other circumstances relevant to the needs of the obligee § 48-7-3.

Information on Assets of Parties. No statutory provision.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. When a welfare recipient has assigned rights to support to the department of public welfare, the department may receive money paid as support or maintenance on behalf of the child or caretaker spouse. § 9-3-4.

Mechanism for Keeping Track of Obligors. The court may order the child support obligor to report periodically to the court his or her place of employment and the amount earned. § 49-7-6.

Enforcement of Support by State in Nonwelfare Cases. No statutory provision.

Location of Absent Parents. In a URESA action, "[t]he prosecuting attorney shall, on his own initiative, use all means at his disposal to trace the obligor or his property" § 48-9-19.

If the state information agency (designated as the office of attorney general) does not know the location of the obligor or his or her property, and no location service is available, it shall use all means at its disposal to obtain this information, including examination of official state records and other sources. § 48-9-17.

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. An employer must honor a wage assignment executed by an employee owing support, if the rights to such support have been assigned to the department of welfare. The assignment may go into effect only after the department notifies the person owing support that he has accumulated two months' arrearages. § 48-8-3. All assignments are subject to the limitations on the amount payable to an assignee: no more than thirty times the federal minimum hourly wage. § 38-5A-3.

Garnishment Specifically Available for Support. Any person or agency authorized to bring an action under § 48-7-1 et seq or § 48-8-1 et seq may obtain a writ of execution, suggestion, or suggestee execution for support due. § 48-8-5. A suggestee execution allows a judgment creditor to garnish the salary or wages due a debtor for one year after issuance of the judgment, but only if the amount of weekly earnings due the debtor exceeds a sum equalling thirty times the federal minimum hourly wage then in effect. § 38-5A-3.

Attachment Specifically Available for Support. No statutory provision.

Other Special Enforcement Tools. Whenever an obligor has accumulated arrearages of more than \$150 and rights to support have been assigned to the department of welfare, the tax department shall assist by setting off all or part of the obligor's tax refund sufficient to satisfy the debt. § 48-8-4.

To enforce child support, the court "may make any order concerning the estate of the parties or either of them, as it shall deem expedient." § 48-2-15.

Also the child support obligor can petition the court to release him or her from a lien created for support. The court then holds a hearing with all interested persons as parties. If the lien is released, the action is only prospective and will not deprive the support obligee of support accrued to the hearing. § 48-2-18.

Long-Arm Statute Specifically for Support. No statutory provision.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "Any payment of federal and state assistance . . . creates a debt due and owing to the department of welfare by the person or persons who are responsible for the support and maintenance of such child The assignment hereunder shall subrogate the department of welfare to the rights of the child . . . to the prosecution or maintenance of any action or procedure existing under law providing a remedy whereby the department of welfare may be reimbursed for money expended on behalf of the child" § 9-3-4.

"The state department of welfare shall have the authority to institute, in the name of the State, proceedings incident to the performance of its duties." § 49-7-28.

Support Payments Assigned. "Any recipient of financial assistance . . . shall upon receipt of such assistance be deemed to have assigned to the West Virginia department of

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West Virginia

welfare all rights, title and interests such recipient may have to the receipt of support and maintenance money from any person responsible for the support and maintenance of any member of the benefit group." § 9-3-4.

Agency Can Request Modification of Support. The state is subrogated to all rights of the recipient. [See § 9-3-4, above.]

Service on Agency If Public Assistance Involved. No statutory provision.

2/13/84

WISCONSIN

West's Wisconsin Statutes Annotated
(1981-82 Cum. Supp.) 1983 Session Laws

State Contact
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Madison, Wisconsin 53708

UNIFORM ACTS

Uniform Parentage Act. Not adopted.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Section 52.05 has §§ 1-6 of the act, but there are no provisions incorporating §§ 7-9 of the act.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version including part IV. § 52.10.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. The party bringing an action for determination of paternity shall have the burden of proving the issues involved by clear and satisfactory preponderance of the evidence. § 767.47(8). See also § 891.39(1)(a).

Long-Arm Statute Specifically for Paternity. "A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought . . . with respect to a child who may have been conceived by that act of intercourse." § 767.01(2).

Paternity Action Brought by State. When AFDC is being paid, the state is listed as one of the "persons" who may bring a paternity action. § 767.45(1)(g). The state may represent any petitioner who commences a paternity action, with that person's consent. § 767.45(6)(a) and (b).

The district attorney's duties include cooperation with the county and the department of health and social services in establishment of paternity including representation of individuals not receiving public assistance. § 59.47(14). See §§ 59.07(97) and 46.25(7) for similar provisions.

Default Judgment Allowed. If the respondent fails to appear and there are reasonable grounds to believe he is outside the state or if he has not been apprehended within six months after his arrest has been ordered, the court or family court commissioner may enter a judgment upon due proof by the petitioner of the facts alleged in the petition. However, the court may not make such a judgment where service has been obtained by publication. § 767.465(2). Also this default judgment of paternity may be reopened at any time on the appropriate motion or petition. § 767.465(3).

Procedure for Blood Tests. At the first court appearance where the respondent is present, the court or family court commissioner shall inform the parties that the court or family court commissioner will order blood tests upon the request of any party. §§ 767.456(4) and 767.48(7).

The court may, and upon request of a party shall, require the child, mother, alleged father, and any male witness who has or will testify about his sexual relations with the mother near the time of conception to submit to blood tests performed by a qualified expert appointed by the court. § 767.48(1). On request of any party the court shall order additional independent blood testg. § 767.48(2). In all cases, the court shall determine the number and qualifications of the experts. § 767.48(3).

If any party refuses to accept the recommendation after a pretrial, the court shall require the appropriate parties to submit to blood tests. § 767.46(4).

Whenever the blood test results exclude the alleged father, this shall be conclusive evidence of nonpaternity, and the action shall be dismissed. It will also be conclusive evidence of nonpaternity of any male witness if it excludes him. If any party refuses to submit to the blood tests, that fact will be disclosed to the fact finder. However, if the mother brought the action and she refuses to submit herself or the child to blood tests, the action will be dismissed. § 767.48(4). See § 885.23 for a similar provision.

Section 767.47(1) provides that evidence at a paternity trial or in pretrial hearing may include:

- "(c) Blood test results under ss. 767.48 and 885.23.
- "(d) The statistical probability of the alleged father's paternity based upon the blood tests.
- "(e) Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based on tests performed by experts."

Support Without Paternity Determination. There are two provisions on settlement, but neither is clear on the issue of a settlement with the father denying paternity. Section 767.45(2) provides that no agreement between the alleged or presumed father and by the mother or child bars a paternity action unless approved by the court. The only requirement for approval is that the court determine whether the settlement is in the best interest of the child.

Under § 767.46 the court or family court commissioner is to make a recommendation after a pretrial. Although the list of items the recommendation "may include" does not contain an agreement to pay without acknowledgment of paternity, that might be a possibility. § 767.46(2).

Factors Considered in Setting Support. In setting the amount and duration of child support, the court shall consider all relevant facts, including but not limited to:

- "(a) The needs of the child.
- "(b) The standard of living and circumstances of the parents.
- "(c) The relative financial means of the parents.
- "(d) The earning ability of the parents.
- "(e) The need and capacity of the child for education, including higher education.
- "(f) The age of the child.
- "(g) The financial resources and the earning ability of the child.
- "(h) The reponsibility of the parents for the support of others.
- "(i) The value of services contributed by the custodial parent." § 767.51(5).

This provision contains the same factors as those set forth in the Uniform Parentage Act.

The court also has the option of using department of health and social service standards for child support obligations based upon a percentage of the gross income and assets of the parents. § 767.51(5m); § 767.395(3).

Information on Assets of Father, Section 767.475(8) provides that "[i]n all other matters, paternity proceedings shall be governed by the procedures applicable to other actions affecting the family." Section 767.27 provides that, in actions affecting the family, the court shall require each party to make full disclosure of all assets on standard forms.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Both civil and criminal actions may be brought to compel child support. Section 52.055(1) provides for child support and makes it a misdemeanor for a parent to intentionally neglect or refuse to provide the necessary and adequate support of his or her minor child (legitimate or illegitimate). Section 52.05(1) provides for child support and makes it a felony for a parent to desert, willfully neglect, or refuse to provide for his or her minor child (legitimate or illegitimate) without just cause.

In a civil action if either spouse fails or refuses, without lawful or reasonable excuse, to provide for the support of his or her minor child, he or she can be compelled to provide such support as may be legally required. §§ 767.02(1)(f) and 767.08. If an action for divorce or legal separation has been denied, the court may still order such child support as is just and reasonable. § 767.28.

Initiation of Proceedings. A criminal action for abandonment of a child can be instituted by the spouse, child, any officer in charge of a public welfare agency, or any other person or organization. § 52.05(2). The statute on criminal failure to support a child (§ 52.055) does not indicate who may initiate the proceedings.

A civil action or child support can be commenced by the other spouse, the person with legal custody of the child, or by any nonlegally responsible relative. § 767.08(2); § 767.08(1). The state or any of its subdivisions, may bring an action if it furnishes public aid to the children and the other spouse, custodian, or nonlegally responsible

relative fails or refuses to institute the appropriate action. § 767.02(1)(f) & § 767.08.

Support Pending Divorce. The court or family court commissioner may make just and reasonable temporary child support orders during the pendency of a divorce action. § 767.23(1)(c).

Effect on Support of Denial of Visitation. "Violation of visitation rights by the custodial parent shall not constitute reason for failure to met child support obligations." § 767.25(3). "Visitation may not be denied for failure to met financial obligations to the child . . . , nor shall visitation be granted for meeting such obligations" § 767.245(3).

Factors Considered in Setting Support. In a criminal action for abandonment of a child, the court shall have "regard to the circumstances, and to the financial ability or earning capacity of the defendant." § 52.05(4).

In a civil action for child support, the court shall consider the guidelines for child support established by the department of health and social services and the following factors:

- "(a) The financial resources of the child.
- "(b) The financial resources of both parents
- "(c) The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.
- "(d) The desirability that the custodian remain in the home as a full-time parent.
- "(e) The cost of day care . . . or the value of the custodial services performed by the custodian
- "(f) The physical and emotional health needs of the child.
- "(g) The child's educational needs.
- "(h) The tax consequences to each party.
- "(i) Such other factors as the court may in each individual case determine to be relevant."
§ 767.25(1).

Information on Assets of Parties. The court shall require each party to furnish full disclosure of all assets owned in full or in part by either party separately or by the parties jointly on the court's standard forms. Assets required to be disclosed shall include, but are not limited to: real

estate, savings accounts, stocks and bonds, mortgages and notes, life insurance, and any other financial interest or source. The court shall also require the parties to furnish information on all debts and liabilities. § 767.27(1).

The court may require on its own initiative, and must require on the request of either party, copies of all state and federal income tax returns filed in the past two years. Information provided on these forms is confidential and may not be made available to any person for any purpose outside this action. § 767.27(1) and (3).

Failure by either party to file this information shall authorize the court to accept the statement of the other party as accurate. If a party deliberately or negligently omits disclosure of an asset worth \$500 or more, the other party may petition the court to declare the creation of a constructive trust for the benefit of the parties and their minor children. § 767.27(4) and (5).

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. "All orders or judgments providing for temporary or permanent . . . support of children shall direct the payment of all such sums to the clerk of the court for the use of the person for whom the same has been awarded." § 767.29(1).

Mechanism for Keeping Track of Obligors. "Each order for child support . . . shall include an order that the payer and payee notify the clerk of court of any change of employer or change of address within 10 days of such change." § 767.263.

Enforcement of Support by State in Nonwelfare Cases. The department of health and social services, or the district attorney or corporation counsel if it delegates its authority to him or her, may represent any individual in any action to establish or enforce a child support obligation. § 46.25(7). The department may also authorize a county to contract with an attorney or a collection agency to collect unpaid child support. § 46.25(7). The department shall establish a uniform system of fees, taking into account the ability to pay, for services provided to individuals not receiving public assistance. § 46.25(6).

Location of Absent Parents. The department of health and social services shall create a state location service to locate these parents. The department may request and shall receive any appropriate and necessary information from the records of all departments, boards, bureaus, or other agencies of this state. These governmental units shall provide the requested information within seven days. § 46.25(2).

In an action under URESA, the state information agency (designated as the department of health and social services), if no state location service is available shall use all means at its disposal to obtain information regarding location of the obligor or his or her property, including the examination of official state records and other sources. § 52.10(17). The district attorney shall also on his or her own initiative use all means at his or her disposal to locate the obligor or property. § 52.10(19).

Child Support Priority over Other Creditors. No statutory provision.

Wage Assignment Specifically Available for Support. Once a parent has been convicted of failure to support his or her child, and there has been a showing of need, the court shall order a hearing where the court may order the parent to assign the salary or wages due or to be due in the future to him or her. § 52.055(2m).

"Each order for child support . . . constitutes an assignment of all commissions, earnings, salaries, wages . . . as will be sufficient to meet the . . . child support payments . . . and to defray arrearages"The assignment may take effect immediately in the discretion of the court and shall take effect on default. Beginning July 1, 1987, all assignments will take effect immediately unless the payer establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the support obligation or provides sufficient security for payment under the order." § 767.265(1).

Also see § 767.23(1)(f) providing for an assignment of income with temporary child support orders. An order compelling child support may be enforced by wage assignment under § 767.08(2) also.

Garnishment Specifically Available for Support. If a party fails to pay child support, the court may enforce the order by any appropriate remedy, including garnishment under ch. 812. § 767.30(3).

Attachment Specifically Available for Support. If a parent is absconding or about to abscond from his or her children or is about to leave the municipality in which he or she resides, leaving a child on or likely to be on public assistance, or neglects or refuses to support the child, the county or municipality where the child resides may apply to the circuit court for any county where the parent has real or personal property for a warrant to seize the property. § 52.03(1).

The court may enforce a support order by any appropriate remedy, including satisfaction under § 811.23 of any property attached under § 811. § 737.30(3).

Other Special Enforcement Tools. "The court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children." § 767.25(2).

"The court may appoint a trustee, when deemed expedient, to receive any payments ordered, to invest and pay over the income for the . . . support and education of any of the minor children, or to pay over the principal sum in such proportions and at such times as the court directs. The trustee shall give such bond, with such sureties as the court requires, for the faithful performance of his or her duties." § 767.31. See § 767.475(7) for a similar provision on paternity proceedings.

The court may enforce a support order by any appropriate remedy, including execution of the order or judgment, contempt of court under ch. 785, and money judgment for past due payments. § 767.30(3).

Long-Arm Statute Specifically for Support. Section 801.05(11) gives the court jurisdiction in any action affecting the family in which a personal claim is asserted against the respondent and commenced in the county where the petitioner resides if the respondent resided in this state in a marital relationship with the petitioner not less than six consecutive months within the prior six years and the respondent is served personally.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. When public assistance is provided, the state is deemed a real party in interest for purposes of securing support. § 767.075.

Support Payments Assigned. A recipient of aid to families with dependent children is deemed to have assigned all support rights to the state by applying for the aid. § 49.19(4)(h).

Agency Can Request Modification of Support. The court may revise and alter the child support order on "the petition of the department of health and social services, a county welfare agency or a child support agency if an assignment has been made . . . or if either party or their minor children receives aid" § 767.32(1).

Also, "[i]n any case in which the state is a real party in interest . . . , the department of health and social services shall review the support obligation periodically and whenever circumstances so warrant, petition the court for revision" § 767.32(4). Whenever public assistance is provided to a dependent, the state is deemed a real party in interest for purposes of securing support. § 767.075.

Service on Agency If Public Assistance Involved. In any action affecting the family in which either party is a recipient of public assistance, each party, unless represented by a child support agency, must serve a copy of the pleading or motion upon the child support agency of the county where the action is begun within twenty days of making service on the opposing party. § 767.15.

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WYOMING

Wyoming Statutes Annotated
1977 (1983 Cum. Supp.)

State Contact
Shirley Kingston
Department of Health and Social
Services
Division of Public Assistance
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UNIFORM ACTS

Uniform Parentage Act. §§ 14-2-101 - 14-2-120.

Uniform Blood Test Act. Not adopted.

Uniform Desertion and Nonsupport Act. Not adopted.

Uniform Civil Liability for Support Act. Not adopted.

Uniform Reciprocal Enforcement of Support Act. The 1968 version
including part IV. §§ 20-4-101 - 20-4-138.

ESTABLISHMENT OF PATERNITY

Burden of Proof of Paternity. Under the Uniform Parentage Act,
a paternity action is civil, governed by the rules of civil
procedure. § 14-2-112(a)

Long-Arm Statute Specifically for Paternity. The district court
has jurisdiction of an action brought under §§ 14-2-101 to
14-2-120 pertaining to adjudication of paternity. § 14-2-
106(a). A person who has sexual intercourse in Wyoming that
has resulted in the birth of a child subject to paternity
proceedings, thereby submits to the jurisdiction of this
state's courts in a paternity action. § 14-2-106(b).
[Uniform Parentage Act provision.]

Paternity Action Brought by State. Under the Uniform Parentage
Act, any interested party may bring a paternity action to
determine the existence or nonexistence of the presumed
father and child relationship. § 14-2-104. A man is
presumed to be the father if the child was born during the

marriage to the child's mother, or he and the mother attempted to marry before or after the birth of the child and he acknowledged his paternity, or he received the child into his home and openly held out the child to be his own. § 14-2-102. When there is no presumed father, a paternity action may be brought by the department of health and social services, the child, mother, alleged father, or their personal representatives. § 14-2-104(c).

Default Judgment Allowed. Under the Uniform Parentage Act, the rules of civil procedure apply so a default judgment may be available. § 14-2-112(a).

Procedure for Blood Tests. Under the Uniform Parentage Act, the court may, and on a party's request shall, require the child, mother or alleged father to submit to blood tests, which will be performed by a court-appointed expert. The court, upon a party's reasonable request, shall order independent tests by other experts. The court determines the number and qualifications of the experts. § 14-2-109.

Evidence relating to paternity may include blood test results weighed with the statistical probability of the alleged father's paternity. § 14-2-110. If a pretrial hearing has been held and the judge or referee who presided made recommendations that are not accepted by all parties, the court shall require blood tests if practicable. § 14-2-111. If the scientific evidence from the blood tests conclusively shows the defendant could not be the father, the action shall be dismissed. § 14-2-111(f).

In a paternity action, the alleged father can offer evidence only about a man who had sexual intercourse with the mother near the time of conception if the defendant has undergone and made available blood tests that do not exclude the defendant's possible paternity of the child. A man who is identified and subject to the court's jurisdiction will be made a defendant in the action. § 14-2-112(c). The court may order the blood test costs paid by the parties in the proportions and at the time it determines. § 14-2-114.

Support Without Paternity Determination. Only agreements made under § 14-2-111(b) bar a paternity action. Under § 14-2-111(b), there can be a support agreement with the alleged father without an acknowledgement of paternity if a defined economic obligation to the child is made and if the

judge or referee conducting the pretrial hearing and the guardian ad litem accept the agreement. The judge or referee shall consider the factors for setting child support and the improbability of establishing the defendant's paternity or nonpaternity.

Factors Considered in Setting Support. Under the Uniform Parentage Act, the court shall consider all relevant facts including the:

- (1) child's needs,
- (2) parents' standard of living and circumstances,
- (3) parents' relative financial means,
- (4) parents' earning ability,
- (5) child's need and capacity for education, including higher education,
- (6) child's age,
- (7) child's financial resources and earning ability,
- (8) parents' responsibility for the support of others,
- (9) value of custodial parent's services. § 14-2-113(e).

Information on Assets of Father. No statutory provision.

ENFORCEMENT OF SUPPORT

Support Enforcement Apart from Paternity or Marital Dissolution.

Wyoming adopted three statutory provisions for support within marriage. Under the statutes relating to children, "[a]ny person legally responsible for the support of a child under the age of eighteen years who abandons, deserts, neglects or unjustifiably fails to support the child is liable for the support of the child." § 14-2-204.

"When the husband and wife are living separately, or when they are living together but the husband does not support the wife or children within his means, and no proceeding for divorce is pending, the wife in behalf of herself or her minor children may institute a proceeding for support." § 20-2-102.

Under the domestic relations statutes, Wyoming provides criminal sanctions for nonsupport and a procedure for court-ordered support within marriage. "[A]ny parent who without just cause or lawful excuse deserts, or fails or refuses to provide adequately for the care, support and maintenance of

his child or children under the age of eighteen (18) years, is guilty of a crime" § 20-3-101.

Initiation of Proceedings. Under § 14-2-204, "[e]ither of the parents of the child or any other person, agency or institution furnishing the physical care or support of the child may bring the action." If the child is supported, even partially, by public assistance, the director of the county department of public assistance and social services may request that the county attorney file the petition and maintain the action. The wife may institute proceedings on behalf of herself or minor children under § 20-2-102. Under the criminal proceeding, an action "may be instituted upon verified complaint by any person against any person guilty of the offenses." § 20-3-101.

Support Pending Divorce. Section 20-2-111 provides that the court may require either party to pay any sum necessary for the support of the children or spouse during the pendency of the divorce.

Effect on Support of Denial of Visitation. No statutory provision.

Factors Considered in Setting Support. The court has broad discretion in determining the amount of support. §§ 20-2-111 and 20-2-113.

Information on Assets of Parties. The court may compel an answer under oath by either party concerning his or her property. § 20-2-112.

SUPPORT ENFORCEMENT MECHANISMS

Payments Through Official Agency. No statutory provision.

Mechanism for Keeping Track of Obligor. No statutory provision.

Enforcement of Support by State in Nonwelfare Cases No statutory provision.

Location of Absent Parents. Under URESA, "[i]f the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources." § 20-4-117. "The prosecuting attorney shall use all means at his disposal to locate the obligor or his property" § 20-4-119.

Child Support Priority over Other Creditors. An execution under § 20-3-105(a) has priority over all other garnishments, executions, attachments, or withholdings. § 20-3-105(f).

Wage Assignment Specifically Available for Support. The court can order a wage assignment for earned or future income if: (1) the child support order is from a Wyoming court or from a state with reciprocal enforcement, (2) the custodial parent or the state (if the support is assigned to it) fills out a request for the assignment or the court determines an assignment is proper on its own motion, (3) the child support payments are more than thirty days overdue, (4) the custodial parent has complied with the judgment, and (5) all constitutional and statutory procedural requirements are met, including the opportunity for a hearing. § 20-3-105.

"From the time of filing, the order [for support] shall have the same effect as a judgment or decree of the district court in a civil action and may be enforced by the district attorney in any manner provided by law for enforcement of a civil judgment for money." § 14-6-236. This provision may include wage assignment, garnishment, and attachment, which are remedies available in civil actions.

Garnishment Specifically Available for Support. See Wage Assignment Specifically Available for Support, above.

Attachment Specifically Available for Support. See Wage Assignment Specifically Available for Support, above. Also, in divorce actions, attachment is an enforcement tool under § 20-2-112. In paternity actions, "all remedies for the enforcement of judgments apply." § 14-2-115. In civil nonsupport actions under § 14-2-204, "execution of judgment . . . shall be as provided by the general laws of Wyoming."

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Other Special Enforcement Tools. In divorce proceedings the court may order any amount set apart for child support to be paid to a trustee appointed by the court. § 20-2-115.

The respondent in a paternity action can be imprisoned for failure to obey the court's order or judgment under § 14-2-115 (a Uniform Parentage Act provision).

Long-Arm Statute Specifically for Support. Section 20-2-102 provides that, when a wife petitions a court for support of minor children by the father, the court may use constructive service upon the father if he has property within the state.

COLLECTION OF SUPPORT FOR AFDC

Duty of Support Determined by Administrative Agency. No statutory provision.

Enforcement of Support by State in Welfare Cases. "If the child is supported or partially supported by public assistance funds, the director of the county department of public assistance and social services may request the county attorney to file the petition and maintain this action" § 14-2-204.

Support Payment Assigned. No statutory provision.

Agency Can Request Modification of Support. No statutory provision.

Service on Agency If Public Assistance Involved. No statutory provision.