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Jane F. Vehko

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## ENFORCEMENT OF FAMILY SUPPORT OBLIGATIONS IN VIRGINIA

An alimony<sup>1</sup> or child support order has a special status in the postjudgment collection process because of the dual nature of the award. As a decree ordering the payment of money, the support order provides all of the legal remedies for the enforcement of a money judgment.<sup>2</sup> As an order fulfilling the social and moral duty of a spouse or parent, the decree is also enforceable by a full range of equitable remedies.<sup>3</sup> The duty aspect of the obligation avoids state constitutional prohibitions against imprisonment for civil debt if a delinquent spouse is found in contempt.<sup>4</sup> It also justifies denial of the obligor's homestead exemption<sup>5</sup> and denial of his discharge in bankruptcy for support obligations.<sup>6</sup>

Obstacles to private enforcement of support orders, however, do remain. The expense of locating an obligor and his assets, if they can be located, is not always economically feasible for the private attorney. The Revised Uniform Reciprocal Enforcement of Support Act (RURESA),<sup>7</sup> which is available to a Virginia spouse seeking enforcement against an obligor residing in a different Virginia county or city<sup>8</sup> as well as against an out-of-state obligor, has eased some of the jurisdictional and financial barriers to enforcement. Nevertheless, the limited time and resources available to officials in the responding states for locating the obligor and his assets undermine the effectiveness of RURESA enforcement.

This Note will examine the legal and equitable remedies available in Virginia for the enforcement of domestic alimony or child

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1. Alimony is referred to in the Virginia Code as maintenance and support of the spouse. *See, e.g.*, VA. CODE § 20-103 (Repl. Vol. 1975).

2. A decree in equity for the payment of money has the same effect as a judgment; the obligee therefore is a judgment creditor entitled to carry the decree into execution or to pursue enforcement of the judgment lien on realty. *Id.* §§ 8.01-426 to 428 (Repl. Vol. 1977).

3. *Branch v. Branch*, 144 Va. 244, 132 S.E. 303 (1926).

4. *See* note 41 *infra*.

5. *See* notes 105-07 *infra* & accompanying text.

6. *See* notes 78-81 *infra* & accompanying text.

7. VA. CODE §§ 20-88.12 to .31 (Repl. Vol. 1975).

8. *Id.* § 20-88.28:4.

support orders and the operation of RURESA in the enforcement of foreign alimony or child support orders. The increased public enforcement of support obligations under the Social Security Amendments of 1974<sup>9</sup> and 1975<sup>10</sup> and under the parallel state legislation<sup>11</sup> also will be discussed. These federal and state responses to the ineffectiveness of private enforcement through common law and statutory remedies aid both the welfare and nonwelfare dependents who rely on support obligations.

### LEGAL AND EQUITABLE REMEDIES

#### *Contempt*

No legal process is available to enforce a decree for spousal or child support until the installments under a periodic award become due and payable. Once default occurs, however, a contempt proceeding is the usual method of enforcement.<sup>12</sup>

A court of equity has inherent power to enforce its interlocutory or final decrees by fine and imprisonment for contempt.<sup>13</sup> Because a contempt proceeding is within the court's continuing jurisdiction to enforce its decrees, specific reservation of this right in the decree is unnecessary. For the same reason, no limitation is placed on the time within which contempt enforcement may be sought.<sup>14</sup>

In Virginia, contempt enforcement is available in several situations. In a pending or concluded suit for divorce *a vinculo matrimonii*,<sup>15</sup> for divorce *a mensa et thoro*,<sup>16</sup> or for separate mainte-

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9. 42 U.S.C.A. §§ 651-660 (West Supp. 1979).

10. *Id.*

11. VA. CODE §§ 63.1-249 to 290 (Cum. Supp. 1979).

12. Attorney's fees and court costs awarded in a divorce decree also may be enforced by contempt. *Eddens v. Eddens*, 188 Va. 511, 50 S.E.2d 397 (1948) (awarding no spousal support in decree but enforcing attorney's fees and court costs by contempt).

13. *Id.*

14. *Id.* at 523, 50 S.E.2d at 403-04. Some conflict exists among the jurisdictions concerning whether contempt is a cumulative remedy or is available only when other means of enforcement have been exhausted. H. CLARK, *LAW OF DOMESTIC RELATIONS* 468 (1968). In Virginia, contempt is a cumulative remedy that is often the first response to noncompliance.

15. A divorce *a vinculo matrimonii* is an absolute divorce, dissolving the marriage bond and extinguishing all economic incidents of marriage such as dower and curtesy. For a list of the grounds for divorce from the bond of matrimony in Virginia, see VA. CODE § 20-91 (Repl. Vol. 1975).

16. A divorce *a mensa et thoro*, or divorce from bed and board, is a judicial separation for cause that allows the parties to live apart but leaves the marriage bond intact and extin-

nance, the court has the power to require a recognizance upon or after entry of a support order.<sup>17</sup> The court may imprison the contemnor for failure to provide such recognizance.<sup>18</sup> The court's contempt power also extends to punishment for failure to comply with any order or decree for support and maintenance including the following:<sup>19</sup> (1) a pendente lite order<sup>20</sup> issued in a Virginia suit for divorce *a mensa et thoro*, for divorce *a vinculo matrimonii*, or for separate maintenance;<sup>21</sup> (2) a pendente lite order issued by a Virginia court acting as a responding state in a RURESA action;<sup>22</sup> (3) a final decree in a Virginia suit for divorce or separate maintenance;<sup>23</sup> (4) a foreign decree registered in Virginia under RURESA;<sup>24</sup> and (5) a final decree establishing a support obligation by a Virginia court acting as a responding state in a RURESA action.<sup>25</sup>

If the terms of a valid separation agreement concerning support are incorporated in the final divorce decree,<sup>26</sup> the terms are enforceable by contempt.<sup>27</sup> If, however, the agreement is only ap-

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guishes none of the economic incidents of marriage. Because the marriage bond is not dissolved, the parties are not discharged from other marital obligations. Thus, under an *a mensa* decree the wife is entitled to continue to receive support from the husband. For a list of the grounds for an *a mensa* divorce, see *id.* § 20-95.

17. *Id.* § 20-114.

18. *Id.* § 20-115.

19. *Id.*

20. Pendente lite order refers to an order made while the suit is pending.

21. Pendente lite orders in suits for divorce or separate maintenance are authorized under § 20-103 of the Virginia Code.

22. A Virginia responding court may issue a pendente lite support order and must conform its support order to any final decree, foreign or domestic, in a pending or prior action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody. *Id.* § 20-88.28:1. The court, however, has power to enforce its order, so conformed if necessary, notwithstanding retention of jurisdiction for enforcement purposes by the court in the prior action. *Id.* The Code further provides that all duties of support are enforceable by a proceeding for civil contempt. *Id.* § 20-88.20. See also notes 164, 169 *infra* & accompanying text.

23. VA. CODE § 20-115 (Repl. Vol. 1975).

24. "Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and may be enforced and satisfied in like manner." *Id.* § 20-88.30:6. See *id.* § 20-88.20 (defining how duties of support issued by Virginia courts are enforced).

25. *Id.* §§ 20-88.20, .24.

26. *Id.* § 20-109.1 (Cum. Supp. 1979).

27. *McLoughlin v. McLoughlin*, 211 Va. 365, 368, 177 S.E.2d 781, 783 (1970).

The purpose of § 20-109.1 of the Virginia Code is to allow the court to incorporate any

proved but not incorporated by the court,<sup>28</sup> the obligee's remedy for enforcement is limited to a contract action for damages or specific performance.<sup>29</sup>

A contempt proceeding is initiated by a written petition or motion, verified by the spouse, setting forth the terms of the award, the amount of accrued arrearage, and a request for the issuance of an order to the obligor to appear in court and show cause why he should not be adjudged guilty of contempt.<sup>30</sup> After notice to the obligor, the obligee spouse also may petition the court for a determination of the amount of arrearages and for a judgment for that sum.<sup>31</sup> Because the court in which the award originally was granted has continuing jurisdiction to enforce its decree by contempt,<sup>32</sup> a

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valid agreement between the divorcing parties into the divorce decree to facilitate enforcement of the terms of the agreement by the contempt power. *Morris v. Morris*, 216 Va. 457, 459, 219 S.E.2d 864, 867-68 (1975) (citing *McLoughlin v. McLoughlin*, 211 Va. 365, 177 S.E.2d 781 (1970)).

28. *Shoosmith v. Scott*, 217 Va. 789, 232 S.E.2d 787 (1977); *Henebry v. Henebry*, 185 Va. 320, 38 S.E.2d 320 (1946). The court in *Martin v. Martin*, 205 Va. 181, 135 S.E.2d 815 (1964), held that the terms of an agreement could not be enforced as terms of the decree if the agreement were incorporated in the decree, but did not expressly order the obligor to comply with its provisions. Section 20-109.1 of the Virginia Code was added in 1970 after *Martin* to clarify any ambiguities over the effect of incorporation. This section now overrules the result in *Martin*.

29. Similarly, if a property settlement is incorporated in the decree, its terms cannot be enforced in the same manner as a support agreement so incorporated. The obligee's remedy to enforce a property settlement is an action on the contract. *Higgins v. McFarland*, 196 Va. 889, 895, 86 S.E.2d 168, 197 (1955).

Other jurisdictions conflict on the question of contempt enforcement of a property division incorporated in the divorce decree. For example, such enforcement violates the California constitutional prohibition against imprisonment for civil debt. *Bradley v. Superior Court*, 48 Cal. 2d 509, 310 P.2d 634 (1957). See also *Plumer v. Superior Court*, 50 Cal. 2d 631, 328 P.2d 193 (1958). Washington, however, in response to a similar constitutional attack has upheld contempt enforcement of a property division based on the parties' agreement if the purpose of the property division is the same as that of a support award, specifically, if the division "bears a reasonable relationship to the husband's duty to support his wife and children." *Decker v. Decker*, 52 Wash. 2d 456, 326 P.2d 332 (1958). For a discussion of contempt enforcement of family support obligations as imprisonment for debt, see note 41 *infra*.

30. JOINT COMMITTEE ON CONTINUING LEGAL EDUCATION, SEPARATION AND DIVORCE IN VIRGINIA 157 (1975) [hereinafter cited as CLE, SEPARATION AND DIVORCE.].

31. A judgment for arrearages enforces the original decree. In *Sheffield v. Sheffield*, 207 Va. 188, 148 S.E.2d 771 (1966), a judgment for arrearages was entered against a nonresident husband on constructive service twelve years after he had appeared in Virginia to defend the suit for divorce and alimony.

32. Frequently, in a suit for divorce or separate maintenance, the circuit court will trans-

reinstatement of the original cause on the docket is unnecessary and improper.<sup>33</sup> The petition or motion is filed with the papers of the pending or concluded suit.<sup>34</sup> Usually, the petition or motion is instituted in the name of the parties, but it may be captioned in the style of the original cause. An order to show cause also should be prepared for the judge's *ex parte* entry.

The primary defense available to the delinquent obligor in a contempt hearing is inability, as opposed to unwillingness, to comply with the support order.<sup>35</sup> Inability to comply with the support order is measured by the obligor's earning capacity, not his actual income;<sup>36</sup> therefore, inability is not a defense if the obligor is able to pay part of the award, or if he has sufficient funds to comply with the order but the property is exempt from creditors' claims.<sup>37</sup>

The equitable defense of laches, applicable if the obligee's delay in enforcing the order prejudices the obligor, is rarely successful.<sup>38</sup> The Virginia Supreme Court's recent rejection of the laches argument in an action for a judgment for support arrearages indicates the continued lack of viability of the defense in the contempt context.<sup>39</sup>

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fer to the juvenile and domestic relations district court the enforcement of its order for spousal or child support. VA. CODE § 20-79(c) (Cum. Supp. 1979). The contempt proceeding therefore usually is brought in the juvenile and domestic relations district court.

33. *Eddens v. Eddens*, 188 Va. 511, 50 S.E.2d 397 (1948).

34. Two copies of the decree and the sheriff's fee for service should be left with the clerk. CLE, SEPARATION AND DIVORCE, *supra* note 30, at 157.

35. *Lindsey v. Lindsey*, 158 Va. 647, 164 S.E. 551 (1932); *Branch v. Branch*, 144 Va. 244, 132 S.E. 303 (1926); *Camden v. Virginia Safe Deposit & Trust Corp.*, 115 Va. 20, 78 S.E. 596 (1913).

36. *Canavos v. Canavos*, 205 Va. 744, 139 S.E.2d 825 (1965) (holding increase of alimony from \$17.50 to \$35 per week justified in light of unemployed husband's ability to obtain employment and his rental income from property worth \$60,000); *Brooks v. Brooks*, 201 Va. 731, 113 S.E.2d 872 (1960) (deeming award of \$12.50 per week for alimony and \$10.00 per week for child support appropriate when husband having annual net income of only \$1,800 was in "early fifties," had good health, and owned residence worth \$10,000 and equity of \$7,000 in service station); *Hinshaw v. Hinshaw*, 201 Va. 668, 112 S.E.2d 902 (1960) (holding increase of separate maintenance award from \$15 to \$50. per week justified when husband owned real and personal property worth \$124,500 and had annual net business income of \$9,600).

37. H. CLARK, *supra* note 14, at 469.

38. *Id.* at 470-71.

39. In *Alig v. Alig*, 220 Va. \_\_\_, 255 S.E.2d 494 (1979), the husband argued laches as a bar to the wife's petition for a judgment for arrearages. The court held that the wife's "failure to communicate with [the husband] for almost three years after his termination of the alimony

At the contempt hearing, the judge may order the contemnor to make periodic payments to satisfy the arrearages if the violations are not severe. The judge, however, also may commit the contemnor to a state correctional institution, a workhouse, a city farm or work squad, or the state convict road force, at hard labor, for a fixed or indeterminate period not to exceed twelve months or until further order of the court.<sup>40</sup>

Because of the severity of the penalty, contempt enforcement of support obligations is both civil and criminal in nature.<sup>41</sup> It is a civil proceeding in that its purpose is to coerce obedience to the decree<sup>42</sup> or to enforce the rights of the individual for whose benefit the award was made.<sup>43</sup> The penalties for contempt are criminal in nature in that they are identical to those imposed under the criminal statutes for conviction of desertion or nonsupport.<sup>44</sup> Moreover,

payments did not justify [his] noncompliance with the alimony decree." *Id.* at —, 255 S.E.2d at 497 (citation omitted). *See also* notes 75-77 *infra* & accompanying text.

40. VA. CODE § 20-115 (Repl. Vol. 1975). If the contemnor is committed to a workhouse, city farm or work squad, the person for whose benefit the decree was made receives between \$5 and \$25 per week from the city or county in which the obligor performs work. *Id.* § 20-63 (Cum. Supp. 1979). Thus, the counterproductive effects of jailing as a means of support enforcement, resulting from the obligor's inability to earn income during confinement, are mitigated to a limited extent.

Before the enactment of statutes that gave a decree in equity ordering the payment of money the effect of a money judgment and made such decree a lien on the obligor's real estate, the penalty for contempt was seizure of the contemnor's real and personal property under a writ of sequestration. These assets were held until the obligor paid. *Hook v. Ross*, 11 Va. (1 Hen. & M.) 310 (1807).

41. A related issue is whether imprisonment for contempt is imprisonment for civil debt. Virginia has no constitutional ban on imprisonment for debt. Nevertheless, the Virginia Supreme Court has stated in dictum that a support obligation is not an ordinary debt within the meaning of such prohibitions because it is not a contractual debt, but an obligation imposed by a court. *West v. West*, 126 Va. 696, 101 S.E. 876 (1920). *See also* Note, *Body Attachment and Body Execution: Forgotten But Not Gone*, 17 WM. & MARY L. REV. 543, 550-53 (1976).

42. *Eddens v. Eddens*, 188 Va. 511, 50 S.E.2d 397 (1948); *Gloth v. Gloth*, 158 Va. 98, 163 S.E. 351 (1932).

43. Local 333B, *United Marine Div. v. Commonwealth*, 193 Va. 773, 71 S.E.2d 159 (1952).

44. VA. CODE §§ 20-61, -62 (Cum. Supp. 1979). The text of § 20-115 provides in part as follows:

[U]pon conviction of any party for contempt of court in failing or refusing to comply with any order or decree for support and maintenance for a spouse or for a child or children, the court may commit and sentence such party to the State correctional institution for women, a workhouse, city farm or work squad, or the State convict road force, at hard labor, for a fixed or indeterminate period or until further order of the court, in no event however for more

the statute authorizing the contempt remedy for support enforcement uses the term "conviction."<sup>45</sup> The Virginia Supreme Court views contempt enforcement of support orders as a "quasi-criminal" remedy<sup>46</sup> it punishes the obligor for disobedience of a court-ordered duty to uphold the power and dignity of the court.<sup>47</sup>

The Virginia Supreme Court has acknowledged this dual coercive/punitive aspect of contempt enforcement of a support obligation:

[A] decree for alimony is different from an ordinary debt or judgment for money. It is an order compelling a husband to support his wife, and this is a public as well as a marital duty—a moral as well as a legal obligation. The liability is not based upon a contract, but upon the refusal to perform a duty. The imprisonment is not ordered simply to enforce the payment of the money, but to punish for the wilful disobedience of a proper order of a court of competent jurisdiction.<sup>48</sup>

Although the Virginia Supreme Court has recognized that no comprehensive test exists that substantively classifies contempt as either civil or criminal,<sup>49</sup> contempt enforcement of support obligations is treated procedurally as a civil action. Accordingly, the defendant debtor is not entitled to the constitutional guarantees available in a criminal proceeding.<sup>50</sup>

The contemnor must pay all arrears before the court will entertain a motion to quash an execution issued on a support order.<sup>51</sup>

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than twelve months.

*Id.*

45. *Id.* § 20-115 (Repl. Vol. 1975). *Gowen v. Wilkerson*, 364 F. Supp. 1043 (W.D. Va. 1973), also points out that the language of § 20-115 is similar to that of the criminal contempt statute, § 18.1-292(5). *See also* 4 U. RICH. L. REV. 128 (1969).

46. *Branch v. Branch*, 144 Va. 244, 132 S.E. 303 (1926). *See also* *Eaton v. Davis*, 176 Va. 330, 10 S.E.2d 893 (1940); *Deeds v. Gilmer*, 162 Va. 157, 174 S.E. 37 (1934); *Lindsey v. Lindsey*, 158 Va. 647, 164 S.E. 551 (1932); *Camden v. Virginia Safe Deposit & Trust Corp.*, 115 Va. 20, 78 S.E. 596 (1913); *Kidd v. Virginia Safe Deposit & Trust Corp.*, 113 Va. 612, 73 S.E. 145 (1912).

47. *West v. West*, 126 Va. 696, 101 S.E. 876 (1920).

48. *Id.* at 699, 101 S.E. at 877.

49. *Local 333B, United Marine Div. v. Commonwealth*, 193 Va. 773, 71 S.E.2d 159 (1952).

50. *See* *Sword v. Sword*, 399 Mich. 367, 249 N.W.2d 88 (1976).

51. *Hall v. Hall*, 192 Va. 721, 66 S.E.2d 595 (1951). Although the husband's appeal was dismissed on procedural grounds, the court indicated that it would have affirmed the lower court's denial of relief to the husband on the ground of his failure to purge himself of con-



Furthermore, although a court cannot dismiss the contemnor's bill for divorce as punishment for contempt, it can refuse to proceed with the action until the contemnor has satisfied all arrearages.<sup>52</sup>

Courts generally disfavor imprisonment for failure to pay support obligations; nevertheless, the threat of a contempt proceeding against a Virginia debtor is a powerful tool for the obligee when the remedy is pursued vigorously.<sup>53</sup> The territorial limits of the contempt power, however, often force Virginia obligees to use RURESA procedures against absconding obligors.<sup>54</sup> If deserting obligors can be located,<sup>55</sup> RURESA contempt enforcement can be effective.

### *Execution*

A decree in equity for the payment of money has the same effect as a money judgment at law.<sup>56</sup> The obligee is a judgment creditor entitled to enforce the decree through execution. If, however, the decree specifies a time within which payment must be made, the writ of execution cannot issue until the debt matures.<sup>57</sup> Thus, in the case of periodic alimony or child support payments, the writ may issue only for accrued, unpaid installments.<sup>58</sup> The obligee is

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tempt. *Id.* at 726, 66 S.E.2d at 598.

52. *Gloth v. Gloth*, 154 Va. 511, 555, 153 S.E. 879, 893 (1930).

53. For a discussion of the effectiveness of jailing for contempt in the context of a vigorous public system of support enforcement, see Chambers, *Men Who Know They Are Watched: Some Benefits and Costs of Jailing for Nonpayment of Support*, 75 MICH. L. REV. 900 (1977).

54. A writ of *ne exeat* may act as a deterrent to desertion. Because in a divorce suit the court may make any order necessary to assure compliance, issuance of a writ of *ne exeat* is proper when the defendant is about to leave the jurisdiction. VA. CODE § 20-103 (Repl. Vol. 1975). A requirement under the writ is that the defendant post a bond in the nature of an appearance bond. See A. PHELPS, DOMESTIC RELATIONS IN VIRGINIA 297 (3d ed. 1971).

55. The new federal and state parent locator services can assist in this situation. See notes 204-07 *infra* & accompanying text.

56. VA. CODE §§ 8.01-426, -427 (Repl. Vol. 1975). This applies, of course, not only to domestic support orders but also to foreign support orders registered in a Virginia court under the provisions of RURESA. See *Id.* §§ 20-88.30:1 to 6.

57. *Id.* § 8.01-427 (Repl. Vol. 1977). If the decree does not specify a limit for payment, execution is available within twenty-one days after entry of the decree. *Id.* § 8.01-466.

58. In Virginia, payments awarded under a support decree vest as they accrue. *Cofer v. Cofer*, 205 Va. 834, 838, 140 S.E.2d 663, 666 (1965). These accrued installments are treated as final judgments for money on which execution may issue without further action by the court. In some jurisdictions, accrued, unpaid installments must be reduced to a judgment

entitled to a writ of *fiery facias* as often as the installments become due and are unpaid.<sup>59</sup>

In Virginia, execution cannot be levied on real estate.<sup>60</sup> The sheriff may levy on all tangible personal property of the debtor, such as automobiles and other chattels, subject to applicable statutory exemptions that the debtor may assert.<sup>61</sup> The primary obstacle to using execution to enforce the decree is locating the obligor and his assets. For this purpose, an examination of the debtor and third parties indebted to the debtor may be available to the obligee under Virginia's provisions for interrogatories.<sup>62</sup>

The decree is enforced by petitioning the clerk of the court that rendered the decree to issue a writ of *fiery facias* and to give the writ to the sheriff for execution.<sup>63</sup> Notice need not be given to the debtor.<sup>64</sup> The writ commands the sheriff to levy and sell the debtor's property within the sheriff's bailiwick to satisfy the arrearages.<sup>65</sup> For tangible personal property, the levy creates a lien that is enforceable by sale of the property.<sup>66</sup> For intangible personal property, the lien arises on delivery of the writ to the officer

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for arrears before execution may issue.

59. *Stephens v. Stephens*, 171 Ga. 590, 156 S.E. 188 (1930); *Wagner v. Wagner*, 26 R.I. 27, 57 A. 1058 (1904).

60. VA. CODE § 8.01-478 (Repl. Vol. 1977). See *Davis v. National Grange Ins. Co.*, 281 F Supp. 998 (E.D. Va. 1968).

61. See M. BURKS, COMMON LAW AND STATUTORY PLEADING AND PRACTICE § 360 (4th ed. 1952) (regarding property not subject to levy). Statutory exemptions in Virginia are discussed in Note, *The Failure of the Virginia Exemption Plan*, *supra* this issue.

62. VA. CODE §§ 8.01-506 to 510 (Repl. Vol. 1977).

The investigative work necessary to locate the obligor and his assets is often beyond the means of the private attorney. The new state and federal parent locator services ameliorate this problem. See notes 204-07 *infra* & accompanying text. For tips on data about the debtor that can be useful in directing avenues of inquiry, see E. LUBOFF & C. POSNER, HOW TO COLLECT YOUR CHILD SUPPORT & ALIMONY 11-13 (1977). The authors suggest use of such public records as Division of Motor Vehicles driver's license and registration records, state employment records, city or county business license records, prison records, and real estate records. *Id.* at 29-53.

63. VA. CODE § 8.01-466 (Repl. Vol. 1977). See Note, *Enforcing Money Judgments Against Personal Property in Virginia*, *supra* this issue.

64. *Palais v. DeJarnette*, 145 F.2d 953 (4th Cir. 1944). In those states in which the arrearages must be reduced to judgment before execution may issue, notice to the debtor and opportunity to be heard are essential.

65. VA. CODE § 8.01-474 (Repl. Vol. 1977).

66. *Id.* § 8.01-479.

and is enforceable by garnishment.<sup>67</sup>

Defenses to execution include expiration of the statute of limitations and laches.<sup>68</sup> A twenty-year statute of limitations applies to executions on a judgment or decrees for the payment of money;<sup>69</sup> thus, expiration of the statute is a proper defense. The judgment may be extended, however,<sup>70</sup> for an additional twenty years on the obligee's motion.<sup>71</sup> For periodic support payments, the statute begins to run on the date each installment becomes due, not on the date of the original decree.<sup>72</sup>

A decree or judgment that has not lapsed may be revived by a motion filed in the circuit court of the jurisdiction in which the decree was entered requesting an order to show cause why the judgment should not be extended.<sup>73</sup> After notice to the obligor and a hearing on the motion, the court may extend the judgment.<sup>74</sup>

In revival contexts, as in other support enforcement situations, the defense of laches is rarely successful. In *Richardson v. Moore*,<sup>75</sup> the wife, seeking arrearages from the deceased husband's estate, filed a motion to revive a support order entered forty years earlier. The husband had reduced the installment without court approval when the children reached majority. The court rejected the defense of laches, reasoning that, because a subsequent private contract between the parties reducing the support obligation did not excuse noncompliance with the decree,<sup>76</sup> neither could the wife's passive acquiescence ratify the reduced payments.<sup>77</sup>

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67. *Id.* § 8.01-501.

68. Because execution of a support decree is procedurally an action at law, the statute of limitations constitutes the proper bar to this action. One commentator, however, suggests that laches, an equitable defense, also may be applicable because of the inherent equitable nature of the underlying support decree. H. CLARK, *supra* note 14, at 470. No Virginia cases use the doctrine of laches to bar execution of a support decree.

69. VA. CODE § 8.01-251(A) (Repl. Vol. 1977).

70. *Phipps v. Sutherland*, 201 Va. 448, 111 S.E.2d 422 (1959). Extension of a judgment by issuance of a writ of *fiat facias* is no longer possible. *Id.*

71. VA. CODE § 8.01-251(B) (Repl. Vol. 1977).

72. The commencement of a lien on the obligor's real estate also is measured from the date each installment becomes due, with each installment creating a separate lien. *United States v. Spangler*, 94 F. Supp. 301 (S.D. W. Va. 1950).

73. VA. CODE § 8.01-251(B) (Repl. Vol. 1977).

74. *Id.*

75. 217 Va. 422, 229 S.E.2d 864 (1976).

76. *Capell v. Capell*, 164 Va. 45, 178 S.E. 894 (1935).

77. Similarly, because of the importance of the children's welfare, a wife's conduct in vio-

A bankrupt debtor may not assert a claim of discharge as a defense because "any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of both spouse or child, in connection with a separation agreement, divorce decree, or property settlement" is not dischargeable.<sup>78</sup> The distinction between alimony and a dischargeable property division is unclear under the new Bankruptcy Reform Act of 1978.<sup>79</sup> Formerly, state law determined the nature of an award.<sup>80</sup> Under the new Act, however, federal bankruptcy laws apply.<sup>81</sup>

### *Garnishment*

The garnishment process may be used to subject money held by the obligor's debtor to satisfaction of the arrearages. Once a writ of *fieri facias* has been issued, the obligee may sue out a garnishment summons directed to the debtor of the obligor.<sup>82</sup> The life of a garnishment summons when issued from a general district court is sixty days and when issued from a circuit court is ninety days.<sup>83</sup> If

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lation of a divorce decree does not relieve the husband of his child support obligation. H. CLARK, *supra* note 14, at 513.

78. 11 U.S.C.A. § 523(a)(5) (West 1979); however, for a discussion on the dischargeability of support obligations that have been assigned, see note 221 *infra*.

79. The Bankruptcy Reform Act of 1978 applies to all bankruptcy proceedings initiated on or after October 1, 1979. 11 U.S.C.A. § 402 (a) (West Supp. 1979).

80. For example, the dischargeability of an award of attorney's fees pursuant to a divorce decree turned on whether state law treated such awards as in the nature of alimony or support. *In re Cornish*, 529 F.2d 1363 (7th Cir. 1976) (Illinois); *Jones v. Tyson*, 518 F.2d 678 (9th Cir. 1975) (California); *In re Nunnally*, 506 F.2d 1024 (5th Cir. 1974) (Texas); *Damon v. Damon*, 283 F.2d 571 (1st Cir. 1960) (Maine); *Hyman & Rice v. Knuppenburg*, 422 F. Supp. 274 (E.D. Mich. 1976) (Michigan).

81. H.R. REP. No. 595, 95th Cong., 2d Sess. 363, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 5963, S. REP. No. 989, 95th Cong., 2d Sess. 77-79, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 5787. Courts have defined alimony under bankruptcy law to mean "payments in the nature of support of a former spouse." *Nichols v. Hensler*, 528 F.2d 304, 307 (7th Cir. 1976). See *Norris v. Norris*, 324 F.2d 826, 828 (9th Cir. 1963); *In re Baldwin*, 250 F. Supp. 533, 534 (D. Neb. 1966); 1A COLLIER ON BANKRUPTCY 1678 (14th ed. 1975); 3A COLLIER ON BANKRUPTCY 1839 (14th ed. 1975).

If this is what is meant by the bankruptcy law that is controlling, the knotty problem of distinguishing alimony from a property division persists.

82. VA. CODE §§ 8.01-511, -512 (Cum. Supp. 1979). See Note, *Garnishment in Virginia*, *supra* this issue.

83. VA. CODE § 8.01-514 (Cum. Supp. 1979). The disadvantage of this short life is absent when the federal government is the garnishee. See note 95 *infra* & accompanying text. This also is overcome under the new state provisions for wage assignment and the order to with-

the garnishee fails to appear, the court may enter a default judgment.<sup>84</sup> In a full hearing, the court will determine the fact and the amount of the garnishee's liability from an examination of the garnishee or from his verified statement. It then may enter an in personam judgment directing the garnishee to pay such amount to the court.<sup>85</sup>

The Virginia Code provides for garnishment of the wages and salaries of state,<sup>86</sup> federal,<sup>87</sup> and municipal<sup>88</sup> employees. Furthermore, a 1978 amendment to the Code removed restrictions on the amount of an obligor's wages that may be garnished to enforce a support order.<sup>89</sup>

The recent social security amendments waive the federal government's immunity to process for support orders. The waiver thereby makes available to the obligees salaries and moneys "the entitlement to which is based on remuneration for employment."<sup>90</sup> The new federal statute provides as follows:

Notwithstanding any other provision of law moneys (the entitlement to which is based on remuneration for employment) due from, or payable by, the United States (including any agency or instrumentality thereof and any wholly owned Federal corporation) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States were a private person, to legal process brought for the enforcement, against such individual, of his legal obligations to provide child support or make alimony payments.<sup>91</sup>

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hold and deliver under the IV-D program for child support enforcement. See notes 240-50 *infra* & accompanying text.

84. VA. CODE § 8.01-519 (Repl. Vol. 1977).

85. *Id.* §§ 8.01-515, -516.

86. *Id.* § 8.01-522.

87. *Id.* § 8.01-523.

88. *Id.* § 8.01-524.

89. *Id.* §§ 8.01-512, 34-29 (Cum. Supp. 1979).

90. 42 U.S.C.A. § 659(a) (West Supp. 1979). The statute has been interpreted to include accumulated, unpaid pension and retirement benefits, but to exclude disability payments to a retired military officer. *Elmwood v. Elmwood*, 295 N.C. 168, 244 S.E.2d 668 (1978). It also includes garnishment for attorney's fees awarded in connection with a decree for alimony or child support. *Murray v. Murray*, 558 F.2d 1340 (8th Cir. 1977).

91. 42 U.S.C.A. § 659(a) (West Supp. 1979). See Annot., 44 A.L.R. 2d 494 (1979).

The new statute removes the government's immunity in garnishment proceedings authorized under state law; it does not confer original subject matter jurisdiction on the federal courts to determine such actions.<sup>92</sup> In addition, because no federal law of garnishment exists, the United States is subject to state law procedures.<sup>93</sup> Thus, in Virginia, both a writ of *fiery facias* and a garnishment summons directed to the appropriate federal official are necessary. Pursuant to the federal statute, service of the garnishment summons is effected by certified or registered mail, return receipt requested, or by personal service, on the appropriate agent designated for receipt of service.<sup>94</sup>

The Virginia statute prolonging the life of a garnishment against the government until arrearages are satisfied supplements this expanded use of garnishment to enforce family support obligations.<sup>95</sup> Thus, garnishors of the government avoid the procedural necessity often found in other garnishment proceedings of having to renew the summons periodically

### *Judgment Lien*

Under Virginia's general judgment lien statute,<sup>96</sup> a support de-

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92. *Wilhelm v. United States Dep't of Air Force, Accounting & Fin. Center*, 418 F Supp. 162 (S.D. Tex. 1976); *Golightly v. Golightly*, 410 F Supp. 861 (D. Neb. 1976); *Morrison v. Morrison*, 408 F Supp. 315 (N.D. Tex. 1976); *West v. West*, 402 F Supp. 1189 (N.D. Ga. 1975); *Bolling v. Howland*, 398 F Supp. 1313 (M.D. Tenn. 1975). See Annot., 44 A.L.R. Fed. 494, 499-502 (1979).

93. This is implied in the language that the United States is subject to garnishment "as if [it] were a private person." 42 U.S.C.A. § 659(a) (West Supp. 1979).

94. *Id.* § 659(b). The following offices may be contacted regarding service of process: U.S. Air Force Accounting and Finance Center, AFAFC/AJQ, 300 York Street, Denver, Colorado 80205; U.S. Army Finance and Accounting Center, ATTN: FINCR, Indianapolis, Indiana 46249; U.S. Marine Corps, Commandant of the Marine Corps, The Pentagon, Washington, D.C. 20380; and U.S. Navy Regional Finance Center, Anthony J. Celebrezze Building, Cleveland, Ohio 44199.

95. VA. CODE § 70-78.1 (Cum. Supp. 1979). Note that the statute apparently contains a legislative error giving it retroactive application, that is, application "to arrearages accumulated prior to July one, nineteen hundred seventy-six," rather than prospective application. *Id.* (emphasis supplied).

96. *Id.* § 8.01-458 (Repl. Vol. 1977). Although the statute speaks of a judgment for money, it also applies to a decree ordering the payment of money. Sections 8.01-426 to 427 give decrees the status of a money judgment. For a discussion of the relative priorities of judgment liens and other creditors' claims see Note, *Judgment Liens and Priorities in Virginia*, *infra* this issue.

cree constitutes a lien on the obligor's real estate located in any city or county in which the decree is docketed.<sup>97</sup> The lien attaches not only to realty owned by the obligor at the time of docketing but also to any real estate subsequently acquired.<sup>98</sup> Once the decree is docketed in the clerk's office, it secures both present and future installments due under the decree.<sup>99</sup> A judgment lien is not created by a decree that approves but does not incorporate a separation agreement containing support provisions.<sup>100</sup> In this situation, the provisions are enforced by an action on the contract. In addition, the court always has the discretion to order that the decree not establish a lien on the obligor's land.<sup>101</sup>

The lien allows the obligee to receive rents and profits from the real estate. In a recent case,<sup>102</sup> for example, the Virginia Supreme Court recognized that the wife's lien on the husband's real property included his life interest in his deceased mother's real estate. The court also acknowledged the wife's right to invoke the court's aid in subjecting the life interest to the payment of her judgment by having the estate managed to maximize the income from it.<sup>103</sup>

If the rents and profits from the property are insufficient to satisfy the arrearages within five years, the lien is enforceable through a creditor's bill in equity by a sale of the property.<sup>104</sup> The homestead exemption granted by the Virginia Code<sup>105</sup> is unavailable as a

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97. VA. CODE § 8.01-458. To maximize chances of recovery from the obligor's realty, the decree should be docketed in all Virginia cities or counties where the obligor owns real estate.

98. *Id.*

99. *Morris v. Henry*, 193 Va. 631, 70 S.E.2d 417 (1952); *Bray v. Landergren*, 161 Va. 699, 172 S.E. 252 (1934); *Issacs v. Issacs*, 117 Va. 730, 86 S.E. 105 (1915).

100. *Durett v. Durett*, 204 Va. 59, 129 S.E.2d 50 (1963).

101. *Canavos v. Canavos*, 205 Va. 744, 139 S.E.2d 825 (1965). The policy promoted by denying lien status is to avoid impairing the alienability of the land and thus to avoid hindering the debtor's ability to pay.

102. *Brauer v. Brauer*, 215 Va. 62, 205 S.E.2d 665 (1974).

103. *Id.* at 67-68, 205 S.E.2d at 669. Any lien properly docketed prior to the support decree will be superior. *Jennings v. Montague*, 43 Va. (2 Gratt.) 350 (1845).

104. VA. CODE § 8.01-462 (Repl. Vol. 1977).

105. The pertinent section provides as follows:

Every householder or head of a family residing in this State shall be entitled to hold exempt from sale under any order or process issued on any demand for a debt or liability on contract, his real and personal property, or either, to the value of not exceeding five thousand dollars.

*Id.* § 34-4 (Cum. Supp. 1979). For a discussion of the homestead exemption, see Note, *The*

defense to such enforcement proceedings. The purpose of the homestead exemption is to preserve the debtor's family from destitution,<sup>108</sup> a policy that would be thwarted by allowing the obligor spouse to claim an exemption from a support obligation. The legal justification for denial of the exemption is that support obligations are not contracted debts within the meaning of the exemption statutes.<sup>107</sup>

### *Impressed Lien*

Pursuant to an appropriate court order, a judgment or decree for support can constitute a lien on specific real estate of the obligor.<sup>108</sup> In *Wilson v. Wilson*,<sup>109</sup> for example, the court impressed a lien for the payment of periodic alimony on the obligor spouse's \$25,000 home. Under the Uniform Partnership Act as adopted in Virginia,<sup>110</sup> courts also have authority after the obligor defaults to subject his partnership interest to payment of the support obligation.<sup>111</sup> This impressed lien<sup>112</sup> attaches when the order is docketed under the statutory procedure for docketing money judgments.<sup>113</sup>

The impressed lien on specific realty differs from the judgment lien on all of the obligor's real estate.<sup>114</sup> The impressed lien is an

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*Failure of the Virginia Exemption Plan, supra* this issue.

106. H. CLARK, *supra* note 14, at 472.

107. *Ford v. Ford*, 201 Ala. 519, 78 So. 873 (1918).

108. VA. CODE § 8.01-460 (Repl. Vol. 1977).

109. 195 Va. 1060, 81 S.E.2d 605 (1954).

110. VA. CODE §§ 50-1 to 43 (Repl. Vol. 1974).

111. Section 50-28 of the Code provides as follows:

On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and such court may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

*Id.* § 50-28. Procedurally, the interest of the debtor partner is charged with a lien by serving a copy of such an order on the copartner.

112. An impressed lien refers to a debt that has been made a charge or encumbrance on specific property of the obligor.

113. VA. CODE § 8.01-460 (Repl. Vol. 1977).

114. *See id.* § 8.01-458.



equitable lien creating security<sup>115</sup> for payment of the judgment; the judgment lien is a legal lien.<sup>116</sup> With both the impressed and judgment lien, however, foreclosure is effected by sale of the realty if the rents and profits therefrom are insufficient to satisfy the decree within five years.<sup>117</sup> After the obligor's default and before foreclosure of the impressed lien, the obligee is entitled to the appointment of a receiver<sup>118</sup> to collect the rents and profits from a lease of the specific property.<sup>119</sup> If these proceeds are insufficient to satisfy the award within five years, foreclosure in equity follows.<sup>120</sup>

To secure compliance with a support order, the impressed lien is preferable to an injunction against the obligor's disposition of his property. In *Trimble v. Trimble*,<sup>121</sup> the court held that a divorce decree should not enjoin the obligor perpetually from disposing of or encumbering property; such a harsh measure might hamper the obligor's ability to pay.<sup>122</sup> The court suggested in dictum that a

115. In *Wilson v. Wilson*, 195 Va. 1060, 1074, 81 S.E.2d 605, 613 (1954), the court refused to extend the impressed lien beyond that on the home, deeming that to be sufficient to secure performance of the alimony decree.

116. A. PHELPS, *supra* note 54, at 300.

117. VA. CODE § 8.01-462 (Repl. Vol. 1977).

118. A court of equity has the discretionary power to appoint a receiver to take possession of the property of a nonresident defendant. Property so held may not be interfered with, by garnishment or other methods, without the court's consent. *Thornton v. Washington Sav. Bank*, 76 Va. 432, 433-34 (1882); *Smith v. Butcher*, 69 Va. (28 Gratt.) 144, 150 (1877).

Appointment of a receiver also may be requested by the spouse in an independent equity suit for support and maintenance because in Virginia alimony is a substantive right cognizable in equity and not merely an incident of divorce. *Bray v. Landergren*, 161 Va. 699, 172 S.E. 252 (1934).

In any proceeding in which such appointment is sought, the bill must describe the property to be put under the receiver's control. The Virginia statute also requires service of notice on the defendant debtor and other parties with an interest in the property. VA. CODE § 8.01-591 (Rep. Vol. 1977). If, however, the party already has been served with process in the suit, such notice is unnecessary. *Id.* § 8.01-594. If a nonresident defendant is served by publication or by out-of-state service, he may have any appointment reconsidered if he did not appear at the appointment hearing. *Id.* § 8.01-322.

119. *Smith v. Butcher*, 69 Va. (28 Gratt.) 144 (1877).

120. VA. CODE § 8.01-462 (Repl. Vol. 1977). Because impressed liens are enforced in equity, there is no statute of limitations on such actions. *Gilley v. Nidermaier*, 176 Va. 32, 10 S.E.2d 484 (1940).

121. 97 Va. 217, 33 S.E. 531 (1899).

122. *Id.* at 221, 33 S.E. at 533. Although the court did not elaborate, apparently it envisioned the possibility that the proceeds from a timely sale of some of the husband's property might be his only resource for satisfying the obligation.

lien on specific realty would have been more appropriate.<sup>123</sup> Use of the impressed lien, however, may be minimal due to the express authority of Virginia courts to require recognizance or security for compliance.

### *Recognizance or Security*

Upon or after entry of a support decree in a pending<sup>124</sup> or concluded suit for divorce or separate maintenance,<sup>125</sup> the court may require the obligor to give a recognizance, with or without surety.<sup>126</sup> The security may be in the form of collateral or a bond with surety.<sup>127</sup> The consequences for failure to give such security are those that attach to conviction for contempt.<sup>128</sup>

Although recognizance provisions rarely are used,<sup>129</sup> they can be valuable if the spouse attempts to conceal his assets from the divorce court.<sup>130</sup> An alternative security device is suggested by the holding in *Jenkins v. Jenkins*.<sup>131</sup> In *Jenkins*, the Virginia Supreme Court approved the withholding of the husband's share from a partition of property held by the entireties as security for payment of a support obligation.<sup>132</sup>

If a recognizance with surety is required and the obligor defaults on his support payments, the surety must satisfy the support obligation; however, the surety is entitled to a writ of execution in his

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123. In addition, the availability of an action to set aside as fraudulent a conveyance of property to avoid support enforcement makes an injunction unnecessary. The obligee may join the transferee as a party to a divorce suit, and the court may adjudicate the rights of the parties and charge a lien on the property. *Crowder v. Crowder*, 125 Va. 80, 99 S.E. 746 (1919); *Gollehon v. Gollehon*, 123 Va. 504, 96 S.E. 769 (1918).

124. VA. CODE § 20-103 (Repl. Vol. 1975).

125. *Id.* § 20-114.

126. *Id.*

127. A. PHELPS, *supra* note 54, at 290.

128. Compare VA. CODE § 20-115 (Repl. Vol. 1975) with *id.* §§ 20-61 to 62.

129. CLE, SEPARATION AND DIVORCE, *supra* note 30, at 158. In *Canavos v. Canavos*, 205 Va. 744, 139 S.E.2d 825 (1965), however, the Virginia Supreme Court used this remedy in lieu of charging a lien on the spouse's real estate.

130. *Ring v. Ring*, 185 Va. 269, 38 S.E.2d 471 (1946). In *Ring*, the court in dictum suggested that a recognizance was the proper alternative remedy by holding that the trial court lacked equity jurisdiction to impound the husband's stock as security for compliance with alimony and child support awards. *Id.* at 277-78, 38 S.E.2d at 475.

131. 211 Va. 797, 180 S.E.2d 516 (1971).

132. *Id.*

name against the obligor from the court that entered the support order.<sup>133</sup>

### *Attachment*

Accrued, unpaid support payments are a debt within the meaning of the attachment statute. An obligee spouse therefore should be able to use the prejudgment remedy of attachment at or after the commencement of an action to reduce the support arrearages to judgment if one of the six statutory grounds for attachment exists.<sup>134</sup> These grounds generally relate to situations in which the obligee is unable to serve the obligor personally, fraud is claimed, or the obligor is about to or has secreted or disposed of his assets to defraud his creditors.<sup>135</sup>

Procedurally, attachment is commenced by filing a sworn petition that states the details of the debt and a sum certain to which the obligee is entitled.<sup>136</sup> A specific statutory ground for attachment must be alleged and a prayer for attachment included.<sup>137</sup> The issued attachment directs the sheriff to attach the property and to summon the obligor to appear and answer the petition.<sup>138</sup>

Although attachment creates a lien on property<sup>139</sup> giving the obligee leverage to secure payment from the obligor, its primary dis-

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133. VA. CODE § 49-27 (Repl. Vol. 1974).

134. A. PHELPS, *supra* note 54, at 279.

135. VA. CODE § 8.01-534 (Repl. Vol. 1977) lists the six specific grounds as follows:

1. Defendant is a foreign corporation, or a nonresident, with debts owing to such defendant in the city or county in which the attachment is.
2. Defendant is leaving or is about to leave the state with intent to change his domicile.
3. Defendant is removing, is about to remove, or has removed from the state the specific property sued for or such amount of his estate that insufficient property will be left to satisfy the judgment.
4. Defendant is converting, is about to convert, or has converted his property into money, securities or other evidences of debt with intent to hinder, delay or defraud his creditors.
5. Defendant has assigned or disposed of, or is about to assign or dispose of some or all of his property with intent to hinder, delay or defraud his creditors.
6. Defendant has left or is about to leave the state, or has concealed himself from creditors, or is a fugitive from justice.

136. *Id.* § 8.01-537 (Cum. Supp. 1979).

137. *Id.*

138. *Id.* § 8.01-456 (Repl. Vol. 1977).

139. *Id.* § 8.01-557 (Repl. Vol. 1977).

advantage is the expense of the required bond in an amount double the fair market value of the seized property.<sup>140</sup> For the obligee spouse in need of delinquent support payments, the cost of suing out an attachment may be prohibitive.<sup>141</sup>

### REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (RURESA)

#### *Full Faith and Credit to Foreign Support Orders*

The United States Supreme Court has interpreted restrictively the full faith and credit clause of the Constitution. Accordingly, a court must give full faith and credit to a foreign support decree based on subject matter and personal jurisdiction only if the decree is final and nonmodifiable.<sup>142</sup> Thus, a court asked to enforce a foreign support decree first must determine whether the award is final under the law of the state of the rendering court. For periodic support, some states require docketing of a judgment for arrearages before unpaid, accrued installments become final.<sup>143</sup> In others, including Virginia, these installments automatically become a final judgment debt on accrual.<sup>144</sup> Furthermore, in most jurisdictions future installments are modifiable; consequently, full faith and credit is not mandated. The obligee then must wait until sufficient arrearages have accrued to pursue out-of-state enforcement or engage in expensive, piecemeal enforcement efforts.

#### *Comity Recognition of Foreign Support Orders*

The finality requirement for enforcement of a foreign decree under the full faith and credit clause has led to an increased reliance on comity for support order enforcement.<sup>145</sup> Comity recogni-

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140. *Id.* §§ 8.01-551 to 552. The bond is required to protect the obligor against damages caused by wrongful seizure. *Harris v. Lipson*, 167 Va. 365, 189 S.E. 349 (1937).

141. Whether it is in fact prohibitive will depend on such factors as the amount of the debt, and in turn, the value of the seized property and the likelihood of collection.

142. *Sistare v. Sistare*, 218 U.S. 1 (1909).

143. H. CLARK, *supra* note 14, at 475-76.

144. *See* note 58 *supra*.

145. *See* H. CLARK, *supra* note 14, at 278-80 (discussing comity recognition of foreign decrees). Comity recognition circumvents the effects of a broad reading of *Fall v. Eastin*, 215 U.S. 1 (1909), which asserts that equity act decrees, such as one ordering the conveyance of property located in another state, are not entitled to full faith and credit.

tion avoids duplicative litigation and also prevents evasion of support obligations. Evasion is blocked when, under comity principles, a court recognizes a foreign support order and enters a domestic decree on the same terms. This makes contempt and other remedies available and allows the obligee to enforce the obligation as effectively in the foreign state as in the rendering state.

Virginia and many other jurisdictions have recognized the importance of comity in support enforcement.<sup>146</sup> Recently, the Virginia Supreme Court interpreted Virginia's adoption of the Uniform Reciprocal Enforcement of Support Act as mandating comity recognition of a foreign support decree ordering payments that were both retroactively and prospectively modifiable.<sup>147</sup> In upholding a judgment for arrearages on a Maryland decree, under which the payments were modifiable retroactively, the court in *Alig v. Alig*<sup>148</sup> relied on the provisions of RURESA declaring modifiable support duties enforceable<sup>149</sup> and declaring foreign decrees enforceable in the same manner as Virginia decrees.<sup>150</sup>

### *Revised Uniform Reciprocal Enforcement of Support Act*

Because of restrictive full faith and credit requirements and because of the difficulty and expense of obtaining personal jurisdiction over an absconding obligor,<sup>151</sup> RURESA has become the more effective way to enforce a foreign support decree.<sup>152</sup> The Act repre-

146. *Alig v. Alig*, 220 Va. —, 255 S.E.2d 494 (1979); *Scott v. Sylvester*, No. 78-0176 (Va. Aug. 30, 1979); *Osborne v. Osborne*, 215 Va. 205, 207 S.E.2d 875 (1974); *McKeel v. McKeel*, 185 Va. 108, 37 S.E.2d 746 (1946).

147. *Alig v. Alig*, 220 Va. —, 255 S.E.2d 494 (1979); *Scott v. Sylvester*, No. 78-0176 (Va. Aug. 30, 1979).

148. 220 Va. —, 255 S.E.2d 494 (1979).

149. VA. CODE § 20-88.13(14) (Repl. Vol. 1975).

150. *Id.* § 20-88.30:6(a).

151. Obtaining personal jurisdiction may no longer be the barrier it once was. By a 1978 amendment, the Virginia long-arm statute confers jurisdiction over the obligor in a cause of action arising from a spousal or child support order rendered by a Virginia court in a divorce suit. *Id.* § 8.01-328.1(A) (8) (Cum. Supp. 1979).

152. *Id.* 20-88.12 to 31. URESA has been adopted in some form by all states except New York. New York has adopted the Uniform Support of Dependents Law, N.Y. DOMESTIC RELATION LAW §§ 30-43 (West 1973), which is substantially similar to RURESA and permits reciprocity between various jurisdictions. RURESA also has been enacted in a number of U.S. territories. Adopting jurisdictions are as follows (asterisk indicates adoption of the Revised Uniform Act in some form): ALA. CODE tit. 30, §§ 4-80 to 98 (1975); ALASKA STAT. §§

sents the adopting state's choice to give full faith and credit to foreign support orders and establishes a procedural framework for interstate cooperation in the establishment and enforcement of support orders. The Virginia version of RURESA now also provides for use of its enforcement mechanisms by Virginia obligees if the obligor resides in a different Virginia county or city.<sup>153</sup> Because filing fees and costs are paid by the obligor,<sup>154</sup> the obligee can better afford to pursue enforcement of the support duty. Enforceable under the Act is any duty of support existing or imposable under the laws of the state in which the obligor was present for the period for which support is sought.<sup>155</sup> Support duties include those

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25.25.010 to .270 (1977); A.S. CODE §§ 901-1075 (1973) (American Samoa); \*ARIZ. REV. STAT. §§ 12-1651 to 1691 (1956); \*ARK. STAT. ANN. §§ 34-2401 to 2449 (Cum. Supp. 1979); \*CALIF. CIV. PROC. CODE §§ 1650-1699 (West 1972); \*COLO. REV. STAT. §§ 14-5-101 to 143 (1973); CONN. GEN. STAT. §§ 17-327 to 355b (1975); DEL. CODE tit. 13, §§ 601-638 (Rev. 1974); D.C. CODE §§ 30-301 to 324 (1973); FLA. STAT. ANN. §§ 88.011 - .3711 (West 1964); GA. CODE §§ 99-9016 to 919b (1976); HAW. REV. STAT. §§ 576-1 to 41 (Repl. Vol. 1976); \*IDAHO CODE §§ 7-1048 to 1089 (Cum. Supp. 1979); \*ILL. REV. STAT. ch. 68, §§ 101-142 (Supp. 1979); IND. CODE §§ 31-2-1-1 to 2-1-39 (1973); IOWA CODE §§ 252A.1 - .12 (1969); \*KAN. STAT. §§ 23-451 to 493, 4,100 (1974); \*KY. REV. STAT. §§ 407.010 - .480 (Cum. Supp. 1978); \*LA. REV. STAT. ANN. §§ 13:1641 - :1699 (West 1968); \*ME. REV. STAT. tit. 19, §§ 331 - 420 (West 1964); MD. ANN. CODE art. 89C, §§ 1-39 (Repl. Vol. 1979); MASS. ANN. LAWS ch. 273A, §§ 1-17 (Michie La. Co-op 1970); MICH. COMP. LAWS §§ 780.151 - .174 (1968); MINN. STAT. ANN. §§ 518.41 - .53 (West 1979); MISS. CODE ANN. §§ 93-11-1 to 65 (1972); MO. REV. STAT. §§ 454.010 - .360 (1977); \*MONT. REV. CODES ANN. §§ 40-5-101 to 257 (1979); \*NEB. REV. STAT. §§ 42-762 to 7,104 (1978); \*NEV. REV. STAT. §§ 130.010 to .370 (1973); \*N.H. REV. STAT. ANN. §§ 546:1 to :41 (1974); N.J. REV. STAT. §§ 2A:4-30.1 to .22 (1952); \*N.M. STAT. ANN. §§ 40-6-1 to 41 (1978); \*N.C. GEN. STAT. §§ 52A-1 to 32 (Repl. Vol. 1976); \*N.D. CENT. CODE §§ 14-12.1-01 to 43 (1971); \*OHIO REV. CODE ANN. §§ 3115.01 - .34 (Repl. Vol. 1972); \*OKLA. STAT. ANN. tit. 12, §§ 1600.1 - .40 (West 1961); OR. REV. STAT. §§ 110.005 to .291 (Repl. Part 1975); \*42 PA. CONS. STAT. ANN. §§ 6741 - 6780 (Purdon Supp. 1979); P.R. LAWS ANN. tit. 32, §§ 3311-3313v (1968) (Puerto Rico); R.I. GEN. LAWS §§ 15-11-1 to 37 (1969); S.C. CODE §§ 20-7-110 to 470 (1976); S.D. COMPILED LAWS ANN. §§ 25-9-1 to -31 (1976); TENN. CODE ANN. §§ 36-901 to 929 (Repl. Vol. 1977); TEX. FAM. CODE ANN. tit. 1 §§ 21.01 - .66 (Vernon 1975); UTAH CODE ANN. §§ 77-61a-1 to 39 (1978); \*VT. STAT. ANN. tit. 15, §§ 385-428 (1974); V.I. CODE ANN. tit. 16, §§ 391-429 (1964) (Virgin Islands); WASH. REV. CODE ANN. §§ 26.21.010 - .910 (1961); \*W. VA. CODE §§ 48-9-1 to 42 (Repl. Vol. 1976); \*WIS. STAT. § 52.10' (1957); \*WYO. STAT. §§ 20-4-101 to 138 (1977).

153. VA. CODE § 20-88.28:4 (Repl. Vol. 1975).

154. *Id.* § 20-88.22:01. These fees and costs do not have priority over amounts due the obligee. *Id.*

155. *Id.* § 20-88.18. The Virginia Supreme Court recently clarified the meaning of this provision. *Scott v. Sylvester*, No. 78-0176 (Va. Aug. 30, 1979), involved an action under RURESA to register a foreign support order and to recover arrearages thereunder. The trial court had held that § 20-88.18 of the Code of Virginia prohibited a Virginia court from

under temporary or final orders in a suit for divorce or separate maintenance and any arrearages of support.<sup>156</sup>

RURESA is primarily a procedural framework within which a Virginia resident<sup>157</sup> can establish a support duty or enforce an existing one against an out-of-state obligor or an obligor residing in a different city or county in Virginia.<sup>158</sup> To establish a support duty, the obligee files a petition in the juvenile and domestic relations district court where she resides containing the name and last known address of the obligor, the circumstances of the obligor and his dependents for whom support is sought, and any information that might help locate the obligor.<sup>159</sup> After a determination by the reviewing court that the petition sets forth facts indicating that the obligor owes a support duty, the petition is certified and transmitted to the appropriate court of the responding state.<sup>160</sup> In the responding state, the obligor is notified of the docketing of the cause. The Commonwealth attorney or the equivalent official in the responding state has the duty to locate the obligor or his property and to prosecute the case.<sup>161</sup> At the hearing, the defendant may raise any defense available under the responding state's law.<sup>162</sup> If the responding court finds a duty owing, it enters an order requiring payment of the obligation to its clerk of court, who forwards the order to the initiating court for disbursement to the obligee.<sup>163</sup> To assure compliance with the order, the responding

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enforcing a Maryland decree except as to arrears that accrued while the defendant was in Virginia. The supreme court reversed, explaining that § 20-88.18 is a conflict of laws rule that applies only when the request for support is not based on a foreign decree. The applicable provision in the registration action at issue in *Scott* declared a registered foreign decree to have the same effect as a Virginia support order. VA. CODE § 20-88.30:6(a) (Repl. Vol. 1975).

156. VA. CODE §§ 20-88.13(6), .13(14) (Repl. Vol. 1975).

157. The Act also authorizes the state to initiate proceedings when it has provided assistance to the dependent. *Id.* § 20-88.19. See also notes 220-25 *infra* & accompanying text.

158. VA. CODE § 20-88.28:4 (Repl. Vol. 1975).

159. *Id.* § 20-88.21.

160. *Id.* § 20-88.22. The appropriate court is that where the obligor resides. *Id.* If the obligor's residence is unknown, the petition is sent to the state information agency of the responding state which attempts to locate the obligor and then forwards the petition to the proper court. *Id.*

161. *Id.* § 20-88.23.

162. *Id.* § 20-88.23:2. The hearing may be continued to allow for testimony by depositions regarding controverted issues. *Id.*

163. *Id.* § 20-88.24.

court may require recognizance, demand the obligor to make periodic payments and personally report to the clerk, and use contempt proceedings if the obligor fails to comply.<sup>164</sup> In addition, the court of any county or city in which the obligor is present or owns property has the same powers to enforce the order as the court that entered it.<sup>165</sup>

An existing support duty under a foreign decree may be enforced in Virginia under the registration provisions of the Uniform Act. These provisions also may be used to enforce an existing support duty under a domestic Virginia decree in a foreign state. In the foreign decree situation, the obligee effects registration by transmitting to the appropriate clerk of court in Virginia three certified copies of the foreign court order and any modifications, plus a verified statement containing the obligor's last known post office address and residence, the obligee's address, the amount of arrearages, the description and location of any leviable property of the obligor, and the names of other states in which the order is registered.<sup>166</sup> The clerk then notifies the obligor of the registration<sup>167</sup> and the registration is confirmed if the obligor does not petition to vacate the registration within twenty days.<sup>168</sup> Confirmation gives the order the same effect as if it had been rendered in the responding state.<sup>169</sup> If the obligor petitions to vacate, the obligee is represented by the Commonwealth attorney.<sup>170</sup> The obligor may raise any defense available in Virginia to the enforcement of a foreign money judgment.<sup>171</sup>

Civil and criminal<sup>172</sup> enforcement remedies under RURESA sup-

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164. *Id.* § 20-88.26.

165. *Id.* § 20-88.24.

166. *Id.* § 20-88.30:5(a).

167. *Id.* § 20-88.30:5(b).

168. *Id.* § 20-88.30:6(b).

169. *Id.* § 20-88.30:6(a).

170. *Id.* § 20-88.30:4.

171. *Id.* § 20-88.30:6(c). The obligor cannot contend that the decree is not entitled to full faith and credit. By adopting the Uniform Act, the responding state extends full faith and credit even to nonfinal, modifiable support duties. *Cf. Alig v. Alig*, 220 Va. \_\_\_, 255 S.E.2d 494 (1979) (holding that the Uniform Act mandates comity recognition to retroactively modifiable support decree).

172. For criminal prosecution provisions under RURESA for failure to provide support, see VA. CODE §§ 20-88.16, .17 (Repl. Vol. 1975). See also *id.* § 20-61 (criminal proceedings for nonsupport).



plement other remedies.<sup>173</sup> Coordination of any RURESA action with support orders in other pending proceedings against the obligor is provided for in the Code of Virginia. The responding court is directed to proceed with the reciprocal action even when another marital, adoption, or custody action is pending.<sup>174</sup> If, however, the other action concludes before the RURESA hearing<sup>175</sup> and provision was made for the support sought in the RURESA proceeding, the responding court must conform its order to the amount so awarded.<sup>176</sup> The responding court may enforce fully its own support order even if the court in the other action retains jurisdiction.<sup>177</sup> Thus, the obligee's enforcement opportunities are enlarged. The Act further provides that an order in the RURESA proceeding does not nullify and is not nullified by another support order in a reciprocal action within or outside Virginia.<sup>178</sup> Again, the availability of a number of outstanding support orders in different jurisdictions expands the obligee's collection avenues.

Although the Uniform Act was intended to eliminate, through interstate cooperation, the drain on state welfare funds caused by unenforced support orders, obstacles to effective enforcement remain. State information agencies to locate the obligor do exist;<sup>179</sup> however, once the obligee's petition is forwarded to the responding court, the Commonwealth attorney must locate the obligor and his assets and prosecute.<sup>180</sup> RURESA actions in a busy Commonwealth attorney's office often are given low priority. Moreover, a Commonwealth attorney may be reluctant to prosecute if enforcement

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173. *Id.* § 20-88.14.

174. *Id.* § 20-88.28:1.

175. When establishing a support duty, this RURESA hearing on the petition is authorized by § 20-88.23 of the Code of Virginia. In a registration situation, this RURESA hearing on the obligor's motion to vacate is authorized by § 20-88.30:6(c) of the Code of Virginia. Note that in the registration situation, the responding court must stay enforcement of the registered order if the obligor proves that an appeal from the order is pending or that execution has been stayed. *Id.*

176. *Id.* § 20-88.28:1.

177. *Id.*

178. *Id.* § 20-88.28:2. Money paid by the obligor for a particular period under a support decree rendered by another state is credited against the obligor's liability for that period under the Virginia decree. *Id.*

179. *Id.* § 20-88.15:1.

180. *Id.* §§ 20-88.23, .23:1.

would force the obligor onto the responding state's welfare rolls.<sup>181</sup> Thus, the effectiveness of RURESA is impeded by heavy caseloads and continued provincialism.

#### THE NEW FEDERAL ROLE IN CHILD SUPPORT ENFORCEMENT

Although the federal government made earlier efforts to increase public enforcement of child support obligations,<sup>182</sup> the Child Support and Establishment of Paternity Amendments of 1974<sup>183</sup> and 1975<sup>184</sup> to Title IV of the Social Security Act dramatically increased the role of the federal government in this area. These amendments also called for increased state enforcement of child support obligations.

The amendments are designed to enforce the support obligations owed by absent parents, to establish paternity, and to obtain child support.<sup>185</sup> Because of the burgeoning welfare expenditure of the Aid to Families with Dependent Children (AFDC) program,<sup>186</sup> the legislation sought to reduce total welfare expenses by implementing a cost effective program for enforcing family support obligations.<sup>187</sup> Three main features of the amendments include the mandate for state programs for child support enforcement, the

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181. Federal court jurisdiction is now available under certain circumstances. 42 U.S.C.A. § 652(a)(8) (West Supp. 1979). See notes 202-03 *infra* & accompanying text. This could alleviate the problem at least in the child support enforcement area.

182. For highlights of these efforts and the legislative history of the current provisions, see OFFICE OF CHILD SUPPORT ENFORCEMENT, DEP'T OF HEALTH, EDUCATION, AND WELFARE, FIRST ANNUAL REPORT TO CONGRESS ON THE CHILD SUPPORT ENFORCEMENT PROGRAM 5-11 (1976). See also J. CASSETTY, CHILD SUPPORT AND PUBLIC POLICY 7-14 (1978); Bernet, *The Child Support Provisions: Comments on the New Federal Law*, 9 FAM. L.Q. 491, 492-98 (1975).

183. 42 U.S.C.A. §§ 651-660 (West Supp. 1979).

184. *Id.*

185. *Id.* § 651.

186. See Bernet, *supra* note 182, at 497; Locker, *Enforcement of Child Support Obligations of Absent Parents — Social Services Amendments of 1974*, 30 Sw. L.J. 625, 632 (1976).

187. The program apparently has achieved its cost-effectiveness goal. See Rich, *Runaway Fathers Program Proves a Major Success*, Washington Post, Mar. 13, 1978, at 1, col. 2. One commentator, however, has questioned the relevance of the cost-effectiveness rationale and suggested instead that greater federalization of child support enforcement should be undertaken as a "fundamental function of society." Under this view, parental responsibility is a duty that should be enforced per se, without regard to economic considerations. J. CASSETTY, *supra* note 182, at 97-99, 110-12.

establishment of a Federal Parent Locator Service, and the waiver of sovereign immunity allowing garnishment of federal salaries in the enforcement of support obligations.<sup>188</sup>

Under the amendments, states are primarily responsible for child support enforcement by establishing a state office for child support enforcement designed to locate absent parents, establish paternity, and establish and collect support obligations.<sup>189</sup> The Department of Health, Education and Welfare establishes standards for state programs,<sup>190</sup> monitors and evaluates the programs,<sup>191</sup> provides technical assistance, and assists in locating absent parents.<sup>192</sup> State programs are required to be statewide, to involve state financial participation, and to provide for the establishment of a separate organizational unit that undertakes establishment of paternity, securing and collecting support,<sup>193</sup> and parent location.<sup>194</sup> The state also must cooperate with other states in parent location, in paternity determination, and in securing compliance with a court order.<sup>195</sup> Finally, the state program's services must be made available to non-AFDC families on a fee and cost basis.<sup>196</sup>

To assist in the collection of support by the state agency, the state plan must require as conditions of AFDC eligibility that the

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188. 42 U.S.C.A. §§ 652, 653, 659 (West Supp. 1979).

189. *Id.* § 652.

190. *Id.* § 652(a)(1).

191. *Id.* § 652(a)(4). State programs are audited annually. The state receives reimbursement from the federal government for seventy-five percent of its expenses in operating the plan. *Id.* § 655. If a state fails to meet minimum standards of effectiveness, it is penalized by a five percent reduction in federal reimbursements. *Id.* § 603(h). On the other hand, states receive an incentive bonus if a local authority determines paternity or collects child support payments, which results in recoupment of AFDC payments to the family. *Id.* § 658.

192. *Id.* § 653.

193. Support payments must be made to the states and not directly to the family. *Id.* § 654(5). This institutionalization of the support process may prevent the creation of a sense of paternal responsibility and satisfaction from compliance and thereby may act as a disincentive for such compliance. Comment, *Federal Law and the Enforcement of Child Support Orders: A Critical Look at Subchapter 4 Part D of the Social Security Amendments of 1974*, 6 N.Y.U. REV. L. & SOC. CHG. 23, 36 (1976).

194. 42 U.S.C.A. § 654 (West Supp. 1979).

195. *Id.* Reciprocal arrangements with other states and with the federal courts when necessary, are to be utilized in the enforcement process.

196. *Id.* § 654(6). In addition, a state may continue to collect support payments for up to three months after an AFDC recipient goes off public assistance and may prolong services beyond the three months for a fee and costs. *Id.* § 657(c).

applicant furnish her social security number,<sup>197</sup> assign her support rights to the state,<sup>198</sup> and cooperate in establishing paternity and securing support payments.<sup>199</sup> The amount of the debt owed by the obligor to the state by virtue of the assignment of the support right is determined by an existing court order or, in the absence of a decree, by the state in accordance with a formula approved by HEW<sup>200</sup>

If the amount due is based on a court order and all state enforcement efforts fail, a federal statute authorizes referral of the matter to the Secretary of the Treasury for collection by tax collection methods.<sup>201</sup> Another statute also confers jurisdiction on the federal courts to entertain a support enforcement action certified by the Secretary of HEW without regard to the amount in contro-

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197. *Id.* § 602(a)(25)(A). One commentator has attacked this provision as involving an invasion of the welfare parent's privacy rights. Comment, *supra* note 193, at 33-35.

198. 42 U.S.C.A. § 602(a)(26)(A) (West Supp. 1979).

199. *Id.* § 602(a)(26)(B). The parent is denied assistance for refusal to cooperate. Aid to the child, however, still is provided by protective payments. *Id.* This provision was criticized widely. Fear of physical reprisal from putative and deserting fathers could deter mothers from applying for AFDC. Locker, *supra* note 186, at 638. In the 1975 amendment Congress exacted a "good cause" exception under which assistance is not denied for failure to cooperate. 42 U.S.C.A. § 208 (West Supp. 1979). Comment on the general rule, however, has remained generally negative. See J. CASSETTY, *supra* note 182, at 109; Bernet, *supra* note 182, at 513-15.

This provision has other faults. The uncooperative mother, in all likelihood, will continue to receive the children's "protective payments" with her welfare check even though payment to a third party technically is required. Thus, the mandatory cooperation provisions inure to the children's detriment. Comment, *supra* note 193, at 31.

200. 42 U.S.C.A. § 656 (West Supp. 1979). The Virginia Code authorizes the state Department of Welfare to establish a scale of suggested minimum contributions that may be used in fixing the amount of the obligation. VA. CODE § 63.1-286 (Cum. Supp. 1979). See also note 222 *infra*.

Under the United States Code, the amounts of monthly installments collected are retained by the state to offset welfare assistance payments for that period, with reimbursement to the federal government for its share of participation. Any excess, up to the amount of the support order for that period, goes to the family. If funds remain, the state and federal governments are reimbursed for past assistance. 42 U.S.C.A. § 657(b) (West Supp. 1979).

201. *Id.* § 652(b). See also 26 *id.* § 6305 (West Supp. 1979). The tax collection process begins with a notice to the obligor of assessment of liability and demand for payment pursuant to § 6303 of the Internal Revenue Code. In the case of a first assessment against an obligor under a court order, collection is stayed for a period of sixty days following the notice and demand. I.R.C. § 6305(a)(4). Thereafter, the obligor's property is subject to levy and distraint. *Id.* § 6331. Wages subject to a garnishment judgment for support however are exempt from levy. *Id.* § 6305(a)(3).

versy<sup>202</sup> Such certification is possible after a federal court determines that another state has not undertaken to enforce the originating state's court order against the absent parent within a reasonable time and that use of the federal courts is the only reasonable method of enforcing the order.<sup>203</sup>

The amendments further require HEW to establish the Federal Parent Locator Service. Established within the child support unit of HEW, this service provides information, such as the most recent address and employment of a deserting parent, gained from the files of any participating state or from virtually any federal agency.<sup>204</sup> The service is available to a state or local official with support enforcement authority, a court with support order authority, or an agent of a deserted, nonwelfare child.<sup>205</sup> Although the Federal Parent Locator Service is available to non-AFDC parents for a fee,<sup>206</sup> the request for such service must be channeled through the state agency after the state agency's efforts at location have failed.<sup>207</sup> The third main feature of the amendments, discussed previously, is the provision allowing garnishment of federal salaries to enforce not only child support obligations but also spousal sup-

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202. 42 U.S.C.A. § 652(a)(8) (West Supp. 1979). Federal courts, however, may decline jurisdiction on the premise that domestic relations is an area of state court expertise. Comment, *supra* note 193, at 31-32.

203. 42 U.S.C.A. § 652(a)(8) (West Supp. 1979).

204. *Id.* § 653(b). Although it never announced a definitive stance on the matter, the ACLU expressed concern at the legislative stage about the invasion of the absent father's privacy rights through use of the parent locator service. See J. CASSETTY, *supra* note 182, at 14.

The constitutional infirmity has been attacked by others. *Id.* at 109; Bernet, *supra* note 182, at 519-21; Locker, *supra* note 186, at 639-42; Schulman & Rinn, *Child Support and the New Federal Legislation*, 46 J. KAN. B.A. 105, 114 (1977); Comment, *supra* note 193, at 33-35. President Ford also expressed his reservation about this aspect of the legislation when he signed the bill. 11 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, no. 2, at 20 (January 13, 1975).

205. 42 U.S.C.A. §§ 653(c)(1)-(3) (West Supp. 1979).

206. *Id.* § 653(e)(2). The National Organization for Women lobbied vigorously for the inclusion of this provision. It noted that initial support awards, if granted on divorce, often are insufficient to meet the needs of middle-class women. Moreover, deficient state enforcement penalizes the wife who cannot afford private attorney's fees for an enforcement action but does not qualify for legal aid. *Hearings on S. 1842, S. 2081 Before the Senate Comm. on Fin.*, 93d Cong., 1st Sess. 180 (1973).

The failure to extend such services to non-AFDC persons may violate the equal protection provisions of the United States Constitution.

207. 42 U.S.C.A. § 653(f) (West Supp. 1979).

port payments.<sup>208</sup>

### THE VIRGINIA CHILD SUPPORT ENFORCEMENT PROGRAM

In Virginia, the problem of nonsupport of children by an absent parent paralleled the nationwide problem of growing AFDC expenditures.<sup>209</sup> As a result of a study authorized by the Virginia General Assembly in 1973,<sup>210</sup> the Virginia Public Welfare and Assistance Law<sup>211</sup> was enacted.

The Bureau of Support Enforcement, a division of the Virginia Department of Welfare, has been established to implement the mandates of Title IV-D of the Social Security amendments.<sup>212</sup> The Bureau has seven regional offices.<sup>213</sup> Field investigators and other regional staff members directly contact the obligors to secure voluntary compliance with the support duty. The Bureau's administrative staff<sup>214</sup> develops statewide policies and procedures, provides technical assistance to the regional staff, collects and disburses support funds, operates the state Parent Locator Service,<sup>215</sup> and oversees interstate support enforcement.<sup>216</sup>

The Virginia Public Welfare and Assistance Act specifically recognizes past inadequacies of common law and statutory remedies for support enforcement<sup>217</sup> and grants the Bureau extensive ad-

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208. *Id.* § 659. See notes 90-94 *supra* & accompanying text.

209. Department of Health, Education, and Welfare data indicates that in 1971 only 13.4% of all AFDC families received any support payments from the absent parent. A 1973 study by Virginia's Bureau of Research and Reporting of the Department of Welfare and Institutions reveals a 12.5% figure for Virginia AFDC families. REPORT OF DEPARTMENT OF WELFARE AND INSTITUTIONS TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA, S. Doc. No. 23, at 9 (1974).

210. S.J. Res. 125, 1973 Va. Acts 1326.

211. VA. CODE §§ 63.1-249 to 290 (Cum. Supp. 1979). Thus, the legislation to carry out the federal mandates of the 1974 social security amendment was enacted in Virginia before the authorization of federal funding for state programs.

212. *Id.* § 63.1-287.

213. Regional offices are located in Richmond, Falls Church, Virginia Beach, Roanoke, Lynchburg, Verona, and Abingdon.

214. Bureau headquarters, housing the administrative staff, are located in Richmond.

215. VA. CODE § 63.1-287(2) (Cum. Supp. 1979).

216. *Id.* § 63.1-287.

217. The Act's preface states as follows:

Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children and their caretakers by responsible persons have not proven sufficiently effective or efficient to cope

ministrative powers that go beyond current judicial remedies for support enforcement.<sup>218</sup> Services provided by the Bureau include the location of absent parents, establishment of paternity, and establishment, enforcement and collection of child support obligations.<sup>219</sup> The means of establishing and enforcing child support payments depends on the existence of a court order against the absent parent.

In all situations, the applicant must assign her support rights to the state to be eligible for receipt of AFDC.<sup>220</sup> Thereafter, any payment of public assistance to the family constitutes a debt owed to the state by the absent parent.<sup>221</sup> If a court order exists, the debt is limited to the amount of the court order; otherwise, the debt is established administratively.<sup>222</sup> Upon assignment, the Bureau is

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with the increasing incidence of financial dependency. The increasing workload of courts and the Commonwealth's attorneys has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the State

*Id.* § 63.1-249.

218. These remedies supplement existing judicial enforcement procedures. *Id.*

219. Because the goal of the federal and state legislation is to reduce AFDC budgets, child support is the focus of the enforcement program. According to John B. Tyler of the Policy Division of Virginia's Bureau of Support Enforcement, the Bureau also will collect alimony if a single decree imposes alimony and child support obligations. Interview with John B. Tyler, Policy Division, Bureau of Support Enforcement, in Richmond, Virginia, Aug. 9, 1979 [hereinafter cited as Interview].

220. VA. CODE § 63.1-105.1 (Cum. Supp. 1979). This provision also contains the other federally-mandated eligibility requirements, specifically, furnishing the social security number and cooperating in paternity determination. Failure to comply with these requirements is a misdemeanor. *Id.* § 63.1-278 (Cum. Supp. 1979).

221. *Id.* § 63.1-251. Under the Bankruptcy Reform Act of 1978, a support debt that has been assigned is dischargeable in bankruptcy. 11 U.S.C.A. § 523(a)(5)(A) (West Supp. 1979). Thus, bankruptcy can preclude the state's recovery right. This change in the bankruptcy law has been criticized as "jeopardiz[ing] the continuing viability of the AFDC program and at the same time giv[ing] tacit encouragement to parents who seek to avoid their duty to support their dependents." *Williams v. Department of Social & Health Servs.*, 529 F.2d 1264, 1271 (9th Cir. 1976) (footnotes omitted) (holding under the old bankruptcy provisions that a support debt owed to the state because of assignment under a state IV-D program was not dischargeable).

222. VA. CODE § 63.1-251 (Cum. Supp. 1979). This court decree also determines the intervals of payment for the debt. In administrative determinations of the support debt, a formula based on the responsible parent's income may be used. *Id.* § 63.1-286. The scale of suggested minimum contributions developed by the State Department of Welfare

include[s] consideration of gross income, authorize[s] an expense deduction for determining net income, designate[s] other available resources to be considered, consider[s] the amount of assistance which would be paid

subrogated to the rights of the AFDC recipients to pursue any action, legal or administrative, to recoup the debt.<sup>223</sup> In the court order situation, the money judgment is deemed to be in favor of the Bureau,<sup>224</sup> and payments made are redirected at the Bureau's request from the court to the Bureau while the assignment is in effect.<sup>225</sup>

If the collection of the court-ordered support is in jeopardy,<sup>226</sup> the Bureau may proceed with administrative or judicial means of enforcement.<sup>227</sup> In the typical court decree situation, the Bureau will take no action before this time unless the rendering court previously had requested the Bureau to proceed with administrative enforcement.<sup>228</sup> Also, if collection is in jeopardy, the formality of the Bureau's intervention varies. A field investigator simply may notify the clerk of court of the noncompliance or may petition the court for authority to proceed.<sup>229</sup>

Service of a Notice and Finding of Financial Responsibility initiates administrative action in both court and no-court order situations.<sup>230</sup> In the latter case, service of the notice is necessary to establish the administratively determined obligation. The notice is

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to the child and caretaker under the full standard of need of the Department's plan for aid to dependent children, and specif[ies] the circumstances which should be considered in raising or reducing such contributions including, but not limited to, earnings potential, reasonable necessities, ability to borrow, existence of other dependents or special hardships of the responsible person, as well as the needs of the child and caretaker.

*Id.*

A field investigator typically contacts the responsible parent for an interview in which financial data are gathered and the amount of the debt established. Interview, *supra* note 219.

223. VA. CODE § 63.1-251 (Cum. Supp. 1979).

224. *Id.*

225. *Id.* § 63.1-279.

226. Because the clerk of the juvenile and domestic relations district court is required to review nonsupport cases monthly and the Bureau does its own monitoring, theoretically any noncompliance will be acted on promptly.

227. VA. CODE § 63.1-266 (Cum. Supp. 1979).

228. The Bureau reports that cooperation with Virginia courts is generally good, with courts frequently requesting the Bureau to use its administrative remedies. The Bureau also assists courts through the Parent Locator Service. The Department of Corrections cooperates with the Bureau by providing the names of prisoners on work release, which the Bureau will check for names of obligors. Interview, *supra* note 219.

229. *Id.*

230. VA. CODE §§ 63.1-252, -253 (Cum. Supp. 1979).



served on the absent parent by the sheriff or by registered mail. It contains a demand for payment within twenty days and notification of the administrative actions that may be taken to collect the obligation.<sup>231</sup> If no court order exists, the absent parent may file an answer within twenty days of service setting forth any defenses.<sup>232</sup> An appeal from the notice of support debt is heard before an administrative hearings officer, with the right to an appeal de novo to the juvenile and domestic relations district court.<sup>233</sup>

Twenty-one days after service of the notice of debt,<sup>234</sup> the Bureau may assert a lien on all the real or personal property of the debtor by filing a statement with the clerk of the circuit court of the jurisdiction in which the property is located.<sup>235</sup> This lien grants the Bureau the priority of a secured creditor.<sup>236</sup> The Bureau also may serve a copy of the lien on anyone holding earnings, bank deposits, or balances of the debtor in order to prevent transfer or release of these assets.<sup>237</sup> The holder of the debtor's property may be held civilly liable for the full amount of the support debt if he fails to comply with the support lien.<sup>238</sup> The support lien thereby encumbers disposition of the property while a support debt is owing.<sup>239</sup> Tactically, support liens are filed and served at the outset of all cases to prevent disposition of valuable property and to preserve the Bureau's power to obtain reimbursement through foreclosure should the obligor resist other less severe measures.

After freezing the obligor's assets, the Bureau will attempt to se-

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231. *Id.* § 63.1-252.

232. *Id.* § 63.1-253.

233. *Id.* § 63.1-268. Jurisdiction is in the juvenile and domestic relations district court of the district in which the obligor resides or in which he has real or personal property.

234. When collection of a court-ordered obligation is in jeopardy, liens may be filed and served without regard to the twenty-day period. *Id.* § 63.1-266.

235. *Id.* § 63.1-254. The lien attaches on the date of filing. The scope of the lien includes all real property and all personal property located in the jurisdiction in which the lien is filed, except such property as is exempt from distraint, seizure, and sale under other provisions of the Virginia Code. *Id.*

236. *Id.*

237. *Id.* § 63.1-255. Service is in the manner prescribed for services of a warrant in a civil action or by certified mail. *Cf. id.* § 8.01-502 (Repl. Vol. 1977) (listing requirements for valid notice to third party who owes debt to judgment debtor).

238. *Id.* § 63.1-258.

239. Fifty percent of the obligor's disposable earnings, however, are exempt. *Id.* § 63.1-257.

cure a voluntary wage assignment from the obligor.<sup>240</sup> This assignment, which is the Bureau's only means of collecting current support, is irrevocable by the obligor and must be honored by any employer of the debtor.<sup>241</sup> Thus, it is superior to a garnishment summons, which has a limited life and cannot bind successive employers.

If the obligor is uncooperative, the Bureau can use the stricter administrative remedies at its disposal.<sup>242</sup> The order to withhold and deliver, a special kind of garnishment action, may be issued by the Bureau and served on any person in possession of the debtor's property, including his earnings.<sup>243</sup> During the twenty-day period within which such person must answer the order, the property must be withheld. At the expiration of that period, the property must be delivered to the Bureau<sup>244</sup> pending final determination of liability.<sup>245</sup> If a support lien or an order to withhold and deliver is outstanding, however, fifty percent of the debtor's disposable earnings is exempt from garnishment and may be disbursed to the debtor.<sup>246</sup> The nonexempt portion goes to the Bureau,<sup>247</sup> which acquires priority over other creditors of the debtor.<sup>248</sup> Unlike the limited civil garnishment action,<sup>249</sup> the order remains in effect until the entire support debt has been collected.<sup>250</sup>

In extreme situations, the Bureau may subject the property on which a support lien has been filed to distraint, seizure, and

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240. The Bureau will not act if the court prohibits an assignment. Interview, *supra* note 219. The field investigator normally negotiates with the obligor to arrive at a plan for satisfaction of the support debt. *Id.*

241. The "requirement to honor the assignment of earnings and the assignment of earnings itself shall continue in force and effect until released in writing by the Director" of the Department of Welfare. VA. CODE § 63.1-272 (Cum. Supp. 1979).

242. Judicial action is also available. See notes 257-61 *infra* & accompanying text.

243. VA. CODE § 63.1-256 (Cum. Supp. 1979). A copy also is served on the debtor.

244. The Bureau also may order delivery to the court. *Id.*

245. The holder who violates the order to withhold and deliver is subject to civil liability for the amount of the support debt. *Id.* § 63.1-258.

246. *Id.* § 63.1-257.

247. *Id.*

248. *Id.* § 63.1-256.

249. See text accompanying note 83 *supra*.

250. VA. CODE § 63.1-256 (Cum. Supp. 1979). Service of an order to withhold and deliver frequently compels the absent parent to reconsider a voluntary wage assignment. Interview, *supra* note 219.

sale.<sup>251</sup> After posting a public notice and giving notice to the debtor and other persons with a known interest in the property, the Bureau may conduct a sale of the property and credit the proceeds to the delinquent account.<sup>252</sup> Any excess, which ordinarily would be refundable to the obligor, may be subjected to distraint, seizure, and sale for sums that accrue after the first proceeding.<sup>253</sup>

A suit to foreclose a support lien through judicial sale is also available to the Bureau.<sup>254</sup> The action is brought in the circuit court of the jurisdiction in which the property is located and in which the lien is docketed.<sup>255</sup> If the proceeds of the sheriff's sale are insufficient to satisfy the support debt, the Bureau receives a deficiency judgment enforceable under the same execution,<sup>256</sup> an advantage unavailable to other judgment creditors.

In addition to its administrative remedies, the Bureau may pursue through the Commonwealth attorney the following judicial actions on behalf of AFDC recipients: (1) obtain or enforce a support order;<sup>257</sup> (2) advise the court in divorce and separate maintenance suits of the support debt owed to the state;<sup>258</sup> (3) seek modification of a divorce or separate maintenance decree to include or increase a support award if the AFDC parent is unable to employ private counsel for this purpose;<sup>259</sup> (4) seek an order against divorced or legally separated parents to show cause why a support order should not be entered or increased or why the parent should not be held in contempt for noncompliance with an order;<sup>260</sup> and (5) initiate any other civil proceedings necessary to secure reimbursement.<sup>261</sup>

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251. VA. CODE § 63.1-261 (Cum. Supp. 1979). State exemption laws, however, do apply. See Note, *The Failure of the Virginia Exemption Plan*, *supra* this issue.

252. VA. CODE § 63.1-261 (Cum. Supp. 1979).

253. *Id.*

254. *Id.* § 63.1-262.

255. *Id.*

256. *Id.*

257. *Id.* § 63.1-281(1).

258. *Id.* § 63.1-281(2). This should aid the court in fixing an adequate support award. The possibility of dependents being forced onto AFDC because of inadequacy of support awards, even if the obligor complies, is thereby forestalled.

259. *Id.* § 63.1-281(3).

260. *Id.* § 63.1-281(4).

261. *Id.* § 63.1-281(5).

The Bureau's interstate functions<sup>262</sup> include preparing cases for a RURESA action when the Bureau chooses the judicial enforcement route, assisting other states in parent location, and working directly with other Title IV-D agencies. In the latter instance, in response to a request from another IV-D agency, the Bureau will apply its administrative remedies against obligors who have fled to Virginia.<sup>263</sup> Thus, if the obligor locates in a state with a IV-D program allowing administrative remedies, such interagency cooperation expands significantly the avenues of collection beyond those available under RURESA. Furthermore, because IV-D agencies, unlike the prosecutors who handle RURESA matters, engage only in support enforcement activities, interstate enforcement is given high priority.

A person ineligible for public assistance may use the Bureau's parent location, support collection, and paternity determination services for a fee.<sup>264</sup> Thus, a private attorney may use the locator service on behalf of his nonwelfare client<sup>265</sup> and then proceed with judicial remedies. Alternatively, the nonwelfare parent may rely wholly on the Bureau's services. Support enforcement thereby becomes more economical for the client.

Virginia's child support enforcement program furthers public policy in several significant respects. For fiscal year 1977, the program reported collections of \$5.37 million and expenditures of \$3.85 million.<sup>266</sup> Location of an absent father and a determination that his ability to pay support exceeds the assistance grant frequently will enable the wife and children to cease receiving AFDC.

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262. *Id.* § 63.1-287. The Bureau also is investigating the possibility of international reciprocity. Interview, *supra* note 219.

263. Interview, *supra* note 219.

264. VA. CODE §§ 63.1-287(2), (8) (Cum. Supp. 1979). The costs of this service also is added to a standard fee. Although based on income, the fee in any case will not exceed \$45. Interview, *supra* note 219. No federal financial participation currently exists for this aspect of the IV-D program. The initial participation of the federal government terminated September 30, 1978. 42 U.S.C.A. § 655 (West Supp. 1979).

265. The attorney follows the same application procedures for such services as those provided for the nonwelfare client. The Bureau also has assisted private attorneys by communicating with other IV-D agencies to provide the attorney with information necessary to effect out-of-state service on the absent parent. Interview, *supra* note 219.

266. OFFICE OF CHILD SUPPORT ENFORCEMENT, DEP'T OF HEALTH, EDUCATION, AND WELFARE, SECOND ANNUAL REPORT TO THE CONGRESS FOR THE PERIOD ENDING SEPTEMBER 30, 1977, at 79 (1978) [hereinafter cited as SECOND ANNUAL REPORT].

The location of absent parents also facilitates possible family reconciliation.<sup>267</sup> Furthermore, the determination of paternity may entitle the children to inheritance rights. Finally, a strong support enforcement system deters evasion of support obligations and encourages an attitude of social responsibility among those owing family support obligations.

Despite the program's success in improving the efficiency and effectiveness of support enforcement, problems remain. The Bureau's non-AFDC services are underutilized. In 1977 the Bureau reported only three non-AFDC matters in its caseload.<sup>268</sup> Increased efforts are needed to inform non-AFDC families about the availability of these services. Some observers expect the Title IV-D program to expand rapidly once the benefits of public enforcement become widely known.<sup>269</sup>

Although the Bureau's expanded administrative remedies account for much of its success, the administrative approach also poses difficulties. Territorial restrictions limit effective administrative remedies. For example, if a runaway father is located, begins payment under a wage assignment, and then absconds to another state, the Bureau must begin its efforts anew. Because the structure of IV-D programs for each state varies and because all IV-D programs are inexperienced, the mechanics of cooperation at the interagency level are uncertain.<sup>270</sup> If the father absconds, for example, a RURESA action may be the only alternative if the new state lacks administrative remedies comparable to those in Virginia. Moreover, the Bureau has not yet developed guidelines or profiles for determining which cases are best suited for judicial, as opposed to administrative, handling.<sup>271</sup> Time and experience, however, will cure many of these troubles. Meanwhile, the IV-D program represents a substantial improvement over existing enforcement reme-

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267. Although the divorce rate in Virginia has climbed during the few years of the IV-D program's existence, field investigators have witnessed such reconciliations. Interview, *supra* note 219.

268. SECOND ANNUAL REPORT, *supra* note 266, at 79.

269. Interview, *supra* note 219. See also J. CASSETTY, *supra* note 182, at 98, for a specific proposal for complete public enforcement of support, including a mechanism similar to tax withholding in the absent parent situation.

270. Interview, *supra* note 219.

271. *Id.*

dies. Virginia courts should avail themselves of the program's services, perhaps by transferring enforcement matters to the Bureau after the entry of a support order in a divorce or separate maintenance suit, in the way a circuit court currently transfers enforcement to the juvenile and domestic relations district court.<sup>272</sup> Such use, coupled with increased use by nonwelfare persons, would create a more comprehensive public enforcement system.

### CONCLUSION

The common law and statutory remedies available to the obligee for enforcement of a support order reflect the special nature of the order as a social and moral duty. Contempt enforcement and the consequent imprisonment of the obligor are harsh equitable remedies available to other judgment creditors only for the obligor's failure to appear for interrogatory proceedings,<sup>273</sup> but not for the obligor's failure to satisfy the judgment. Other advantages given the support order obligee in the postjudgment collection process include removal of monetary restrictions on wage garnishment, denial of the obligor's homestead exemption, and denial of the obligor's discharge in bankruptcy for support obligations. Nevertheless, the existing remedies are inadequate. A jailed contemnor cannot fulfill support obligations. In addition, support obligations can be avoided by concealing or removing leviable assets from the court's jurisdiction. Moreover, RURESA interstate enforcement often is ineffective because the authorities of the responding state do not always carry out their enforcement duties diligently.

The new federal and state child support enforcement legislation removes family support obligations from this traditional but deficient judicial enforcement scheme. The federal government's waiver of sovereign immunity for the garnishment of federal salaries manifests the need for forceful responses to the support evasion problem. In Virginia, the uncooperative obligor whose family has assigned its support rights to the state under the IV-D program will face swift, harsh, administrative collection tactics. Furthermore, once the mechanics of IV-D interagency cooperation are established, the IV-D program will provide advantages over private

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272. VA. CODE § 20-79(c) (Cum. Supp. 1979).

273. *Id.* § 8.01-508 (Repl. Vol. 1977).

RURESA actions because IV-D officials, unlike Commonwealth attorneys, engage only in support enforcement activities.

The proven effectiveness of the new federal and state child support enforcement programs indicates that increased public enforcement of all family support obligations is possible. Virginia has continued to provide its program's services to nonwelfare persons despite the lack of federal financial participation in this effort. These services, however, are underutilized and financial participation is required for a more comprehensive public support enforcement system. In the meantime, Virginia's program offers needed child support services.

JANE F VEHKO