



AN ACT EXPANDING THE ENFORCEMENT AUTHORITY FOR COLLECTING PARENTAL COST-OF-CARE CONTRIBUTIONS THAT ARE ORDERED BY A YOUTH COURT; AMENDING SECTIONS 40-5-303, 40-5-601, 40-5-701, AND 41-5-1525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

**Section 1.** Section 40-5-303, MCA, is amended to read:

**"40-5-303. Petition for income deduction -- who may initiate.** (1) If an obligor is exempted from immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by 40-5-305.

(2) Income withholding for the payment of child support may be initiated by:

- (a) the person named as the recipient of the child support payments in the child support order;
- (b) the child or the guardian of the child named in the child support order; or
- (c) the department of public health and human services; or

(d) the state of Montana, including the department of corrections and respective county attorneys, for the purpose of enforcing contribution orders under 41-5-1525. These contribution orders are considered to be child support orders for purposes of enforcement under this chapter.

(3) (a) At the request of an initiating party who has determined that an obligor is delinquent, the district court shall issue an order for income deductions for immediate service upon the obligor's payor or payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.

(b) At the same time an income deduction order is issued, the requesting party shall notify the obligor

as provided in 40-5-305 that income deductions have been initiated.

(4) Deductions under this section for current support may be terminated only if:

(a) the district court determines after a hearing that the obligor was not delinquent when the deduction order was issued;

(b) the obligation to pay support has terminated and all delinquencies are paid in full; or

(c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(5) As used in this part, the following definitions apply:

(a) "Employer" includes a payor.

(b) (i) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement program, interest and earnings, and wages.

(ii) Income does not include:

(A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and local taxes and social security; or

(B) an amount exempted from judgment, execution, or attachment by federal or state law.

(c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure."

**Section 2.** Section 40-5-601, MCA, is amended to read:

**"40-5-601. Failure to pay support -- civil contempt.** (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day-care expenses; ~~and~~ any other payments due as support under a court or administrative order; and contributions ordered pursuant to 41-5-1525. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated person resides; or

(c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

(a) there is a support order issued by a court or administrative agency of this or another state, an Indian tribe, or a country with jurisdiction to enter the order;

(b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

(a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated

person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a \$500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order."

**Section 3.** Section 40-5-701, MCA, is amended to read:

**"40-5-701. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for IV-D services under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(5) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(6) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state or an Indian tribe that has the right to receive current or

accrued support payments or that is providing support enforcement services under this chapter.

(7) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(9) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(10) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

(11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

(12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

- (a) support to a child under the laws of this or any other state or under a support order;
- (b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent;

or

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support; or

(d) contributions ordered pursuant to 41-5-1525.

(13) "Support enforcement entity" means:

- (a) in IV-D cases, the department; or
- (b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or

indeterminable amount for insurance covering the child issued by:

- (i) a district court of this state;
- (ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;
- (iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or
- (iv) an administrative agency of another state or an Indian tribe with a hearing function and process

similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

- (i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and
- (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

(16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by a court relating to the appearance of a party in a paternity or child support proceeding.

(17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

- (a) an assignment of support rights under 53-2-613;
- (b) a payment of public assistance;
- (c) an application for support enforcement services under 40-5-203; or
- (d) a referral for services from an agency of another state or an Indian tribe under the provisions of the

Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

**Section 4.** Section 41-5-1525, MCA, is amended to read:

**"41-5-1525. Contribution for costs -- order for contribution -- exceptions -- collection.** (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's

parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, ~~part~~ parts 3 and 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

- (i) provide sufficient security to ensure compliance with the arrangement;
  - (ii) be in writing and be signed by a representative of the department and the person required to make contributions; and
  - (iii) if approved by the court, be entered into the record of the proceeding.
- (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).
- (6) (a) If the court orders the payment of contributions under this section, the department ~~shall~~ may apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.
- (b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to contribution orders in existence on [the effective date of this act].

- END -

I hereby certify that the within bill,  
HB 0095, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 95  
INTRODUCED BY R. HAWK  
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

AN ACT EXPANDING THE ENFORCEMENT AUTHORITY FOR COLLECTING PARENTAL COST-OF-CARE CONTRIBUTIONS THAT ARE ORDERED BY A YOUTH COURT; AMENDING SECTIONS 40-5-303, 40-5-601, 40-5-701, AND 41-5-1525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

