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Collecting Child Support: A History of Federal and State Initiatives

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Collecting Child Support: A History of Federal and State Initiatives

By Naomi R. Cahn and Jane C. Murphy

In this article we sketch an overview of the increasing federal involvement in the child-support area. Because the federal role has grown so dramatically over the past 25 years, family law practitioners need to understand the different federal programs and requirements that affect state management of child-support programs. While for many low-income parents state agencies handle child-support establishment and collection, the federalization of child support has practical implications when it comes to both establishing and enforcing child support. For example, as the time limits of the Personal Responsibility and Work Opportunity Reconciliation Act begin to have their effects, child support may become a supplement more and more needed by custodial parents.¹

We begin this article with a brief history of the changing nature of federal involvement in child support—focusing on the origins of the federally mandated state child-support departments (“IV-D” agencies)—and then examine the development of mandatory child-support guidelines. We conclude with a listing of the

implications of the federalization of child support for the family law practitioner.

I. Background to Federalization

Although the federal government had become involved in child-support programs much earlier, the Social Services Amendments of 1974 signaled the beginning of the contemporary federal-state partnership approach to child support.² Through this legislation, Congress mandated the creation of the federal Office of Child Support Enforcement and required that states participate in various programs of that office to increase the effectiveness of child-support collections. Congress adopted the Social Services Amendments of 1974 in an effort to remedy a steadily increasing number of female-headed households living in poverty, which it blamed on the rising number of absent fathers.³ Senate Finance Committee reports cited studies reporting that from 1959 to 1968, while the poverty rate “for male-headed families went down to 7 percent, poverty among female-headed families increased to 32 percent,” rising even further to 36 percent by 1970.⁴

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¹ See Paula Roberts, *The Potential for Child Support as an Income Source for Low-Income Families*, 31 CLEARINGHOUSE REV. 565 (Mar.–Apr. 1998).

² Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975) (codified at 42 U.S.C. § 1305).

³ S. REP. NO. 93-1356, at 43–44 (1974), reprinted in 1974 U.S.C.C.A.N. 8133, 8146–48.

⁴ *Id.* at 8147–48.

Before the 1974 amendments, Congress had attempted to deal with child abandonment and lax child-support enforcement through the Aid to Families with Dependent Children program.⁵ In 1950 Congress established procedures to give law enforcement officials notice that a child was receiving aid because the child had been deserted, abandoned, or both, creating for the first time a relationship between actually receiving assistance and enforcing support obligations.⁶ In 1967 Congress enacted legislation mandating that each state welfare agency "establish a single, identified unit whose purpose is to undertake to establish the paternity of each child receiving welfare . . . and to secure help for him."⁷ In spite of these steps forward, a 1972 General Accounting Office study showed that the Secretary of Health, Education and Welfare had failed to monitor state child-support enforcement practices appropriately and consequently had no knowledge of the degree to which states were satisfying federal requirements.⁸

Moreover, before the adoption of child-support guidelines in the late 1980s, judges relied on broad discretionary standards to decide how much a noncustodial parent must pay in child support.⁹ These vague standards were applied in

any case in which child support was established, including in divorce, separation, or paternity proceedings in which initial support was set, or in modification proceedings. Traditionally most states' statutes simply instructed the court that parents had an obligation to support their child.¹⁰ Case law interpreting these statutory provisions required courts, when setting the amount of support, to consider the needs of the child and the noncustodial spouse's ability to pay.¹¹ Both the preguideline Uniform Marriage and Divorce Act and the Uniform Parentage Act relied on a series of factors to determine the appropriate amount of child support.¹² However, an utter lack of uniformity not only between states but also within states characterized the setting of the level of child support.

II. Federalization

Against the background of these failed efforts, Congress enacted the Social Services Amendments of 1974. Since then, the federal government has become increasingly involved in state child-support efforts and now requires child-support guidelines, wage withholding, the registering of new hires, and other methods to improve child-support collection. The first step toward improving collection was the creation of better coordination between

⁵ When Aid to Families with Dependent Children was enacted in the 1930s, a father's death was the primary basis for a family's eligibility. With the advent of social security survivor benefits, this basis of eligibility decreased from 43 percent in 1940 to 4 percent in 1973. *Id.* at 8146. Also, the number of families receiving aid because the father was disabled decreased from 18.1 percent in 1961 to 10.2 percent in 1973. *Id.* Aid benefits to families with absent fathers, however, increased from 66.7 percent in 1961 to 80.2 percent in 1973. *Id.*

⁶ *Id.* at 8148.

⁷ *Id.* at 9148.

⁸ *Id.* at 8148-49.

⁹ On child-support guidelines adopted in the late 1980s, see Family Support Act of 1988, Pub. L. No. 100-485, § 103, 102 Stat. 2343, 2346 (1988) (codified at 42 U.S.C. § 667 (1988)). See also 45 C.F.R. §§ 301.10 (stating that an approved state plan is a condition for federal financial assistance), 302.56(a) (requiring that state plans contain child-support guidelines) (1990).

¹⁰ See, e.g., ARIZ. REV. STAT. ANN. § 12-2451 (West Supp. 1990); DEL. CODE ANN. tit. 13, § 501 (1981); MD. CODE ANN., FAM. LAW § 5-203 (1984).

¹¹ See, e.g., Beck v. Jaeger, 604 P.2d 18, 19 (Ariz. 1979); Pencovic v. Pencovic, 287 P.2d 501 (Cal. 1955); Unkle v. Unkle, 505 A.2d 849, 854 (Md. App. 1986); Earle v. Earle, 130 N.Y.S.2d 238 (N.Y. Fam. Ct. 1954); Holt v. Holt, 223 S.E.2d 542 (N.C. App. 1976). See also LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION § 1.01, at 1-3 (Supp. 1997) (describing two factors under preguideline discretionary standard for setting child support as "ability of the obligor parent to pay and the needs of the child").

¹² UNIF. MARRIAGE AND DIVORCE ACT § 109, 9A U.L.A. 400 (1987); UNIF. PARENTAGE ACT §15, 9B U.L.A. 454 (1973).

state and federal collection efforts; the second, a requirement of more uniform standards for establishing child support.

A. 1974: Family Support Act, Title IV-D of Social Security Act

In addition to enacting the Social Services Amendments, in 1974, Congress enacted the Family Support Act, title IV-D of the Social Security Act.¹³ Title IV-D required state participation in programs—including parent location, paternity establishment, and child-support order enforcement—of the newly established Office of Child Support Enforcement.¹⁴ The legislation aimed to increase federal oversight over state child-support collections, with a focus on families on public welfare. Like subsequent legislation, it established both federal and state obligations.

1. Federal Obligations

The Office of Child Support Enforcement was created as a separate unit, with the director reporting directly to the Secretary of the U.S. Department of Health and Human Services.¹⁵ Under title IV-D the office was required to (1) establish standards for state child-support programs; (2) establish minimum organizational and staffing requirements for state agencies; (3) review and approve state programs; (4) evaluate the implementation of state programs; (5) assist states in establishing reporting or records procedures, including technical assistance; (6) receive applications from states and grant permission to use federal courts to enforce court orders against out-of-state parents; and (7) operate the “Parent Locator Service” as a clearinghouse for data and

information for locating absent parents to enforce their outstanding support obligations.¹⁶ Although states retained fundamental authority to implement their child-support programs, title IV-D delegated to the federal government a more active oversight power.¹⁷

2. State Obligations

Under title IV-D a state plan for child support is required to satisfy certain minimum standards in order to avoid federal funding sanctions.¹⁸ Pursuant to title IV-D a state agency must (1) create a single and separate organizational unit (not necessarily administered by the welfare agency), meeting staffing and organizational requirements as prescribed by the Health and Human Services Secretary; (2) undertake to establish the paternity of eligible children; (3) ensure interstate cooperation in child-support efforts; (4) specify ways to distribute proceedings, including a plan to make collection services available to noneligible children through an application process; (5) provide for cooperative arrangements with appropriate courts and law enforcement officials to assist in enforcing support orders; and (6) set up a parent locator service using all sources of information and available records in establishing paternity, locating an absent parent, and securing compliance.¹⁹

As a result of title IV-D, recipients of Aid to Families with Dependent Children were required to assign their child and spousal support rights to the state, a requirement which has continued throughout all of the changes in welfare law.²⁰ Such recipients who also cooperated with

¹³ Family Support Act, Pub. L. No. 93-647, 88 Stat. 2337 (1974) (codified as amended at 42 U.S.C. §§ 651-70 (1994)).

¹⁴ See Robyn Shields, Comment, *Can the Feds Put Deadbeat Parents in Jail? A Look At the Constitutionality of the Child Support Recovery Act*, 60 ALB. L. REV. 1409, 1412 (1997).

¹⁵ See Pub. L. No. 93-647, § 452(a), 88 Stat. 2337 (codified at 42 U.S.C. § 652 (1994)).

¹⁶ 42 U.S.C. §§ 652(a), 653 (as amended).

¹⁷ See S. REP. NO. 93-1356, at 46-47 (1974), reprinted in 1974 U.S.C.A.N. 8133, 8150. In effect Congress intended to transform the existing federal “perfunctory review” of state plans into a more rigorous annual examination of state child-support programs. *Id.* at 8151.

¹⁸ See Paula Roberts, *Child Support Enforcement: An Introduction*, 25 CLEARINGHOUSE REV. 868, 869 (Nov. 1991); see also 42 U.S.C. § 654.

¹⁹ 42 U.S.C. § 654.

²⁰ See *id.* § 656(a)(1); see also Roberts, *supra* note 18, at 868-69.

the state in collection efforts and paternity establishment were automatically referred for IV-D services at no additional cost.²¹ Nonrecipient families might also use IV-D services but had to apply for eligibility and pay an application fee.²²

Under title IV-D states were required to pass through some of the money collected to the family.²³ Any amount collected beyond the payment to the family was retained by the state as reimbursement for welfare payments.²⁴ Although states

Support Enforcement Amendments to strengthen IV-D agencies both jurisdictionally and procedurally and to increase the effectiveness of the programs, ensuring their availability to both recipients and nonrecipients of Aid to Families with Dependent Children.²⁷ The amendments imposed a number of requirements on all IV-D agencies.²⁸ The amendments mandated that the agencies (1) implement mandatory wage withholding after one month of overdue support without changing the court order but with advance notice to absent parents and their employers; (2) provide for liens against personal and real property for amounts of overdue child support by a resident of the state where the property is located; (3) withhold income tax refunds to non-custodial parents who owe overdue payments; (4) permit paternity establishment at any time before a child's 18th birthday (extending the statute of limitations on support claims); (5) expedite processes within a state judicial system for establishing paternity and enforcing and obtaining child-support orders; (6) notify recipients of Aid to Families with Dependent Children at least once each year of the amount of child support collected on their behalf; and (7) allow broader use of the Federal Parent Locator Service (states no longer have to exhaust all state resources before requesting federal assistance).²⁹ The amendments also required states to enact nonbinding guidelines for support awards to be used by judges and other administrators.³⁰

As a result of title IV-D, recipients of Aid to Families with Dependent Children were required to assign their child and spousal support rights to the state, a requirement which has continued throughout all of the changes in welfare law.

are no longer required to pass through amounts as a result of the 1996 welfare reform bill, they are permitted to do so.²⁵

Title IV-D initiated a nationwide growth in child-support enforcement programs. In 1983 alone \$2 billion in payments, four times the amount in 1976, were collected, and 800,000 parents were located, an increase over the 181,500 located in 1976.²⁶

B. 1984: Child Support Enforcement Amendments

In 1984 Congress enacted the Child

²¹ See Roberts, *supra* note 18, at 869.

²² See 42 U.S.C. § 654(6)(B).

²³ See *id.* § 657.

²⁴ See *id.*

²⁵ See Roberts, *supra* note 1, at 572-73.

²⁶ See S. REP. NO. 98-387, at 11 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2397, 2407.

²⁷ See *id.* at 2397; Roberts, *supra* note 18, at 871. These amendments "effectively nationalized" child-support establishment and collection. Ann Laquer Estin, *Federalism and Child Support*, 5 VA. J. Soc. POL'Y & L. 541, 546 (1998).

²⁸ See Child Support Enforcement Amendments, Pub. L. No. 98-378, § 466, 98 Stat. 1306-8 (1984) (codified as amended at 42 U.S.C. §§ 666-67).

²⁹ *Id.*; see S. REP. NO. 98-387, at 29, 30, 53 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2397, 2425-26, 2471.

³⁰ 42 U.S.C. § 667. "The guidelines . . . need not be binding upon such judges or other officials." *Id.*; see Shields, *supra* note 14, at 1412.

C. 1988: Family Support Act

Four years later Congress again confronted problems in the enforcement system, especially with respect to inconsistent orders.³¹ The Family Support Act made existing provisions more stringent and imposed mandatory requirements on IV-D agencies in order to continue receiving federal funding.³²

The Act also changed the method of establishing child-support levels. The inadequacy of most states' discretionary standards in setting the amount of child support took on crisis proportions by the early 1980s. Insufficient child support had become a major cause of the spiraling poverty rate among women and children.³³ Of the 9.4 million custodial parents in 1987, 41 percent had no child-support award.³⁴ When courts did award child support, award levels usually were inadequate, thrusting many children and custodial parents into poverty or a seriously diminished standard of living.³⁵ In 1979 the average awards comprised only 37 percent of the estimated average monthly expenditure for children in a middle-income household and only 55 percent in a low-income household.³⁶ Over time the poor record of collecting

child support combined with the inadequate level of awards resulted in a substantial loss of child support for custodial households.³⁷

In addition to the inadequacy of the award itself, the traditional system of virtually unlimited judicial discretion in this area led to "pronounced disparities in awards from court to court, from judge to judge, and from case to case."³⁸ Although some of the disparity may have been attributable to such factors as differences in income of noncustodial parents, the existence of an alimony award, and the type of custody awarded, substantial arbitrary differences existed. In one study from the mid-1980s a random sampling of cases revealed that fathers earning \$155 per week had to pay anywhere from \$10 to \$60 per week for one child, depending on the judge.³⁹

The Family Support Act made support award guidelines binding in any "judicial or administrative proceeding."⁴⁰ Courts were supposed to treat guidelines as rebuttable presumptions and disregard them only upon a specific showing that the guidelines would be unjust and inappropriate in a particular case.⁴¹ The Act further required states to enact laws pro-

³¹ See S. REP. NO. 100-377, at 1-2 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2777, 2778.

³² See *id.* at 2778; Family Support Act of 1988, Pub. L. No. 485, 102 Stat. 2343 (codified at 42 U.S.C. §§ 666-67).

³³ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CHILD SUPPORT AND ALIMONY: 1987, CURRENT POPULATION REPORTS, SPECIAL STUDIES, SERIES P-23, NO. 167, at 2-4 (1990) [hereinafter CENSUS BUREAU].

³⁴ *Id.* at 1.

³⁵ Lucy Yee, *What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court*, 57 DENV. U. L. REV. 21, 50 (1979).

³⁶ Karen Seal, *A Decade of No-Fault Divorce: What It Has Meant Financially to Women in California*, FAM. ADVOC., Spring 1979, at 10, 13-15 (estimating that child-support awards are less than half the actual costs of raising a child).

³⁷ In 1987 only one-half of the women with child-support orders received the full amount. Almost one-quarter received partial payments while the other one-quarter received nothing. CENSUS BUREAU, *supra* note 33, at 4.

³⁸ Sally F. Goldfarb, *What Every Lawyer Should Know About Child Support Guidelines*, 13 FAM. L. REP. 3031, 3032 (1987).

³⁹ JOSEPH I. LIEBERMAN, CHILD SUPPORT IN AMERICA 12 (1986); see Yee, *supra* note 35, at 28, 52-53. *But see* MARYGOLD S. MELLI, CHILD SUPPORT AWARDS: A STUDY OF THE EXERCISE OF JUDICIAL DISCRETION 41-42 (Inst. for Research on Poverty Discussion Paper 734-83, 1983) (finding that variations in the approximately 148 child-support orders from the four judges studied was more a function of the differences in income of the parties than of the differences in criteria applied by the judges).

⁴⁰ 42 U.S.C. §§ 666-667.

⁴¹ See *id.* § 667(b)(2).

viding for immediate wage withholding, regardless of whether the payments were in arrears, unless a party could demonstrate good cause for a statutory deviance.⁴² States were required to develop better information processing.⁴³ The Act also created performance standards for state paternity establishment programs.⁴⁴

D. 1992: Child Support Recovery Act

To remedy inefficient and inconsistent enforcement from state to state, Congress enacted the Child Support Recovery Act of 1992, which created a new federal crime for willful failure to make past-due support payments to a child residing in another state.⁴⁵ The elements of the interstate crime are willful failure to pay child support (1) that is due to a child residing in a different state from the obligor and (2) that is due in an amount greater than \$5,000 or has remained unpaid longer than one year.⁴⁶ The parent's first offense results in a fine or imprisonment for not more than six months or both.⁴⁷ Any subsequent offenses result in a fine or imprisonment for up to two years or both.⁴⁸ A court would order restitution of all past-due support in addition to a fine or imprisonment.⁴⁹ Moreover, the Act gave federal judges discretion to require full pay-

ment of child-support obligations as a condition of probation.⁵⁰

E. 1993: Omnibus Budget Reconciliation Act

To reduce the large Medicaid payments to children denied coverage under their noncustodial parent's insurance, Congress enacted the Omnibus Budget Reconciliation Act of 1993, which amended the Employee Retirement Income Security Act of 1974 to establish Qualified Security Medical Child Support Orders.⁵¹ In effect Congress mandated that employers with employees who were child-support obligors extend health plan coverage to the obligor's children.⁵²

F. 1996: Welfare Reform Law

In 1996 Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act.⁵³ This law affects not only public welfare but also nearly every aspect of child-support services with respect to both obligations of IV-D agencies and the duties of the recipients themselves.

1. Federal Obligations

The Act expands the Federal Parent Locator Service, permitting parties to use the service not only to enforce child-sup-

⁴² See *id.* § 666.

⁴³ See *id.* §§ 503, 667.

⁴⁴ See *id.* § 666; see also Roberts, *supra* note 18, at 873 (stating that all parties of contested actions must submit to genetic testing).

⁴⁵ Child Support Recovery Act, Pub. L. No. 102-521, § 228(a), 106 Stat. 3403 (1992) (codified as amended at 18 U.S.C. § 228).

⁴⁶ See *id.* § 228(d)(1)(B). For a general discussion of the Child Support Recovery Act, see Shields, *supra* note 14.

⁴⁷ See 18 U.S.C. § 228(b).

⁴⁸ See *id.*

⁴⁹ See *id.* § 228(c).

⁵⁰ See *id.* § 3563(b).

⁵¹ Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1169 (1994); Pub. L. No. 103-66, § 4301(a), 107 Stat. 312, 372 (1993) (codified at 29 U.S.C. §§ 1021, 1144, 1169); see Linda D. Elrod, *Child Support Reassessed: Federalization of Enforcement Nears Completion*, 1997 U. ILL. L. REV. 695, 702 (Congress was trying to combat the denial of coverage to children because of "restrictive dependency definitions and [Employee Retirement Income Security Act] preemption").

⁵² See 29 U.S.C. § 1169(a)(2)(B)(i). The legislation required states to enact laws that would apply to all health plans, regardless of the number of employees. Elrod, *supra* note 51, at 702.

⁵³ Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.).

port orders but also to establish parentage, modify child-support orders, and enforce custody or visitation orders.⁵⁴ The Act also broadens the information made available through the service to include records concerning wages, employee benefits, and type, status, location, and amount of assets.⁵⁵

To facilitate locating individuals to establish paternity or to modify or enforce a support order, the Act mandates that all employers must report information on new hires within 20 days to a state directory. The National Directory of New Hires is an automated directory of records from the state directories.⁵⁶ The Secretary of the U.S. Department of Health and Human Services must compare data collected in the directory with information in the Federal Case Registry at least every two business days and report any matches.⁵⁷ The registry is an automated record system containing support orders and case information.⁵⁸

2. State Obligations

The Act imposes several obligations on state agencies in addition to expanding the Federal Parent Locator Service and facilitating the establishment of paternity. The Act requires structural and programmatic changes, promotes the adoption of uniform state laws, and modifies requirements for program eligibility and disbursement of support payments.

The Act expands eligibility for services and increases state IV-D agency obligations to provide a wider range of

child-support enforcement services.⁵⁹ State agencies must now provide for the establishment, modification, and enforcement of support orders to an increased range of children, including those receiving benefits from the Temporary Assistance for Needy Families block grant and foster care payments.⁶⁰

The Act also mandates significant changes in the case tracking and parent locator systems in each state. Each state must establish an automated state case registry, containing a record of each case in which a state agency is providing services.⁶¹ The Act encourages states to compile these registries by "linking local case records through an automated information network" and using "standardized data elements" to make available names, dates of birth, and identification numbers.⁶² The state agency is also responsible for updating and monitoring the records.⁶³

The Act further requires that state agencies enact specific procedures to expedite the establishment of paternity and enforcement of support orders, alleviating the need for additional judicial or administrative proceedings to obtain permission for modification.⁶⁴ State agencies must have the authority to (1) order genetic testing; (2) subpoena financial information to enforce a support order; (3) require all state entities to give information about employment, compensation, and benefits of any individual employed by that entity; (4) access state records including corrections records and vital statistics, tax, and revenue informa-

⁵⁴ See § 316(c)a, 110 Stat. at 2214–15 (to be codified at 42 U.S.C. § 653). For general information about the Personal Responsibility and Work Reconciliation Opportunity Act, see Paula Roberts, *The Family Law Implications of the 1996 Welfare Legislation*, 30 CLEARINGHOUSE REV. 988 (Jan.–Feb. 1997).

⁵⁵ See § 316(c)a, 110 Stat. at 2214–15 (to be codified at 42 U.S.C. § 653).

⁵⁶ See § 453A(g)(2), 110 Stat. at 2211 (to be codified at 42 U.S.C. § 653(i)).

⁵⁷ See § 316(j)(2)(A), 110 Stat. at 2217 (to be codified at 42 U.S.C. § 653(j)).

⁵⁸ See § 316(h)(1), 110 Stat. at 2216.

⁵⁹ See § 301, 110 Stat. at 2199 (to be codified at 42 U.S.C. § 654).

⁶⁰ See H.R. CONF. REP. NO. 104-725, at 33 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2649, 2726.

⁶¹ See § 311(e)(1), 110 Stat. at 2205 (to be codified at 42 U.S.C. § 454A(e)).

⁶² See *id.*

⁶³ See *id.* (to be codified at 42 U.S.C. § 454A(e)(5)).

⁶⁴ See 42 U.S.C. § 666(c); H.R. CONF. REP. NO. 104-725, (1996), *reprinted in* 1996 U.S.C.C.A.N. 2741.

tion; (5) order income withholding or secure assets; (6) increase the amount of support payments to include arrearages; and (7) authorize statewide jurisdiction over child-support and paternity cases.⁶⁵

To facilitate paternity establishment, the Act requires states to permit paternity establishment at any time before a child is 18 years of age and to mandate genetic testing in a contested paternity case at the request of one party.⁶⁶ States must create a simple civil process for voluntary paternity acknowledgment, including procedures enacting a hospital-based program, and also safeguard the due process rights of the mother and putative father with respect to awareness of the legal consequences of and the alternatives to voluntary paternity acknowledgment.⁶⁷

Another notable aspect of the Personal Responsibility and Work Opportunity Reconciliation Act is its effort to promote the adoption of uniform state laws.⁶⁸ For instance, it required that all states adopt the Uniform Interstate Family Support Act by January 1, 1998.⁶⁹ Moreover, in amending the Full Faith and Credit Act, the Personal Responsibility and Work Opportunity Reconciliation Act clarifies choice of law and jurisdictional dilemmas which may arise.⁷⁰ First, if only one court issues a support order, that order must be recognized.⁷¹ But if two or more courts issue orders, and only one court maintains exclusive jurisdiction, the order of the exclusive-jurisdiction court

should take precedence.⁷² If two or more courts issue orders and more than one claims exclusive jurisdiction, the Personal Responsibility and Work Opportunity Reconciliation Act gives precedence to the court located in the child's current state of residence.⁷³ If the courts of the child's resident state do not issue any orders, the parties adhere to the order most recently issued from any court.⁷⁴ States must respond within five business days to one another's requests to enforce orders.⁷⁵

State IV-D agencies are also required by the Personal Responsibility and Work Opportunity Reconciliation Act to operate a centralized system to collect and distribute child-support payments for orders issued after December 31, 1993.⁷⁶ The agency must use automated procedures to (1) receive payments for disbursement to custodial parents; (2) identify payments accurately; (3) ensure prompt disbursement; and (4) furnish timely information about the current status of support payments upon request.⁷⁷ The Act prescribes that the state distribute support payments to families within two business days of their receipt.⁷⁸ At a minimum, IV-D agencies must utilize disbursement units to transmit orders to employers for income withholding, monitor and identify any failures to make timely payments, and automatically use enforcement procedures if the timely payments are not made.⁷⁹

⁶⁵ 42 U.S.C. § 666(c).

⁶⁶ *Id.* § 666(a)(5).

⁶⁷ *See id.* The father's name is included on the birth certificate of a child of unmarried parents only if both the mother and father sign a voluntary acknowledgment of paternity or a court or agency issues a paternity adjudication. *Id.* § 666(a)(5)(D).

⁶⁸ *See* § 321, 110 Stat. at 2221 (amending 42 U.S.C. § 666(f)).

⁶⁹ *See id.*

⁷⁰ *See* § 322, 110 Stat. at 2221 (amending 42 U.S.C. § 1738B(f)).

⁷¹ *See* 42 U.S.C. § 1738B(f)(1).

⁷² *See id.* § 1738B(f)(2).

⁷³ *See id.* § 1738B(f)(3).

⁷⁴ *See id.*

⁷⁵ *See id.* § 666(a)(14).

⁷⁶ *See id.* § 654b(a).

⁷⁷ *See id.* § 654b(a)(3)(b).

⁷⁸ *See id.* § 654b(a)(3)(c).

⁷⁹ *See id.* § 654b(a).

The Act modifies distribution of child-support collections to welfare recipients so that the first \$50 received no longer goes straight to a family.⁸⁰ Collections on arrearages which accumulate after the family leaves the welfare system are paid to the state if collected through "tax intercept."⁸¹ Also, any arrearages accumulated before the family went on welfare are paid to the state if they are procured through tax seizure; otherwise, those funds go to the family.⁸² Using these new procedures, Congress intended to "provide more money to families that leave welfare and thereby increase the odds that such families will be able to maintain their independence from public benefits."⁸³

III. Implications for Practitioners

The major effects of the "federalization" of child support for practitioners concern the shift from discretionary child-support standards to the use of guidelines to establish and modify the amount of support, the development of mandatory wage withholding, and the strengthening of interstate enforcement.

A. From Discretionary Standards to Guidelines

The preguideline statutory and case law on how to set child support has little relevance in disputes regarding the appropriate amount of child support today. The Family Support Act did, however, preserve limited judicial discretion. Decision makers hearing child-support cases can rebut the presumption that the guideline level of support is appropriate by a specific finding that application of the guidelines would be unjust or inappropriate in a particular case, as deter-



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mined under criteria established by each state.⁸⁴ Cases from the discretionary era therefore may be of some value in rebutting the presumption in favor of the guidelines in particular circumstances. For example, the application of guidelines under many "income shares" formulae results in a higher percentage of income devoted to child support for low-income obligors than for middle- and high-income obligors.⁸⁵ The percentage of income presumed to go toward child support under many of these formulae goes down as the income of the obligor increases. Both judges and commentators have expressed concern that such formulae combined with stricter enforcement of child support may have harmful effects on low-income obligors and drive

⁸⁰ See *id.* § 657; H.R. CONF. REP. NO. 104-651, at 1398-99 (1996), reprinted in 1996 U.S.C.C.A.N. 2183, 2457-58.

⁸¹ See 42 U.S.C. § 657; H.R. CONF. REP. NO. 104-725, at 339 (1996), reprinted in 1996 U.S.C.C.A.N. 2649, 2727.

⁸² H.R. CONF. REP. NO. 104-725, at 340 (1996), reprinted in 1996 U.S.C.C.A.N. 2649, 2728.

⁸³ H.R. REP. NO. 104-651, at 1399 (1996), reprinted in 1996 U.S.C.C.A.N. 2183, 2458.

⁸⁴ 42 U.S.C. § 667(b)(2).

⁸⁵ For a complete list of states that have adopted the "income shares" model, see Laura W. Morgan & Mark C. Lino, *A Comparison of Child Support Awards Calculated Under States' Child Support Guidelines*, 33 FAM. L.Q. 191 (1999).

them "underground."⁸⁶ Attorneys representing low-income obligors then might persuade the tribunal to deviate from the guidelines and order less than the presumed amount by relying on arguments from preguideline case law emphasizing that child support should not be ordered at a level which makes it difficult for the obligor to support himself.⁸⁷

Some courts, particularly where the parents are unmarried and the obligor and child have not lived together, seem to set a maximum amount of child support regardless of parental income.⁸⁸ In others, where the parents and child or children have lived together as a family, courts have held that support should be awarded at a level which permits the children to maintain the predivorce standard of living.⁸⁹ Apart from these limited circumstances, practitioners should consider the preguideline body of case law inapplicable in cases in which issues arise as to the amount of support.

B. Mandatory Wage Withholding

Income or wage garnishment has long been available to the practitioner as a method of collecting unpaid child support.⁹⁰ Before 1984, use of this enforcement remedy was governed almost exclusively by state law. Early wage withholding statutes simply required employers to honor voluntary wage assignments.

In 1974 only 10 states had statutory versions of child-support wage assignments.⁹¹ By 1984 26 states began systematic withholding—based on a court order after the finding of a delinquency—of income from an obligor's paycheck.⁹² These state statutes and cases ranged widely on issues such as pregarnishment procedural protections for the obligor, triggers for income withholding, and limits on the percentage of an obligor's wages which could be withheld.⁹³ Limits on withholding were made somewhat uniform by the passage of the federal Consumer Credit Protection Act in

⁸⁶ See JOHN F. FADER II & RICHARD J. GILBERT, MARYLAND FAMILY LAW § 13.91 (1992 Cumul. Supp.) (two judges who authored treatise express "concern" that Maryland "income shares" formulae will result in orders in which low- to moderate-income payors will not be able to support themselves and meet their child-support obligation); see also Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, in *DIVORCE REFORM AT THE CROSSROADS* 166 (Stephen Sugarman & Herman Hill Kay eds., 1990).

⁸⁷ See generally Jay M. Zitter, Annotation, *Excessiveness or Adequacy of Money Awarded as Child Support*, 27 A.L.R.4th 873, 887-89 (1984).

⁸⁸ See *White v. Marciano*, 235 Cal. Rptr. 779 (1987) (finding that \$1,500 per month was a reasonable amount of support for child born outside of marriage to father with income of \$1 million per year and that father's lavish lifestyle was relevant only if father was unable to make "adequate support payments"); *Evans v. Evans*, 559 N.W.2d 240 (S.D. 1997) (Clearinghouse No. 48,074) (where the parties' income exceeds the statutory guidelines, the child-support obligation shall be established at an appropriate level, taking into account the actual needs and standard of living of the child).

⁸⁹ See *In re Scafuri*, 561 N.E.2d 402 (Ill. 1990) (where children's needs and accustomed lifestyle could be maintained on an award of \$6,000 per month, trial court's order of \$10,000 per month was an abuse of discretion even though it complied with the guidelines).

⁹⁰ HARRY D. KRAUSE, *CHILD SUPPORT IN AMERICA: THE LEGAL PERSPECTIVE* 345-49 (1981). Some states allowed the assignment of the father's wages when the support decree was entered. See, e.g., CAL. CIV. CODE § 4701(a) (West Supp. 1984); FLA. STAT. ANN. § 61.12(2) (West Supp. 1982); WIS. STAT. ANN. § 767.265 (West Supp. 1983). Others required default in the payment of support before allowing an assignment of the obligor's wages. See, e.g., ARIZ. REV. STAT. ANN. § 12-2455 (West 1982); MICH. COMP. LAWS ANN. § 552.605 (West Supp. 1983); MINN. STAT. ANN. § 518.611 (West Supp. 1984).

⁹¹ Note, *Remedies—Domestic Relations: Garnishment for Child Support*, 56 N.C. L. REV. 169, 177-78 n.57 (1978).

⁹² U.S. GENERAL ACCOUNTING OFFICE, *STATES' IMPLEMENTATION OF THE 1984 CHILD SUPPORT ENFORCEMENT AMENDMENT* 9 (Dec. 1985).

⁹³ On pregarnishment procedural protections for the obligor, see *Lany v. Superior Court*, 200 Cal. Rptr. 526 (1984) (pregarnishment hearing required); *Hehr v. Tucker*, 472 P.2d 797 (Or. 1970) (no pregarnishment hearing required). Most states used a delinquent dollar amount as a trigger for income withholding, but some used a time delay in paying support.

1968.⁹⁴ That Act placed a maximum limit on the amount states might withhold for child support but did not set a minimum. Limits on percentage of income which may be withheld still vary.

The effectiveness of withholding under state law was limited for a number of reasons. As with decisions governing the amount of child support, the decision to order wage withholding was within the court's discretion.⁹⁵ Proceedings for wage withholding were judicial rather than administrative and, for lack of fixed rules, were often adversarial. Most states permitted wage garnishment only after child-support arrearages had accrued. Custodial parents had to return to court to obtain a new withholding order each time arrearages accumulated. Thus practitioners would counsel clients with child-support orders to wait until substantial back child support had accumulated before incurring the expense of obtaining a wage garnishment order.

Federal legislation has improved the effectiveness of this remedy. While state wage withholding statutes still vary, a series of federal statutes mandates features which all states must adopt. Together these features have created a legislative scheme which is designed to

make wage withholding a regular item of every child-support order from the date of issuance until the termination of the order.

Pursuant to the Child Support Enforcement Amendments, all states were required to enact procedures for wage withholding to collect child support in all cases where the obligor had fallen into arrears.⁹⁶ "Wage" withholding became "income" withholding under this statute because the amendments authorized states to expand the definition of "wages" to include forms of income other than those normally included in the definition.⁹⁷ Pennsylvania, for example, defines "income" as compensation for services, including but not limited to wages, salaries, fees, compensation in kind, commissions and similar items, income derived from business, gains derived from dealings in property, forms of retirement, pensions, income from discharge of indebtedness, distributive share of partnership gross income, income with respect to a decedent, income from an interest in an estate or trust, military retirement benefits, railroad employment retirement benefits, social security benefits, temporary and permanent disability benefits, workmen's compensation, and

⁹⁴ Initially the Consumer Credit Protection Act allowed wage garnishments of up to 25 percent of a wage-earner's disposable income or 30 times the federal minimum hourly wage, whichever was the lesser amount. 15 U.S.C. § 1673(a). In 1977 Congress amended the Act to raise withholding ceilings of child support or alimony orders to (1) 50 percent of the employee's weekly disposable earnings if obligor supports a second family; (2) 55 percent if obligor supports a second family and arrears are 12 weeks past due; (3) 60 percent if he or she does not support a second family; or (4) 65 percent if the employee does not support a second family and the action is to enforce a support order for a period commencing more than 12 weeks before the workweek from which the wages will be garnished (i.e., arrears are 12 weeks past due). The Act preempts less restrictive state laws, so limitations apply even if a state does not incorporate the Act's limitations into its withholding statute. 15 U.S.C. 1677; *Marshall v. District Court*, 444 F. Supp. 1110 (E.D. Mich. 1981). States are, however, free to enact statutes that provide greater protection of obligors' income. 15 U.S.C. § 1677.

⁹⁵ See, e.g., Nan Hunter, *Child Support Law and Policy: The Systemic Imposition of Costs on Women*, 6 HARV. WOMEN'S L.J. 1 (1983).

⁹⁶ 42 U.S.C. § 659. The Child Support Enforcement Amendments of 1984 made a distinction between private cases and allowed states to develop procedures for withholding when a private order was involved. Later statutes have eliminated the different treatment for IV-D and non-IV-D orders.

⁹⁷ 42 U.S.C. § 666(b)(8). Most states define income more broadly under the Child Support Enforcement Amendments for withholding purposes than the Consumer Credit Protection Act's definition of "disposable earnings" subject to withholding. In child-support withholding cases, the state's definition of income subject to withholding governs as long as it is broader than the Consumer Credit Protection Act's definition.

unemployment compensation.⁹⁸ Other state statutes have been interpreted to include as income “commissions” due or advanced to the obligor, disabled veteran’s benefits, lottery winnings, and military retirement pay.⁹⁹ Under the amendments, wages could be withheld to cover current support as well as arrears up to the limits set by the Consumer Credit Protection Act.¹⁰⁰ The amendments’ section that restricts the amount of wages a

tions for terminating withholding before the enforcement agency notifies the employer to stop. Such notification would presumably follow an application by the obligor and a court order.

For practitioners, January 1, 1994, marked the major change in availability of immediate wage withholding. As of that date, all new child-support orders, including non-IV-D cases, had to provide for immediate income withholding. Wage withholding was not to be ordered if good cause was shown by the obligor to exclude such a provision or both parties agreed to an alternative arrangement.¹⁰⁶ This is an important provision for practitioners representing clients who do not want to be subject to automatic withholding and can obtain the agreement of the custodial parent to waive this protection. A good-cause exception or agreement may be set aside, however, and withholding imposed if an obligor is delinquent in support in an amount equal to one month’s support.

As part of its scheme for reforming the welfare system, the Personal Responsibility and Work Opportunity Reconciliation Act also includes a number of provisions designed to strengthen child-support enforcement. Since eligibility for withholding was made more or less universal by the Family Support Act, the income withholding provisions in the Personal Responsibility and Work Opportunity Reconciliation Act focus primarily

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state may withhold to no more than the limits of the consumer credit act does not apply to nonwage income.¹⁰¹

The amendments also required that states have a procedure for terminating arrearages.¹⁰² States were free to establish their own procedures but were not allowed to make payment of arrears the sole criteria for termination of wage withholding.¹⁰³ As a result, some states have discretionary standards for termination of withholding, permitting the obligor to argue that such termination would be equitable.¹⁰⁴ Others have more specific criteria, including inability to deliver payments to obligee and emancipation of children.¹⁰⁵ Employers may face sanc-

⁹⁸ 23 PA. CONS. STAT. ANN. § 4302 (West Supp. 1989); see *Stinner v. Stinner*, 554 A.2d 45 (Pa.), *cert. denied*, 492 U.S. 919 (1989).

⁹⁹ See *Galpen v. Galpen*, 535 A.2d 35 (N.J. Super. Ct. 1987) (commissions); *Rose v. Rose*, 481 U.S. 619 (1987) (disabled veteran’s benefits); *County of Contra Costa v. Lemon*, 252 Cal. Rptr. 455 (Cal. Ct. App. 1988) (lottery winnings); *Millard v. U.S.*, 16 Cl. Ct. 485 (1989), *aff’d*, 916 F.2d 1 (1990), *cert. denied*, 500 U.S. 916 (1991) (military retirement pay). *But see* *County of Kern*, 89 Cal. Rptr. 2d 874 (1999) (lottery winnings).

¹⁰⁰ See discussion of the Consumer Credit Protection Act, *supra* note 94.

¹⁰¹ If a state does define wages to include all income, then the Child Support Enforcement Amendments require that the Consumer Credit Protection Act apply to all income; but if a state does not combine wage and nonwage income in its definition of wages, then nonwage income is not subject to the amendments’ mandatory use of the Consumer Credit Protection Act’s caps. 42 U.S.C. § 666(b)(1) (Supp. V 1987).

¹⁰² 45 C.F.R. § 303.100(a)(9) (1999).

¹⁰³ *Id.*

¹⁰⁴ See *Simpson v. Simpson*, 680 So. 2d 1085 (Fla. Dist. Ct. App. 1996).

¹⁰⁵ See *In re Feicock*, 215 Cal. App. 3d 141 (1989) (inability to deliver payments to obligee); *Denton v. Sims*, 884 S.W.2d 86 (Mo. Ct. App. 1994) (emancipation of children).

¹⁰⁶ 42 U.S.C. § 466 (a)(8)(B)(i).

on the procedures implementing automatic withholding.¹⁰⁷ The latter encourages but does not require states to adopt administrative rather than judicial systems to enforce child support. States, however, must have certain “expedited procedures” for handling routine cases, including cases in which income withholding is ordered. These expedited procedures grant authority to the state IV-D agency to initiate withholding or to modify any order that does not have income withholding “without the necessity of obtaining an order from any judicial or administrative tribunal.”¹⁰⁸ Record keeping of amounts collected and disbursed through withholding is to be centralized in a single state office rather than several local offices.¹⁰⁹ The central state office must have sufficient staff to monitor and enforce support obligations through the centralized unit.¹¹⁰ The central office is also supposed to make timely responses to requests from parents (or, presumably, their attorneys) about the status of their cases. Again, for those attorneys representing clients—both obligors and obligees—who want to opt out of the automatic withholding system, the exceptions for good cause and consent waiver of withholding are preserved in the Personal Responsibility and Work Opportunity Reconciliation Act.¹¹¹ For those attorneys whose clients opt for automatic with-

holding, these changes mean more reliance on and interaction with their state’s IV-D or child-support agency.

C. New Enforcement Remedies

Another major effect of the federalization of child support is the strengthening of interstate enforcement of child-support orders in two major ways: through license revocation and interstate orders.

1. License Revocation

During the 1990s many states enacted legislation authorizing licensing agencies to withhold, suspend, or restrict the use of driver’s, occupational, recreational, or sporting licenses or all four as a means to collect child support. The Personal Responsibility and Work Opportunity Reconciliation Act requires states to have and use such statutes as a sanction for failing to pay child support or, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child-support proceedings.¹¹²

By 1998 all 50 states had enacted license-revocation statutes. The legislative schemes for license restriction vary considerably from state to state.¹¹³ Although the Personal Responsibility and Work Opportunity Reconciliation Act requires that states cover driver’s, occupational, and recreational licenses, not all

¹⁰⁷ Pub. L. No. 104-193, § 314, 110 Stat. 2105, 2212–14 (1996) (codified as amended at 42 U.S.C. § 666).

¹⁰⁸ *Id.* § 325.

¹⁰⁹ The Personal Responsibility and Work Opportunity Reconciliation Act allows states to opt for a decentralized computer-linked system if the system “will not cost more nor take more time to establish and operate than a centralized system.” *Id.* § 312, 110 Stat. at 2207–8 (codified as amended at 42 U.S.C. § 654b). If states opt for a decentralized system, they must still set up a single place for employers to send collected support.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* § 325.

¹¹³ For an excellent comparison of the features of most state license revocation statutes, see OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP’T OF HEALTH & HUMAN SERVS., STATE LICENSE RESTRICTIONS, SUSPENSIONS, AND REVOCATIONS (Jan. 1998). The Office of Child Support Enforcement prepares “information exchanges” on a regular basis on a variety of child-support topics. These exchanges provide state-by-state information identifying names, addresses, and telephone numbers of contact people in IV-D agencies to assist in implementing statutes to initiate or enforce child support. Practitioners can obtain such publications by calling or writing OCSE/Technical Assistance Branch, 4th Floor E., 370 L’Enfant Promenade SW, Washington, DC 20447; 202.401.9267. Information can also be obtained through the Web site www.acf.dhhs.gov/programs/cse.

states are in compliance. Some states cover only driver's licenses.¹¹⁴ Others are limited to occupational licenses.¹¹⁵ Still others go beyond the sanctions mandated by the Act and permit restricting state benefits such as student grants, government contracts, car and other vehicle registration, and weapon permits.¹¹⁶

States have adopted criteria for revoking licenses for failure to pay child support. Some states require a minimum period of child-support delinquency before a license may be revoked, ranging from one month to one year.¹¹⁷ Other statutes require different periods of arrearage depending upon the type of license being withheld, suspended, or revoked.¹¹⁸ The most common arrearage periods which trigger the license sanctions range from 60 to 90 days.¹¹⁹

Some states require a court order of contempt before an obligor may be subject to license revocation.¹²⁰ Other states limit license revocations based upon the

amount of the arrearage—ranging from minimal amounts up to a maximum requirement of \$2,500.¹²¹ Still others have criteria that trigger the license sanction based upon either the amount or the length of arrearages.¹²² Some statutes make license revocation available only if other enforcement remedies have been exhausted or if income withholding is unavailable.¹²³

The procedural protections afforded delinquent obligors also differ from state to state in terms of both prerevocation protections and postrevocation review. All state statutes require some form of prerevocation notice and hearing. A typical statute provides for notice through certified mail informing obligors that they are subject to revocation, the basis for the revocation, and the steps that can be taken to avoid suspension or loss of a license.¹²⁴ Some statutes governing prerevocation review limit the basis for such review to mistakes of fact, while others

¹¹⁴ See KY. REV. STAT. ANN. § 186.570 (Banks-Baldwin 1994); NEV. REV. STAT. ANN. § 425.3837 (Michie 1996).

¹¹⁵ See KAN. STAT. ANN. §§ 74-146, 74-147, 20-1204a (1997); OHIO REV. CODE ANN. §§ 2301.373, 2301.374 (West 1997); 23 PA. CONS. STAT. ANN. § 4355 (West 1998).

¹¹⁶ See FLA. STAT. chs. 409.2598, 327.031 (vessel registration), 322.058 (vehicle registration) (1999); IDAHO CODE § 7-1401 2151(c) (1997) (weapon permits); MINN. STAT. ANN. § 518.551 (West 1999) (student grants); VT. STAT. ANN. tit. 15, § 795 (1998) (government contracts).

¹¹⁷ See CAL. WELF. & INST. CODE § 11350.6(a)(4) (West 1999) (one month); KY. REV. STAT. ANN. § 186.570 (Banks-Baldwin 1994) (one year).

¹¹⁸ See VT. STAT. ANN. tit. 15, §§ 795 (contracts, licenses: one-twelfth of annual support in arrears), 798 (motor vehicle: one-fourth of annual support in arrears) (1998).

¹¹⁹ Statutes requiring 60 days' arrearage include the following: COLO. REV. STAT. § 26-13-123 (1997); D.C. CODE ANN. § 30-5251 (1998); GA. CODE ANN. § 40-5-541 (1999); MD. CODE ANN., FAM. LAW § 10-119 (1998); N.H. REV. STAT. ANN. § 161-B (1998); S.C. CODE ANN. § 20-7-940 (Law. Co-op. 1998); UTAH CODE ANN. §§ 62A-11-107, 78-32-17 (1998). Statutes requiring 90 days' arrearage include the following: CONN. GEN. STAT. § 46b-220 (1997); 5 GUAM CODE ANN. §§ 34202-03 (1999); IOWA CODE § 252J.2 (1997); MINN. STAT. § 518.551 (1999); NEB. REV. STAT. § 43-3314 (1998); N.C. GEN. STAT. §§ 1T-142.2 (driver's licenses), 142.1 (professional and business licenses) (1999); N.D. CENT. CODE § 14-08.1-06 (1998); OKLA. STAT. ANN. tit. 47, § 6-201.1, tit. 43, § 139.1 (West 1998); R.I. GEN. LAWS §§ 15-11.1-2, -7 (1998); TEX. FAM. CODE ANN. § 232.003 (West Supp. 2000); WYO. STAT. ANN. § 220-6-111 (Michie 1999).

¹²⁰ See ARIZ. REV. STAT. § 25-502 (1996); KAN. STAT. ANN. § 74-147 (1992); MISS. CODE ANN. § 93-11-157 (1998).

¹²¹ See OR. REV. STAT. § 25.750(1)(a) (1999) (\$2,500); P.R. LAWS ANN. tit. 8, § 528a (1995) (minimal amount).

¹²² See COLO. REV. STAT. §§ 26-13-123, -126, 42-2-127.5 (1997); MO. REV. STAT. § 454.1000-1025 (1997).

¹²³ See FLA. STAT. ch. 61.13016 (1998) (if other remedies have been exhausted); OHIO REV. CODE ANN. §§ 2301.373, 3113.216 (Anderson 1998) (if other remedies have been exhausted); 23 PA. CONS. STAT. § 4355 (West 1998) (if income withholding is unavailable).

¹²⁴ See KY. REV. STAT. ANN. § 186.570 (Banks-Baldwin 1994); N.J. STAT. ANN. § 2A:17-56.41 (West 1998).

allow obligors to defend, based upon an inability to pay, against such sanctions.¹²⁵ Postrevocation review is available in most states through an administrative procedure, judicial hearings, or some combination of the two.¹²⁶

Because of the variation in state law, practitioners should consult their state statutes both for procedures and criteria for invoking license revocations and for defenses and hearing opportunities available to obligors. Most states' child-support statutes have a general provision relating to license limitations to enforce child-support orders. Because driver's, occupational, and other licenses are regulated under different statutes and regulations, each with its own set of licensing provisions, practitioners should also consult each state law governing the activity covered by the license. These license-revocation statutes are especially useful for practitioners seeking to enforce child-support orders in which obligors are nonwage earners, particularly self-employed professionals. On the other hand, practitioners seeking to protect obligors against such revocations should be aware of constitutional and other potential challenges to such statutes.

Equal protection arguments have been used to challenge driver's license

revocation statutes. The theory behind these arguments is that such statutes create a legislative classification between child-support obligors who have driver's licenses and those who do not, thus subjecting obligor drivers to harsher penalties when they fail to pay child support. Because such a classification need only meet the rational relationship test and the Supreme Court has found child-support enforcement an important state interest, such challenges have not been successful.¹²⁷ Professional license revocation programs are also likely to withstand equal protection challenges under the same analysis.¹²⁸

License-revocation statutes that apply to all licensed occupations except attorneys have also been challenged in the courts. Attorneys were excluded from these statutes because regulation of attorneys, unlike other professionals, in many states is within the exclusive jurisdiction of the state's highest court rather than the legislature. Some courts have responded to challenges that excluding attorneys renders the statute arbitrary by amending the court's disciplinary rules to include license-revocation provisions for attorneys.¹²⁹

The most promising challenges to such state statutes may be due process

¹²⁵ See 23 PA. CONS. STAT. ANN. § 4355 (West 1998) (review for mistakes of fact); P.R. LAWS ANN. tit. 8, § 528a (1995) (review for mistakes of fact); VT. STAT. ANN. tit. 15, § 798 (1998) (inability to pay may be a defense).

¹²⁶ See ALASKA STAT. § 25.27.246 (Michie 1998) (combination); ARIZ. REV. STAT. ANN. § 25-518 (West 1998) (judicial hearing); MD. CODE ANN., TRANSP. I § 16-203 (1995) (administrative procedure); MINN. STAT. ANN. § 518.551 (West 1999) (combination); MISS. CODE ANN. § 93-11-157 (1998) (combination); OKLA. STAT. ANN. tit. 43, § 139.1 (West 1998) (judicial hearing).

¹²⁷ *Zablocki v. Redhail*, 434 U.S. 374 (1978) (Clearinghouse No. 15,279) (child-support enforcement found to be important state interest). Some unsuccessful challenges include the following: *Rushmore v. Registrar of Motor Vehicles*, 596 N.E.2d 340 (Mass. 1992) (applying the "rational basis" standard and emphasizing that a suspension statute having a disproportionate impact on drug offenders who operate motor vehicles does not offend equal protection); *State v. Smith*, 276 A.2d 369 (N.J. 1971) (stating that the equal protection clause does not require that the legislature punish all violators of narcotics laws in the same way or not at all and that the legislature has wide discretion in recognizing different classes of offenders for separate treatment). See generally Jeffrey T. Walter, Annotation, *Validity and Application of Statute or Regulation Authorizing Revocation or Suspension of Driver's License for Reason Unrelated to Use of, or Ability to Operate, a Motor Vehicle*, 18 A.L.R.5th 542 (1994).

¹²⁸ Mark R. Fondacaro & Dennis P. Stolle, *Revoking Motor Vehicle and Professional Licenses for Purposes of Child Support Enforcement: Constitutional Challenges and Policy Implications*, 5 CORNELL J.L. & PUB. POL'Y 355, 389 (1996).

¹²⁹ See, e.g., FLA. STAT. ANN. § 4-8.4 (West 1994); see also Rhonda M. Hand & R. Wade Wetherington, *Chasing the Deadbeat Professional for Child Support*, 69 FLA. B.J. 54 (Nov. 1995); IND. ADMISSION & DISCIPLINE R. 23, §§ 11(c), 18(c).

challenges based upon the availability or scope or both availability and scope of administrative and judicial review in the state statute. While the argument may be made that an obligor is entitled to a judicial determination before revocation, a predeprivation administrative hearing that allows the obligor a “meaningful” opportunity to be heard should be sufficient.¹³⁰ A constitutional challenge may be successful, however, if the statute does not permit judicial (as opposed to administrative) review at the postrevocation stage.¹³¹ Moreover, at least one court has held that the scope of the judicial review must permit the obligor the opportunity to seek relief based on his inability to pay the child support owed.¹³²

2. Interstate Orders

Finding a growing number of cases involving disputes between parents residing in different states, and even an incentive of sorts for noncustodial parents to relocate solely to avoid a state court’s jurisdiction, Congress enacted the Full Faith and Credit for Child Support Orders Act in 1994.¹³³ The “Full-Faith Amendments” of the Act amended the Child Support Recovery Act to help facilitate interstate enforcement and to avoid “jurisdictional competition among different state courts.”¹³⁴

In order to trigger full faith and credit under the Full-Faith Amendments, the court issuing the child-support order must have had appropriate subject-matter jurisdiction and personal jurisdiction over all parties and must have satisfied due

process guarantees of notice and hearing for all parties.¹³⁵ A court that follows these procedures retains “continuing exclusive jurisdiction” as long as the child, or any contestant, resides in that state.¹³⁶ The court of another state may modify an order issued by a different state only if the subsequent court has appropriate jurisdiction and the issuing court no longer maintains exclusive jurisdiction because either the child no longer resides there, or each party has filed written consent to change venue.¹³⁷ In enacting the Full-Faith Amendments, Congress also sought to help custodial parents collect on child-support orders when noncustodial parents leave the state.¹³⁸ As a result, a noncustodial parent who wants to file for a reduction in support payments must file in the state that originally issued the order; this ensures that the custodial parent receives proper notice and a reasonable opportunity to object.¹³⁹

The Personal Responsibility and Work Opportunity Reconciliation Act sets up a national system to track the place of employment of child-support obligors.¹⁴⁰ New-hire information is also sent to a national directory of new hires, which runs a computer match against a federal case registry of child-support orders to determine if delinquent parents have gone to work in other states. As a result, if an obligor parent leaves a state and goes to work anywhere in the country, that state’s child-support agency should know in a very short time. Under the Uniform Interstate Family Support Act, that child-support agency may then send

¹³⁰ See *Walters v. National Ass’n of Radiation Survivors*, 473 U.S. 305, 335 (1985); Fondacaro & Stolle, *supra* note 129.

¹³¹ See *Thompson v. Ellenbecker*, 935 F. Supp. 1037 (S.D.S.D. 1995).

¹³² *Alaska Dep’t of Revenue v. Beans*, 965 P.2d 725 (Alaska 1998).

¹³³ Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994).

¹³⁴ § 1738B, 108 Stat. at 4064 (amending 28 U.S.C. § 1738B); see also S. REP. NO. 103-361, at 4 (1994), reprinted in 1994 U.S.C.C.A.N. 3259, 3260.

¹³⁵ 28 U.S.C. § 1738B(c).

¹³⁶ *Id.* § 1738B(d).

¹³⁷ *Id.* § 1738B(e).

¹³⁸ See Pub. L. No. 103-383, 108 Stat. 4063 (1994).

¹³⁹ See S. REP. NO. 103-361, at 5 (1994), reprinted in 1994 U.S.C.C.A.N. 3259, 3261.

¹⁴⁰ 42 U.S.C. § 653.

a wage withholding order directly across state lines to the delinquent parent's employer.¹⁴¹

Although a number of states had new-hire reporting statutes before passage of the Personal Responsibility and Work Opportunity Reconciliation Act, under the Act all states were required to have programs conforming to the federal requirements by October 1, 1998. Practitioners can assist clients seeking to initiate or enforce child-support orders by contacting their new-hire state contacts for information on implementing these procedures in individual cases.¹⁴²

D. New Federal Criminal Remedies for Enforcement

Practitioners attempting to collect arrearages from an out-of-state obligor should advise their clients that they have two important options: to file an action under the state's Uniform Reciprocal Enforcement of Support Act or to seek criminal prosecution under the Child Support Recovery Act.¹⁴³

When it enacted the Child Support Recovery Act, Congress was primarily concerned with noncustodial parents who move to another state to avoid pay-

ing child support. As a result, the Act calls for federal criminal prosecution of any noncustodial parent who willfully fails to pay a past-due support obligation for a child who resides in another state. The crime established in the Act has been subject to constitutional challenge in many courts but has been consistently upheld as a valid exercise of congressional commerce power.¹⁴⁴ Practitioners who want to use the Act to encourage payment of arrearages should refer their clients to their local U.S. Attorney's office. While most of these offices are just beginning to bring prosecutions under the Act, some larger jurisdictions have established units specifically to bring these cases.

The past 25 years have seen increasing federalization of child-support administration and enforcement. Although many states' IV-D agencies continue to establish and collect child support, practitioners in all states should become familiar with federal laws in this area. Only by understanding the federal programs and requirements that affect state management of child-support programs will family law practitioners be able optimally to represent and serve their clients.

¹⁴¹ See UNIF. INTERSTATE FAMILY SUPPORT ACT § 501, 9 U.L.A. 410 (Supp. 1999).

¹⁴² For a list of new-hire state contacts, see Office of Child Support Enforcement, U.S. Dep't of Health & Human Servs., *New Hire Reporting* (last updated Jan. 1999) <www.acf.dhhs.gov/programs/cse/newhire/nh/nh.htm> (select "How to Contact the States").

¹⁴³ Uniform Reciprocal Enforcement of Support Act, 98 U.L.A. 567 (1987); Child Support Recovery Act, 18 U.S.C. § 228 (West Supp. 1996).

¹⁴⁴ See, e.g., *United States v. Bailey*, 115 F.3d 1222, 1232 (5th Cir. 1997); *United States v. Black*, 125 F.3d 454, 460 (7th Cir. 1997); *United States v. Johnson*, 114 F.3d 476, 479-80 (4th Cir. 1997); *United States v. Simms*, 936 F. Supp. 817, 818 (N.D. Okla. 1996); *United States v. Hampshire*, 892 F. Supp. 1327, 1330 (D. Kan. 1995).